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Presidential Documents

Title 3—

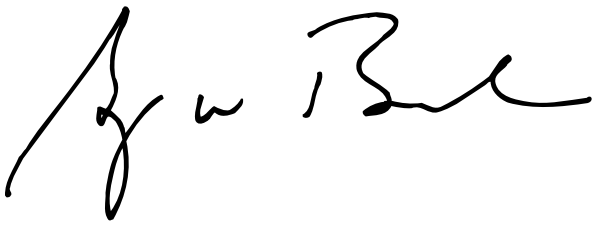
The President

Notice of February 18, 2005

Continuation of the National Emergency Relating to Cuba and the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

On March 1, 1996, by Proclamation 6867, a national emergency was declared to address the disturbance or threatened disturbance of international relations caused by the February 24, 1996, destruction by the Cuban government of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. In July 1996 and on subsequent occasions, the Cuban government stated its intent to forcefully defend its sovereignty against any U.S.-registered vessels or aircraft that might enter Cuban territorial waters or airspace while involved in a flotilla or peaceful protest. Since these events, the Cuban government has not demonstrated that it will refrain from the future use of reckless and excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. On February 26, 2004, by Proclamation 7757, the scope of the national emergency was expanded in order to deny monetary and material support to the repressive Cuban government, which had taken a series of steps to destabilize relations with the United States, including threatening to abrogate the Migration Accords with the United States and to close the United States Interests Section. Further, Cuba's most senior officials repeatedly asserted that the United States intended to invade Cuba, despite explicit denials from the U.S. Secretaries of State and Defense that such action is planned. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6867 as amended and expanded by Proclamation 7757.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
February 18, 2005.

[FR Doc. 05–3701
Filed 2–23–05; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 25 and 95

RIN 3150–AH52

Broadening Scope of Access Authorization and Facility Security Clearance Regulations: Withdrawal of Direct Final Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have broadened the scope of the regulations to include persons who may need access to classified information in connection with licensing and regulatory activities under the regulations that govern the disposal of high-level radioactive waste in geologic repositories, and persons who may need access to classified information in connection with other activities as the Commission may determine, such as vendors of advanced reactor designs. In addition, this direct final rule would have broadened the scope of the regulations applicable to procedures for obtaining facility security clearances. The NRC is withdrawing this direct final rule because it has received significant adverse comments in response to an identical proposed rule which was published concurrently with the direct final rule.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6233 (e-mail *ant@nrc.gov*).

SUPPLEMENTARY INFORMATION: On December 15, 2004 (69 FR 74949), the NRC published in the **Federal Register** a direct final rule that would have amended NRC's regulations to broaden the scope of the regulations (10 CFR Part 25) applicable to persons who may require access to classified information, to include persons who may need access in connection with licensing and regulatory activities under the regulations that govern the disposal of high-level radioactive waste in geologic repositories, and persons who may need access in connection with other activities as the Commission may determine, such as vendors of advanced reactor designs. This direct final rule would also have broadened the scope of the regulations applicable to procedures for obtaining facility security clearances (10 CFR Part 95). The direct final rule was to become effective on February 28, 2005. The NRC concurrently published an identical proposed rule on December 15, 2004 (69 FR 75007).

In the direct final rule, NRC stated that if any significant adverse comments were received, a notice of timely withdrawal of the direct final rule would be published in the **Federal Register**. As a result, the direct final rule would not take effect.

The NRC received significant adverse comments on the direct final rule; therefore, the NRC is withdrawing the direct final rule. As stated in the December 15, 2004, direct final rule, NRC will address the comments received on the companion proposed rule in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Dated at Rockville, Maryland, this 17th day of February, 2005.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 05–3489 Filed 2–23–05; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loans to Members and Lines of Credit to Members

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending three subsections of its lending rule and this final rule clarifies: the conditions for applying the rule to loans secured by mobile homes, recreational vehicles, house trailers and boats; that loans secured by manufactured homes may be considered residential real estate loans; and that loans with a partial government guarantee, insurance, or advance commitment to purchase a portion of a loan fall within the rule. The changes incorporate legal interpretations previously issued by its Office of General Counsel (OGC) regarding permissible maturities for certain types of loans and the effect of partial government guarantees. The NCUA Board is making these changes because it believes it is helpful to federal credit unions (FCUs) and others that may consult NCUA regulations to incorporate these interpretations as part of the rule itself rather than having them stated separately in OGC legal opinions.

DATES: *Effective Date:* This rule is effective March 28, 2005.

FOR FURTHER INFORMATION CONTACT: Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The Federal Credit Union Act (the FCU Act) generally limits an FCU's authority on matters of loan maturity, rates of interest, security and prepayment penalties. 12 U.S.C. 1757(5). As permitted under the FCU Act, the NCUA Board (the Board) has promulgated lending regulations allowing loan maturities of 20 years for mobile home loans and up to 40 years, or more with specific Board approval, on residential real estate loans. 12 CFR 701.21(f) and (g). NCUA's lending regulations also address loans secured by a state or federal government insurance or guarantee. 12 CFR 701.21(e). The OGC had recently issued several legal opinions addressing loan guarantees and loan maturities. In the course of the agency's annual review of regulations, the Board determined that the rules on loan guarantees and maturities should be updated to reflect the OGC opinions. Accordingly, on November 18, 2004, the Board issued a proposal to amend the lending regulations to incorporate the recent OGC opinions. 69 FR 68829, Nov. 26, 2004.

Summary of Comments

NCUA received eleven comments: five from state credit union leagues, two from national credit union trade organizations, three from individual credit unions, and one from a banking trade association. The comments were generally positive and supported the proposal to amend the regulation.

All of the comments that specifically addressed the proposed changes to § 701.21(e) of the rule regarding loan guarantees were favorable and supported the change. The final amendment to the rule, which is unchanged from the proposed, clarifies that a partial government guarantee, insurance, or commitment to purchase a loan is sufficient to effect the application of the regulation.

The majority of comments supported the proposed changes to § 701.21(f) and (g) regarding loan maturities for mobile homes, recreational vehicles and boats, and loan maturities for manufactured homes.

The banking trade association opposed the changes regarding loan maturities in whole, describing them as inconsistent with the credit union industry's specified mission of meeting the credit and savings needs of persons of modest means and arguing that they encourage unsafe lending practices. The Board disagrees. Rather, the Board finds that these amendments to the lending rule enhance an FCU's ability to meet the credit needs of its members. This rule allows FCUs to offer credit products that are more affordable to lower income members. Improvements in the quality and standards of construction of manufactured housing, for example, have resulted in increased values that may put the cost of shorter term loans out of the financial reach of individuals of modest means. The Board also disagrees that the longer maturities will encourage unsafe lending practices. To the contrary, as stated in the preamble to the proposed rule, NCUA encourages FCUs to take appropriate steps to ensure their liens are fully protected. Further, these changes to the regulation merely codify what OGC opinions have permitted for several years, and the Board is unaware of any evidence that the longer loan maturities have resulted in unsafe lending practices.

Two commenters raised issues revealing some confusion about the difference between mobile homes, which may have loan maturities up to 20 years, and manufactured homes, which are eligible for longer maturities. One FCU commented about a particular state law and local practices regarding the titling of manufactured housing as real or personal property, ground-leasing, and what constitutes ''permanently affixed,'' which, the commenter contended, could cause confusion and result in risks to FCUs making manufactured housing loans. In part, some confusion may result if the terms manufactured home and mobile home have a different meaning under a state law. In reviewing the FCU's letter, it became apparent that there may be issues under a state law that FCUs will need to address in their lending agreements with borrowers to ensure compliance with NCUA's lending regulation. One trade association suggested clarifying that manufactured housing that is not permanently affixed to the land constitutes a mobile home. The Board notes that, while this will generally be correct because a mobile home does not have to be permanently affixed to land, which is required for a manufactured home loan, a mobile home still must meet certain regulatory criteria to qualify for a maturity of up to 20 years.

The regulation distinguishes between mobile homes and manufactured homes. First, in using the term ''permanently affixed'' to describe manufactured homes as a type of manufactured housing distinguished from mobile homes, the Board intends to limit long-term loans to manufactured homes that are intended to remain in place permanently. In its opinion letter on this topic, the OGC stated:

> Most significantly, we note that a manufactured home, although constructed at a factory and not built on-site, is designed and intended to be permanently affixed to the land. Unlike a mobile home, which is also constructed at a factory, a manufactured home is not intended to be moved once it has reached its ultimate destination.

Legal Opinion OGC 03–0934, dated November 17, 2003. In order for a loan to qualify for the longer maturities of residential mortgage loans under § 701.21(g), a manufactured home must be designed and intended to remain in place permanently.

The same FCU noted above also commented about two issues regarding manufactured home loans discussed in the preamble to the proposed rule. Regarding the statement in the preamble that a manufactured home must qualify as real property and be titled as real property, the FCU contends the requirement is unnecessary and that state law and local titling practices could cause problems. The Board notes that, for a loan to be eligible for a 30-year or more maturity term, the FCU Act requires that it be a ''residential *real estate* loan.'' 12 U.S.C. 1757(5)(A)(i) (emphasis added). Loans secured by some type of manufactured housing that is titled as personal property are not eligible for 30-year mortgages under the FCU Act but may be able to qualify as 20-year mobile home loans, assuming the criteria of § 701.21(f) are met. To the extent that a particular state law raises questions of how an FCU can ensure its loans comply with NCUA's lending regulation, an FCU may seek interpretive guidance from OGC.

Second, the FCU commented about the Board's suggestion that, for safety and soundness reasons, FCUs engaging in long-term loans for manufactured homes under § 701.21(g) should ensure, if the member is leasing the land where the manufactured home is located, that the term of the lease should be at least as long as the term of the loan. The FCU commented that this requirement is unnecessary and unreasonable, stating that, in practice, most manufactured housing communities permit leases of no longer duration than six months. First, the Board notes its statement in the preamble is not a regulatory requirement but is a statement of guidance. Second, the FCU's reference to a local practice of having short term leases of six months or less is a practice associated with mobile home parks rather than manufactured home locations. A manufactured home, as opposed to a mobile home, is designed and intended to stay in place permanently rather than be moved. The Board's understanding is that, in purchases of manufactured homes, the manufactured home is most often located on land the borrower already owns or is purchasing in conjunction with the purchase of the manufactured home. As noted in the preamble for the proposed rule, as a matter of safety and soundness, an FCU making a manufactured home loan where the land is leased should ensure that the lease is as long as the term of the loan. There may be some rare set of circumstances that would support an FCU making a 30-year loan on a manufactured home located on property that is leased for some lesser period of time. However, where the lease on land is of such a short duration that it places the loan security at a high risk of loss or waste, safety and soundness considerations would weigh against making a 30-year or more loan.

For these reasons, the Board has determined to adopt the proposed rule as a final rule with no changes.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The rule clarifies and expands the lending rules to incorporate recent OGC opinions. NCUA has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the rule 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 § 701.21's collection requirements (OMB No. 3133–0139).

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This rule applies to only federally chartered credit unions. NCUA has determined that the final rule does not constitute a ''significant regulatory action'' for purposes of the Executive Order.

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 rule applies only to federal credit unions. NCUA has determined that the amendments to the rule 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 rule does not constitute a policy that has federalism implications for purposes of the executive order.

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 Procedures Act. 5 U.S.C. 551. NCUA submitted the rule to the Office of Management and Budget, which has determined that it is not major for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 701

Credit unions, loans.

By the National Credit Union Administration Board on February 17, 2005.

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 § 701.21 by revising paragraphs (e), (f) and (g)(1) to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(e) *Insured, Guaranteed and Advance Commitment Loans.* A loan secured, in full or in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal Government, a State government or any agency of either, may be made for the maturity and under the terms and conditions, including rate of interest, specified in the law, regulations or program under which the insurance, guarantee or commitment is provided.

(f) *20-Year Loans.* (1) Notwithstanding the general 12-year maturity limit on loans to members, a federal credit union may make loans with maturities of up to 20 years in the case of:

(i) a loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home, and the mobile home meets the requirements for the home mortgage interest deduction under the Internal Revenue Code,

(ii) a second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower, and

(iii) a loan to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower.

(2) For purposes of this paragraph (f), mobile home may include a recreational vehicle, house trailer or boat.

(g) *Long-Term Mortgage Loans.* (1) *Authority.* A federal credit union may make residential real estate loans to members, including loans secured by manufactured homes permanently affixed to the land, with maturities of up to 40 years, or such longer period as may be permitted by the NCUA Board on a case-by-case basis, subject to the conditions of this paragraph (g).

* * * * *

[FR Doc. 05–3477 Filed 2–23–05; 8:45 am]

BILLING CODE 7535–01–U

SMALL BUSINESS ADMINISTRATION

13 CFR Part 134

RIN 3245–AF25

Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule amends the interim final regulations governing the Service-Disabled Veteran Owned Small Business Concern (SDVO SBC) Program. In particular, this rule clarifies the appeal procedures to the Office of Hearings and Appeals (OHA).

DATES: This rule is effective February 24, 2005. Comments must be received on or before March 28, 2005.

ADDRESSES: You may submit comments, identified by the RIN number, by any of the following methods: through the Federal rulemaking portal at *http://www.regulations.gov* (follow the instructions for submitting comments); through e-mail at *SDVOSBCProgram@sba.gov* (include RIN number in the subject line of the message); or by mail to Dean Koppel, Assistant Administrator, Office of Policy and Research, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Administrator, Office of Policy and Research, (202)

205–7322 or at *SDVOSBCProgram@sba.gov.*

SUPPLEMENTARY INFORMATION: On May 5, 2004, the U.S. Small Business Administration (SBA or Agency) published in the **Federal Register**, 69 FR 25261, an interim final rule to implement that section of the Veterans Benefits Act of 2003 (VBA), which addressed procurement programs for small business concerns (SBCs) owned and controlled by service-disabled veterans. Specifically, the interim final rule defined the term service-disabled veterans, explained when competition may be restricted to SDVO SBCs, and established procedures for protesting and appealing the status of an SDVO SBC. SBA received 45 comments on the interim final rule. The majority of the commenters fully supported the regulatory amendments. SBA explained these comments in a final rule concerning the SDVO SBC regulations that is being issued simultaneously with this interim rule.

SBA received one comment asking for a clarification of the appeal procedures discussed in part 134. SBA has reviewed the OHA appeal procedures set forth in the interim final rule and agrees that further clarification is necessary. Consequently, SBA has amended the rule to include a separate subpart in 13 CFR part 134 to specifically address appeals of SDVO SBC protest determinations. SBA believes the procedures set forth in this subpart will be easier to follow and provide the necessary due process to protested SDVO SBCs and protesters.

As a result of this amendment to part 134, however, SBA has decided to issue the rule with respect to the OHA appeal procedures as an interim final rule with a request for comments. Thus, interested parties can comment on these new changes to the appeal procedures.

I. Justification for Publication as Interim Final Status Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act and SBA regulations, 5 U.S.C. 553 and 13 CFR 101.108. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without prior public participation. In this present case, the Agency notes that this procurement program for service-disabled veterans became effective upon enactment of the VBA. The purpose of this procurement program is to assist agencies in achieving the statutorily mandated 3% government-wide goal for procurement from service-disabled veteran-owned SBCs. When drafting the VBA, Congress found that agencies were falling far short of reaching this goal. Consequently, in the legislative history for that Act, Congress specifically urges SBA and the Office of Federal Procurement Policy to expeditiously and transparently implement this procurement program.

Thus, SBA and the Federal Acquisition Regulations (FAR) Council have issued final rules governing the SDVO SBC Program. These final rules address SDVO SBC protest procedures. Because there are now protest procedures in place with respect to SDVO SBCs, it is necessary for SBA to have appeal procedures established as well.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to provide a mechanism to appeal the status of a SDVO SBC. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would delay the delivery of critical assistance to the Federal procurement community by a minimum of three to six months and would require SDVO SBCs to go to another tribunal (*e.g.*, district court) for an SDVO SBC appeal. This could be a financial burden for SDVO SBCs. Although this rule is being published as an interim final rule, comments are hereby solicited from interested members of the public. SBA will then consider these comments in making any necessary revisions to these regulations.

II. Justification for Immediate Effective Date of Interim Final Rule

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register**.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in Paragraph I, Justification of Publication of Interim Final Status Rule, SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date.

SBA also believes, based on its contacts with interested members of the public, that there is strong interest in immediate implementation of this rule. SBA is aware of many procuring activities and business concerns that will be assisted by the immediate adoption of this rule.

Section-by-Section Analysis

SBA has amended part 134 to add a new subpart E, which will specifically address SDVO SBC appeals from protest determinations issued by the Associate Administrator for Government Contracting (AA/GC). According to § 134.501, this will include appeals from determinations by the AA/GC that the protest was premature, untimely, nonspecific, or not based upon protestable allegations.

Section 134.501 also explains that except where inconsistent, the provisions in subparts A and B apply to SDVO SBC appeals. This means, for example, that the provisions relating to a requirement for a signature on all submissions and representations in cases before OHA that apply to other types of appeals will also apply to SDVO SBC appeals.

In § 134.502, SBA explains that the protested concern, the protester or the contracting officer (CO) may appeal a protest determination to OHA. SBA has limited the appeal process to those parties that were involved in the protest.

Section 134.503 states that such appeals must be filed within 10 business days after the appellant receives the SDVO SBC protest determination. As explained in § 134.204(b), filing is the receipt of pleadings and other submissions at OHA. SBA believes that 10 business days is ample time for an appeal to be filed, yet still allows for an expeditious appeal process.

In § 134.504, the regulation explains the effects of the appeal on the procurement at issue. For example, the filing of an appeal stays the procurement; however, the CO may award the contract after receipt of the appeal if the CO determines in writing

that an award must be made to protect the public interest. SBA believes that this provision is necessary. If COs did not stay the procurement pending the outcome of the appeal, the appeal process could lose its force and effect.

Section 134.505 sets forth the requirements for an appeal petition as well as who must be served the appeal petition. For example, the petition must state the basis of the appeal as well as other information relating to the procurement. This information is necessary so that the OHA Judge can decide whether the appeal is nonspecific or untimely.

Section 134.506 explains that the service and filing of all pleadings and submissions must meet the requirements of § 134.204, unless otherwise indicated. This keeps the filing and service requirements for OHA proceedings consistent with other appeals, such as size and NAICS appeals.

According to § 134.507, upon receipt of the appeal petition, the AA/GC will transmit the entire protest file to OHA. The protest file will generally contain the CO's referral letter, the protest, SBA's request to the protested concern for a response to the protest, the protested concern's response, and the final determination. The AA/GC will certify and authenticate the protest file. SBA believes that this is the information necessary for the OHA Judge to determine whether the AA/GC's decision was erroneous. SBA notes that the protest file will not be sent to the parties to the appeal because it typically contains confidential information that cannot be disclosed to other parties.

According to § 134.508, the standard of review is whether the AA/GC's protest determination was based on clear error of law or fact. SBA has decided to utilize this standard of review because it is the same standard used for size and North American Industry Classification System (NAICS) appeals and SBA believes that such appeals are similar to SDVO SBC appeals. For example, with respect to status determinations, the AA/GC will review documents from the U.S. Department of Veterans Affairs (VA), U.S. Department of Defense (DoD) and the U.S. National Archives and Records Administration (NARA) to determine whether the SBC owner meets the definition of service-disabled veteran set forth in 13 CFR 125.8. The AA/GC does not question the determination made by either the VA or DoD concerning an individual's status as a service-disabled veteran; rather, the AA/GC will ensure the owner has the appropriate documents from those agencies. The protest file will contain any such documentation provided by the protested concern. Upon review, the OHA Judge will also look to see if the AA/GC reviewed the appropriate documents, and will not question the determinations made by the VA or DoD. Consequently, the clear error standard is more appropriate for this type of appeal.

Section 134.509 sets forth those instances when a dismissal of an appeal is warranted. That section provides that the OHA Judge will dismiss an appeal when it fails to allege facts that if proven to be true would warrant reversal of the protest determination; when the appeal petition does not contain all of the information required by § 134.505; the appeal has not been filed on time; or the matter has been decided or is the subject of adjudication before a court of competent jurisdiction.

Section 134.510 explains who may file a response to the appeal petition. The regulation provides that any person served with an appeal petition may file a response. This regulation does not require such parties to file a response; rather, it gives them the discretion to do so. However, if a party does decide to file a response, it must be filed within 7 business days after the service of the appeal petition. This 7-day deadline is necessary to expedite the appeal process. In addition, SBA believes that further time for the filing of a response is unnecessary because most of the issues will have already been addressed at the protest level.

Section 134.511 provides that an OHA Judge will not permit discovery and no oral hearings will be held. In a similar vein, § 134.512 provides that the Judge may not admit evidence beyond the written protest file. SBA believes that the appeal procedures should be quick, since the protest and appeal trigger a stay of the procurement. If discovery and further evidence were permitted, this would lengthen the appeal process. In addition, because the standard of review is clear error of fact or law, the OHA Judge only needs to review only the written protest file to make his or her determination on appeal.

Section 134.513 explains that the record will close when all pleadings have been submitted. This means the record closes when all responses to the appeal have been filed in accordance with § 134.510. This is important because according to § 134.514, the Judge will issue a decision within 15 business days after the close of the record.

Section 134.515 explains the effects of the Judge's decision. All decisions by the OHA Judge are final and binding on the parties. In addition, in accordance with § 125.28, if the contract has already been awarded and on appeal the OHA Judge affirms that the SDVO SBC does not meet a status or ownership and control requirement set forth in these regulations, then the procuring agency cannot count the award as an award to an SDVO SBC and therefore must revise the contract award data to reflect the appropriate status of the awardee. Further, the protested concern cannot self-represent its status as an SDVO SBC for another procurement until it has cured the eligibility issue. If a contract has not yet been awarded and on appeal the OHA Judge affirms that the protested concern does not meet the status or ownership and control requirement set forth in these regulations, then the protested concern is ineligible for that specific SDVO SBC contract award.

Section 134.515 also provides that the Judge may reconsider his or her decision and any party who has appeared in the proceeding (*e.g.*, submitted a protest or other pleading to OHA) or SBA (even if SBA has not appeared in the proceeding) may request a reconsideration. The request for reconsideration must show an error of fact or law material to the decision. SBA has allowed for a reconsideration process because one exists for other types of appeals and SBA believes that it provides SBCs another opportunity for administrative recourse.

In addition, § 134.515 explains that the Judge may remand a proceeding to the AA/GC for a new SDVO SBC status protest determination if the latter fails to address issues of decisional significance sufficiently, does not address all the relevant evidence provided during the protest procedures or does not identify specifically the evidence upon which it relied. Once remanded, OHA no longer has jurisdiction over the matter, unless a new appeal is filed.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

This action meets applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

This regulation will not have substantial direct effects on the States,

on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA determines that this final rule has no federalism implications warranting preparation of a federalism assessment.

Because the rule is an interim final rule, there is no requirement for SBA to prepare an Initial Regulatory Flexibility Act analysis.

OMB has determined that this rule constitutes a ''significant regulatory action'' under Executive Order 12866. The regulatory impact analysis is set forth below.

Regulatory Impact Analysis

A. General Considerations

1. Is There a Need for the Regulatory Actions?

Yes. SBA is statutorily authorized to administer the Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) Program. The SDVO SBC Program is established pursuant to Public Law 108–183, the Veterans Benefits Act of 2003. Section 308 of that law amended the Small Business Act to establish a procurement program for SBCs owned and controlled by service-disabled veterans. This procurement program provides that contracting officers may award a sole source or set-aside contract to SDVO SBCs if certain conditions are met. The VBA also provides that SBA may verify the eligibility of any SDVO SBC.

SBA has issued regulations implementing this procurement program for service-disabled veterans. Those regulations address protest procedures, which is how SBA has decided to verify eligibility for SDVO SBCs. The regulations issued today will implement the appeal procedures to provide protesters and protested concerns an administrative avenue in which to appeal a protest determination. Consequently, SBA believes that this regulation is necessary and that it must be implemented as quickly as possible.

2. Alternatives

SBA must implement this appeal procedures program through regulations. There are no practical alternatives to the implementation of this rule. Issuance of policy directives, for example, which are not generally published material like regulations, would hinder a SBC's access to this needed information. In addition, all of SBA's appeal procedures are set forth by regulation in part 134 and there is no reason why appeals for SDVO SBCs should be located in any other place.

One alternative SBA did consider for SDVO SBCs was proposing a certification program, similar to its 8(a) Business Development and HUBZone Programs. The statute implementing those programs discusses certain certification and program procedures. SBA did not believe such a certification program was necessary to implement the VBA or was required by the VBA. Rather, the SDVO SBC will be able to self-represent its status to the contracting activity as part of its offer. The contracting officer, SBA, or other SDVO SBCs may protest this representation. If the protest is specific, SBA will review the protested firm to determine whether it meets the program's requirements. SBA uses a similar protest procedure for small business set-asides. SBA believes that it is necessary to provide the parties with the appeal process set forth in this rule. This appeal process will allow for an administrative means to appeal the protest decision. The alternative to not having an administrative appeal process is to have the parties appeal the decision to a court of competent jurisdiction. However, because it is typically less costly to use the administrative appeal process rather than going to court, SBA has issued regulations on an appeal process for SDVO SBCs.

B. Potential Benefits and Costs of This Regulation

SBA does not have sufficient data to establish a baseline to measure the costs and benefits of their rule. SDVO SBCs will be the primary beneficiaries of this rule. Specifically, 15 U.S.C. 664(g), (502(b), Pub. L. 106–50, August 17, 1999), established a 3 percent prime contracting and subcontracting goal for SDVO SBCs for Federal contracting. This statutory provision did not, however, establish a procurement mechanism to encourage contracting activities to award contracts to SDVO SBCs. On December 16, 2003, Pub. L. 108–183, the VBA, was signed into law by the President. Section 308 of the VBA revised the Small Business Act to add new section 36 (15 U.S.C. 657f), a procurement program for SDVO SBCs. This program provides that contracting officers may award a sole source or set-aside contract to SDVO SBCs if certain conditions are met. SBA cannot accurately determine how many concerns will be competing for SDVO SBC contract awards because there is insufficient data on SDVO SBCs ready and able to perform on a government contract to support a reasonable estimate. However, a review of the data available from several different sources evidences the following.

According to the VA, there were 2.5 million veterans with a service connected disability. (*See http://www.va.gov/vetdata/demographics/index.htm.*) However, the data does not tell us how many of those veterans own a small business concern that would qualify for the program. Thus, SBA looked at data available from the state of California, the only state that has a similar SDVO SBC Program. (*See http://www.ca.gov.*) In Fiscal Year (FY) 2001, California awarded contracts to 832 Disabled Veteran Business Enterprises (DVBEs). In FY 2002, California awarded 2.8% of all State contract actions to 973 DVBEs. The dollar value of contract awards for 2001 and 2002 was not readily available. In FY 2003, California awarded $142,670,222, or 2.7% of all State contract actions to DVBEs. California requires DVBE Program participants to be a disabled veteran. SBA could not determine how many DVBEs were small business concerns. SBA welcomes comments discussing other State-level DVBE Programs.

In addition, SBA reviewed the 1992 Economic Census data reported under ''Characteristics of Business Owners,'' the most recent data available. (*See http://www.census.gov.*) This data revealed that disabled veterans represented 1.8% of all businesses, or approximately 310,557 businesses. The U.S. Bureau of the Census did not distinguish between small and large businesses or whether the veteran's disability status was based on a ''service-connected'' disability as defined in 38 U.S.C. 101. Therefore, SBA also reviewed information contained in the U.S. Department of Defense's Central Contractor Registration (CCR) database. There are 4,825 SDVO SBCs registered in CCR. This represents a small portion, 15.9% of the 30,434 veteran-owned businesses registered in CCR. Again, it is not known what percentage of the service-disabled veterans based their representation on the ''service-connected'' disability as defined by 38 U.S.C. 101.

Finally, SBA reviewed data from the Federal Procurement Data System. In FY 2001, there were 9,142 contract actions awarded to SDVO SBCs in the amount of $554,167,000. This represented .25% of all Federal contracts awarded. In FY 2002, 7,131 contract actions were awarded to SDVO SBCs in the amount of $298,901,000. This represented .13% of all Federal contracts awarded. Although there are over 2 million

service-disabled veterans, only a small portion own small businesses. However, it is assumed that the establishment of a sole source and set-aside procurement vehicle for SDVO SBCs will attract more of these entities to the Federal procurement arena. In addition, according to the data set forth above, few contracts were awarded to SDVO SBCs in the Federal and State arenas. This number could increase as a result of the implementation of the VBA through this regulation. Thus, there is a relatively small percentage of SDVO SBCs (2.4%) registered in the CCR (4,852), as compared to the total number of SBCs (201,742). Consequently, SBA believes that this rule concerning appeal procedures for SDVO SBCs will not have a major impact on SBCs in the Federal procurement arena.

SBA welcomes comments discussing the potential number of concerns that could become eligible under this rule and which could protest and appeal the SDVO SBC status of an apparent awardee.

With respect to who will benefit from this regulation, SBA notes that it believes currently eligible SDVO SBCs will benefit immediately since they are ready and able to tender an offer for a Federal procurement and can therefore protest and appeal an awardee's SDVO SBC status.

SBA estimates that the Federal government will require no additional appropriations for agencies to implement this program. SBA's Office of Government Contracting will handle the protests and SBA's Office of Hearings and Appeals will handle the appeals.

List of Subjects in 13 CFR Part 134

Administrative practice and procedure, Claims, Lawyers, Organization and functions (Government agencies).

■ For the reasons set forth in the preamble, amend part 134 of title 13 of the Code of Federal Regulations as follows:

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 1. The authority citation for 13 CFR part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(l), 656(i), and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

■ 2. Amend Part 134 by redesignating §§ 134.501 through 134.518 as §§ 134.601 through 134.618 and by redesignating subpart E as subpart F.

■ 3. Add a new subpart E to read as follows:

Subpart E—Rules of Practice for Appeals From Service-Disabled Veteran Owned Small Business Concern Protests

Sec.
134.501 What is the scope of the rules in this subpart E?
134.502 Who may appeal?
134.503 When must a person file an appeal from an SDVO SBC protest determination?
134.504 What are the effects of the appeal on the procurement at issue?
134.505 What are the requirements for an appeal petition?
134.506 What are the service and filing requirements?
134.507 When does the AA/GC transmit the protest file and to whom?
134.508 What is the standard of review?
134.509 When will a Judge dismiss an appeal?
134.510 Who can file a response to an appeal petition and when must such a response be filed?
134.511 Will the Judge permit discovery and oral hearings?
134.512 What are the limitations on new evidence?
134.513 When is the record closed?
134.514 When must the Judge issue his or her decision?
134.515 What are the effects of the Judge's decision?

§ 134.501 What is the scope of the rules in this subpart E?

(a) The rules of practice in this subpart E apply to all appeals to OHA from formal protest determinations made by the Associate Administrator for Government Contracting (AA/GC) in connection with a Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) protest relating to the status or ownership or control of the SDVO SBC, as set forth in § 125.26 of this chapter. This includes appeals from determinations by the AA/GC that the protest was premature, untimely, nonspecific, or not based upon protestable allegations.

(b) Except where inconsistent with this subpart, the provisions of Subpart A and B of this part apply to appeals listed in paragraph (a) of this section.

(c) Appeals relating to formal size determinations and NAICS Code designations are governed by Subpart C of this part.

§ 134.502 Who may appeal?

Appeals from SDVO SBC protest determinations may be filed with OHA by the protested concern, the protester, or the contracting officer responsible for the procurement affected by the protest determination.

§ 134.503 When must a person file an appeal from an SDVO SBC protest determination?

Appeals from an SDVO SBC protest determination must be commenced by filing and serving an appeal petition within 10 business days after the appellant receives the SDVO SBC protest determination (*see* § 134.204 for filing and service requirements). An untimely appeal will be dismissed.

§ 134.504 What are the effects of the appeal on the procurement at issue?

The filing of an SDVO SBC appeal with OHA stays the procurement. However, the contracting officer may award the contract after receipt of an appeal if the contracting officer determines in writing that an award must be made to protect the public interest. A timely filed appeal applies to the procurement in question even though a contracting officer awarded the contract prior to receipt of the appeal.

§ 134.505 What are the requirements for an appeal petition?

(a) *Format.* There is no required format for an appeal petition. However, it must include the following information:

(1) The solicitation or contract number, and the name, address, and telephone number of the contracting officer;

(2) A statement that the petition is appealing an SDVO SBC protest determination issued by the AA/GC and the date the petitioner received the SDVO SBC protest determination;

(3) A full and specific statement as to why the SDVO SBC protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation; and

(4) The name, address, telephone number, facsimile number, and signature of the appellant or its attorney.

(b) *Service of appeal.* The appellant must serve the appeal petition upon each of the following:

(1) The AA/GC at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, facsimile (202) 205–6390;

(2) The contracting officer responsible for the procurement affected by an SDVO SBC determination;

(3) The protested concern (the business concern whose SDVO SBC status is at issue) or the protester; and

(4) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, facsimile number (202) 205–6873.

(c) *Certificate of Service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

§ 134.506 What are the service and filing requirements?

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart unless otherwise indicated in this subpart.

§ 134.507 When does the AA/GC transmit the protest file and to whom?

Upon receipt of an appeal petition, the AA/GC will send to OHA a copy of the protest file relating to that determination. The AA/GC will certify and authenticate that the protest file, to the best of his or her knowledge, is a true and correct copy of the protest file.

§ 134.508 What is the standard of review?

The standard of review for an appeal of a SDVO SBC protest determination is whether the AA/GC's determination was based on clear error of fact or law. With respect to status determinations on whether the owner is a veteran, service-disabled veteran, or veteran with a permanent and severe disability, the Judge will not review the determinations made by the U.S. Department of Veteran's Affairs, U.S. Department of Defense, or such determinations identified by documents provided by the U.S. National Archives and Records Administration.

§ 134.509 When will a Judge dismiss an appeal?

(a) The Judge selected to preside over a protest appeal shall dismiss the appeal, if:

(1) The appeal does not, on its face, allege facts that if proven to be true, warrant reversal or modification of the determination;

(2) The appeal petition does not contain all of the information required in § 134.505;

(3) The appeal is untimely filed pursuant to § 134.503 or is not otherwise filed in accordance with the requirements of this subpart or the requirements in Subparts A and B of this part; or

(4) The matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(b) Once Appellant files an appeal, subsequent initiation of litigation of the matter in a court of competent jurisdiction will not preclude the Judge from rendering a final decision on the matter.

§ 134.510 Who can file a response to an appeal petition and when must such a response be filed?

Although not required, any person served with an appeal petition may file and serve a response supporting or opposing the appeal if he or she wishes to do so. If a person decides to file a response, the response must be filed within 7 business days after service of the appeal petition. The response should present argument.

§ 134.511 Will the Judge permit discovery and oral hearings?

Discovery will not be permitted and oral hearings will not be held.

§ 134.512 What are the limitations on new evidence?

The Judge may not admit evidence beyond the written protest file nor permit any form of discovery. All appeals under this subpart will be decided solely on a review of the evidence in the written protest file, arguments made in the appeal petition and response(s) filed thereto.

§ 134.513 When is the record closed?

The record will close when the time to file a response to an appeal petition expires pursuant to 13 CFR 134.510.

§ 134.514 When must the Judge issue his or her decision?

The Judge shall issue a decision, insofar as practicable, within 15 business days after close of the record. If OHA does not issue its determination within the 15-day period, the contracting officer may award the contract, unless the contracting officer has agreed to wait for a final determination from the Judge.

§ 134.515 What are the effects of the Judge's decision?

(a) A decision of the Judge under this subpart is the final agency decision and is binding on the parties. For the effects of the decision on the contract or procurement at issue, please see 13 CFR 125.28.

(b) The Judge may reconsider an appeal decision within 20 calendar days after service of the written decision. Any party who has appeared in the proceeding, or SBA, may request reconsideration by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within 20 calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative.

(c) The Judge may remand a proceeding to the AA/GC for a new SDVO SBC determination if the latter fails to address issues of decisional significance sufficiently, does not address all the relevant evidence, or does not identify specifically the evidence upon which it relied. Once remanded, OHA no longer has jurisdiction over the matter, unless a new appeal is filed as a result of the new SDVO SBC determination.

Dated: December 1, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 05–3445 Filed 2–23–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Euthanasia Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The ANADA provides for use of an injectable solution of pentobarbital sodium and phenytoin sodium for humane, painless, and rapid euthanasia of dogs.

DATES: This rule is effective February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lonnie.luther@fda.gov*.

SUPPLEMENTARY INFORMATION: Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861, filed ANADA 200–280 that provides for use of EUTHANASIA III (pentobarbital sodium and phenytoin sodium) Solution for humane, painless, and rapid euthanasia of dogs. Med-Pharmex, Inc.'s EUTHANASIA–III Solution is approved as a generic copy of Schering-Plough Animal Health Corp.'s BEUTHANASIA–D Special, approved under NADA 119–807. The ANADA is approved as of February 3, 2005, and the regulations are amended in 21 CFR 522.900 to reflect the approval. The

basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.900 is amended by revising paragraph (b)(1) to read as follows:

§ 522.900 Euthanasia solution.

* * * * *

(b) * * *

(1) Nos. 000061, 051259, and 051311 for use of product described in paragraph (a)(1) of this section.

* * * * *

Dated: February 15, 2005.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–3595 Filed 2–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AL96

Board of Veterans' Appeals: Appeals Regulations, Rules of Practice; Delegations of Authority

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA), Board of Veterans' Appeals (Board) Appeals Regulations and Rules of Practice. The amendments update regulations governing certain delegations of authority exercised by the Chairman of the Board. The amendments reflect statutory changes and changes to other regulations made because of the statutory changes.

DATES: *Effective Date:* February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone 202–565–5978.

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is the component of the Department of Veterans Affairs, in Washington, DC, that decides appeals from denials of claims for veterans' benefits. The Board is under the administrative control and supervision of a Chairman directly responsible to the Secretary of Veterans Affairs. 38 U.S.C. 7101. This document amends the Board's Appeals Regulations and Rules of Practice concerning delegations of authority exercised by the Chairman.

Under 38 CFR 19.14 and 20.102, certain authorities exercised by the Chairman of the Board are delegated to certain other employees of the Board. The sources of these authorities are 38 U.S.C. 7101(a), 7102, 7103, and 7104.

In 1994, 38 U.S.C. 7102 was amended to authorize the deciding of appeals by individual Board members, as well as by panels of at least three Board members. The amendment also prohibited a proceeding before the Board from being assigned to the Chairman as an individual member. Board of Veterans' Appeals Administrative Procedures Improvement Act of 1994, Public Law 103–271, § 6(a), 108 Stat. 740, 741. In May 1996, the Secretary amended the Board's Appeals Regulations and Rules of Practice to incorporate these statutory changes. *See* 61 FR 20447, May 7, 1996. However, certain provisions governing the Chairman's delegation of authority in the appeals regulations and rules of practice were not amended to reflect the statutory and regulatory changes. Therefore, we are now amending 38 CFR 19.14 and 20.102 to reflect those prior statutory and regulatory changes.

The 1996 rulemaking included amendments to 38 CFR 19.3, 19.11, 20.606, 20.608, and 20.900. The amendments reflected, in addition to the statutory amendments, administrative changes in the Board's organization from sections to teams. The versions of 38 CFR 19.14 and 20.102 in effect until February 24, 2005, refer to paragraphs in the previously amended regulations that were removed, redesignated, or revised by the 1996 rulemaking.

We are removing references to § 19.3(c) and (d) from 38 CFR 19.14 because the 1996 amendments revised § 19.3 so that it has no paragraph (c) or (d).

We are also removing paragraph (a) of 38 CFR 20.102 and redesignating paragraphs (b) and (c) of § 20.102 as paragraphs (a) and (b), respectively. The provisions of paragraph (a) of 38 CFR 20.102 in effect until February 24, 2005 permitted the Vice Chairman of the Board to exercise the same authority the Chairman may exercise under 38 CFR 20.900(c). However, § 20.900(c), itself authorizes the Vice Chairman to exercise that authority as well as to delegate such authority to a Deputy Vice Chairman. Therefore, paragraph (a) of § 20.102 is not necessary.

In addition, we are removing the references to Rule 608(b) and § 20.608(b) from § 20.102(b). The provisions of paragraph (b) of § 20.102 in effect until February 24, 2005, permitted the Vice Chairman of the Board and the Deputy Vice Chairmen to exercise the same authority the Chairman may exercise under 38 CFR 20.608(b). However, the 1996 amendments removed that authority from § 20.608(b) to conform with the statutory amendments. Therefore, the references in § 20.102(b) to Rule 608(b) and § 20.608(b) are inappropriate.

Finally, in 38 CFR 20.102(c), we are replacing the references to Rule 606(e) and § 20.606(e) with references to Rule 606(d) and § 20.606(d). The provisions of paragraph (c) of § 20.102 in effect until February 24, 2005 permitted the Vice Chairman of the Board, the Deputy Vice Chairmen, or members of the Board to exercise the same authority the Chairman may exercise under 38 CFR 20.606(e). However, that authority is now in § 20.606(d). Thus, a reference to paragraph (d) instead of paragraph (e) is the appropriate reference.

Administrative Procedure Act

Because this final rule concerns agency organization, procedure, or practice, pursuant to 5 U.S.C. 553(b), it is exempt from notice and comment requirements. Further, we have concluded that, because this final rule only brings 38 CFR 19.14 and 20.102 into conformity with existing regulations in Parts 19 and 20 of title 38, there is good cause for dispensing with a delayed effective date as unnecessary.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

Because this final rule is not a ''rule'' as defined in 5 U.S.C. 601(2), it is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612. Nevertheless, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The changes made by this rule will not have a significant economic impact on any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: January 26, 2005.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR parts 19 and 20 are amended as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

■ 1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 19.14 [Amended]

■ 2. Section 19.14 is amended by:
■ a. Removing '', 19.3(c),'' from paragraph (a); and
■ b. Removing ''§ 19.3(d) and'' from paragraph (b).

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 3. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

§ 20.102 [Amended]

■ 4. Section 20.102 is amended by:
■ a. Removing paragraph (a);
■ b. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively;
■ c. Removing ''608(b),'', ''20.608(b),'' and the commas after ''717(d)'' and ''20.717(d)'' from newly designated paragraph (a);
■ d. Removing ''606(e)'' and ''20.606(e)'' from newly designated paragraph (b) and adding, in their places, ''606(d)'' and ''20.606(d)'', respectively.

[FR Doc. 05–3498 Filed 2–23–05; 8:45 am]

BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN–86–1; FRL–7867–5]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Revised Format of 40 CFR Part 52 for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by the state of Minnesota that are incorporated by reference (IBR) into its State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by Minnesota and approved by EPA.

This format revision will primarily affect the ''Identification of plan'' section of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Region 5 Office. EPA is also adding a table in the ''Identification of plan'' section which summarizes the approval actions that EPA has taken on the non-regulatory and quasi-regulatory portions of the Minnesota SIP. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or state-submitted materials not subject to IBR review remain unchanged.

DATES: *Effective Date:* This final rule is effective on February 24, 2005.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 5, Air Programs Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room B108, Washington, DC 20460; or 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: Christos Panos, Environmental Engineer, (312) 353–8328, at the above Region 5 address or by e-mail at *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

I. Background
Description of a SIP
How EPA Enforces SIPs
How the State and EPA Update the SIP
How EPA Compiles the SIP
How EPA Organizes the SIP Compilation
Where You Can Find a Copy of the SIP Compilation
The Format of the New Identification of Plan Section
When a SIP Revision Becomes Federally Enforceable
The Historical Record of SIP Revision Approvals
II. What EPA Is Doing in This Action
III. Statutory and Executive Order Reviews

I. Background

Description of a SIP—Each state has a SIP containing the control measures and strategies used to attain and maintain the National Ambient Air Quality Standards (NAAQS). The SIP is extensive, containing elements covering a variety of subjects, such as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

How EPA Enforces SIPs—Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures and strategies are approved by EPA, after notice and comment rulemaking, they are incorporated into the federally approved SIP and are identified in Title 40 of the Code of Federal Regulations part 52 (Approval and Promulgation of Implementation Plans), (40 CFR part 52). The actual state regulations approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are ''incorporated by reference,'' which means that EPA has approved a given state regulation with a specific effective date. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the state is enforcing the regulations. It also allows EPA and the public to take enforcement action, should a state not enforce its SIP-approved regulations.

How the State and EPA Update the SIP—The SIP is a living document which can be revised as necessary to address the unique air pollution problems in the state. Therefore, EPA must, from time to time, take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR).

EPA began the process of developing: (1) A revised SIP document for each state that would be incorporated by reference under the provisions of title 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the ''Identification of plan'' sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures, and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

How EPA Compiles the SIP—The federally approved regulations, source-specific requirements, and nonregulatory provisions (entirely or portions of) submitted by each state agency have been organized by EPA into a ''SIP compilation.'' The SIP compilation contains the updated regulations, source-specific requirements, and nonregulatory provisions approved by EPA through previous rulemaking actions in the **Federal Register**. The compilation is contained in three-ring binders and will be updated, primarily on an annual basis. The nonregulatory provisions are available by contacting Christos Panos at the Regional Office.

How EPA Organizes the SIP Compilation—Each compilation contains three parts. Part one contains the regulations, part two contains the source-specific requirements that have been approved as part of the SIP, and part three contains nonregulatory provisions that have been approved by EPA. Each part consists of a table of identifying information for each SIP-approved regulation, each SIP-approved source-specific requirement, and each nonregulatory SIP provision. In this action, EPA is publishing the tables summarizing the applicable SIP requirements for Minnesota. The effective dates in the tables indicate the date of the most recent revision of each regulation. The EPA Regional Offices have the primary responsibility for updating the compilation and ensuring its accuracy.

Where You Can Find a Copy of the SIP Compilation—EPA's Region 5 Office developed and will maintain the compilation for Minnesota. A copy of the full text of Minnesota's regulatory and source-specific compilation will also be maintained at NARA and EPA's Air Docket and Information Center.

The Format of the New Identification of Plan Section—In order to better serve the public, EPA revised the organization of the ''Identification of plan'' section and included additional information to clarify the enforceable elements of the SIP.

The revised Identification of plan section contains five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source specific permits, and (e) EPA approved nonregulatory and quasi-regulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

When a SIP Revision Becomes Federally Enforceable—All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to paragraphs (c), (d), or (e) of the applicable Identification of plan section found in each subpart of 40 CFR part 52.

The Historical Record of SIP Revision Approvals—To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA retains the original Identification of plan section, previously appearing in the CFR as the first or second section of part 52 for each state subpart. After an initial two-year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures and will decide whether or not to retain the Identification of plan appendices for some further period.

II. What EPA Is Doing in This Action

Today's rule constitutes a ''housekeeping'' exercise to ensure that all revisions to the state programs that have occurred are accurately reflected in 40 CFR oprt 52. State SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs.

Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

III. 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 is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative

Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the State's rules.

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 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of February 24, 2005. 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

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Minnesota SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these ''Identification of plan'' reorganization actions for Minnesota.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 13, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Y—Minnesota

§ 52.1220 [Redesignated as § 52.1222]

■ 2. Section 52.1220 is redesignated as § 52.1222 and the section heading and paragraph (a) are revised to read as follows:

§ 52.1222 Original Identification of plan section.

(a) This section identifies the original ''Air Implementation Plan for the State of Minnesota'' and all revisions submitted by Minnesota that were federally approved prior to December 1, 2004.

* * * * *

■ 3. A new § 52.1220 is added to read as follows:

§ 52.1220 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State Implementation Plan (SIP) for Minnesota under section 110 of the Clean Air Act, 42 U.S.C. 7401, and 40 CFR part 51 to meet National Ambient Air Quality Standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to December 1, 2004, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with the EPA approval dates after December 1, 2004, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 5 certifies that the rules/regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of December 1, 2004.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region 5, Air

Programs Branch, 77 West Jackson Boulevard, Chicago, IL 60604; the EPA, Air and Radiation Docket and Information Center, 1301 Constitution Avenue NW., Room B108, Washington, DC 20460; or 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.*

(c) EPA approved regulations.

EPA—APPROVED MINNESOTA REGULATIONS

Minnesota citation	Title / subject	State effective date	EPA approval date	Comments
CHAPTER 7001 PERMITS AND CERTIFICATIONS				
7001.0020	Scope	08/10/93	05/02/95, 60 FR 21447	Only items I and J.
7001.0050	Written application	08/10/93	05/02/95, 60 FR 21447	Only item I.
7001.0140	Final determination	08/10/93	05/02/95, 60 FR 21447	Only Subp. 2F.
7001.0180	Justification to commence revocation without reissuance of permit.	08/10/93	05/02/95, 60 FR 21447	Only item D.
7001.0550	Contents of part a of application	08/10/93	05/02/95, 60 FR 21447	Only items E and J(3).
7001.3050	Permit requirements	08/10/93	05/02/95, 60 FR 21447	Only Subp. 3E.
CHAPTER 7002 PERMIT FEES				
7002.0005	Scope	08/10/93	05/02/95, 60 FR 21447	
7002.0015	Definitions	08/10/93	05/02/95, 60 FR 21447	Only Subp. 1 and 2.
CHAPTER 7005 DEFINITIONS AND ABBREVIATIONS				
7005.0100	Definitions	10/18/93	05/24/95, 60 FR 27411	All except 25(a), NESHAP definition.
7005.0110	Abbreviations	10/18/93	05/24/95, 60 FR 27411	
CHAPTER 7007 AIR EMISSION PERMITS				
7007.0050	Scope	08/10/93	05/02/95, 60 FR 21447	
7007.0100	Definitions	08/10/93	05/02/95, 60 FR 21447	
		12/27/94	05/18/99, 64 FR 26880	Revised Subp. 9a, 12a, 12b, 17, 18a, and 28.
7007.0150	Permit required	08/10/93	05/02/95, 60 FR 21447	
		12/27/94	05/18/99, 64 FR 26880	Revised Subp. 2 and 4.
7007.0200	Sources required or allowed to obtain a part 70 permit.	08/10/93	05/02/95, 60 FR 21447	
		12/27/94	05/18/99, 64 FR 26880	Revised Subp. 1.
7007.0250	Sources required to obtain a state permit	08/10/93	05/02/95, 60 FR 21447	
		12/27/94	05/18/99, 64 FR 26880	Revised Subp. 1 and 7.
7007.0300	Sources not required to obtain a permit	08/10/93	05/02/95, 60 FR 21447.	
		12/27/94	05/18/99, 64 FR 26880	Revised Subp. 1.
7007.0350	Existing source application deadlines and source operation during transition.	08/10/93	05/02/95, 60 FR 21447	
		12/27/94	05/18/99, 64 FR 26880	Revised Subp. 1A.
7007.0400	Permit reissuance applications after transition; new source and permit amendment applications; applications for sources newly subject to a Part 70 or State permit requirement.	08/10/93	05/02/95, 60 FR 21447	
		12/27/94	05/18/99, 64 FR 26880	Revised Subp. 1 and 4.
7007.0450	Permit reissuance applications and continuation of expiring permits.	08/10/93	05/02/95, 60 FR 21447	
		12/27/94	05/18/99, 64 FR 26880	Revised Subp. 2C.
7007.0500	Content of permit application	08/10/93	05/02/95, 60 FR 21447	
7007.0550	Confidential information	08/10/93	05/02/95, 60 FR 21447	
7007.0600	Complete application and supplemental information requirements.	08/10/93	05/02/95, 60 FR 21447	
7007.0650	Who receives an application	08/10/93	05/02/95, 60 FR 21447	
7007.0700	Completeness review	08/10/93	05/02/95, 60 FR 21447	
7007.0750	Application priority and issuance timelines	08/10/93	05/02/95, 60 FR 21447	
		12/27/94	05/18/99, 64 FR 5 26880	Revised Subp. 5.
7007.0800	Permit content	08/10/93	05/02/95, 60 FR 21447	
		02/28/95	10/14/97, 62 FR 53239	Revised Subp. 6.C(5).
7007.0850	Permit application notice and comment	08/10/93	05/02/95, 60 FR 21447	
7007.0900	Review of part 70 permits by affected states	08/10/93	05/02/95, 60 FR 21447	
7007.0950	EPA review and objection	08/10/93	05/02/95, 60 FR 21447	
7007.1000	Permit issuance and denial	08/10/93	05/02/95, 60 FR 21447	
7007.1050	Duration of permits	08/10/93	05/02/95, 60 FR 21447	
		12/27/94	05/18/99, 64 FR 26880	Revised Subp. 3a.
7007.1100	General permits	08/10/93	05/02/95, 60 FR 21447	
7007.1110	Registration permit general requirements	12/27/94	05/18/99, 64 FR 26880	
7007.1115	Registration permit option a	12/27/94	05/18/99, 64 FR 26880	

EPA—APPROVED MINNESOTA REGULATIONS—Continued

Minnesota citation	Title / subject	State effective date	EPA approval date	Comments
7007.1120	Registration permit option b	12/27/94	05/18/99, 64 FR 26880	
7007.1130	Registration permit option d	12/27/94	05/18/99, 64 FR 26880	
7007.1150	When a permit amendment is required	08/10/93	05/02/95, 60 FR 21447.	
		12/27/94	05/18/99, 64 FR 26880	Revised Subp. (C).
7007.1200	Calculating emission changes for permit amendments	12/27/94	05/18/99, 64 FR 26880.	
7007.1250	Insignificant modifications	08/10/93	05/02/95, 60 FR 21447.	
		12/27/94	05/18/99, 64 FR 26880	Revised Subp. 1.
7007.1251	Hazardous air pollutant thresholds	12/27/94	05/18/99, 64 FR 26880.	
7007.1300	Insignificant activities list	08/10/93	05/02/95, 60 FR 21447.	
		12/27/94	05/18/99, 64 FR 26880	Revised Subp. 2, 3, and 4.
7007.1350	Changes which contravene certain permit terms	08/10/93	05/02/95, 60 FR 21447.	
7007.1400	Administrative permit amendments	08/10/93	05/02/95, 60 FR 21447.	
7007.1450	Minor and moderate permit amendments	08/10/93	05/02/95, 60 FR 21447.	
		12/27/94	05/18/99, 64 FR 26880	Revised Subp. 2.
7007.1500	Major permit amendments	08/10/93	05/02/95, 60 FR 21447.	
7007.1600	Permit reopening and amendment by agency	08/10/93	05/02/95, 60 FR 21447.	
7007.1650	Reopenings for cause by EPA	08/10/93	05/02/95, 60 FR 21447.	
7007.1700	Permit revocation by agency	08/10/93	05/02/95, 60 FR 21447.	
7007.1750	Federal enforceability	08/10/93	05/02/95, 60 FR 21447.	
7007.1800	Permit shield	08/10/93	05/02/95, 60 FR 21447.	
7007.1850	Emergency provision	08/10/93	05/02/95, 60 FR 21447.	
	Offsets			
7007.4000	Scope	10/18/93	05/24/95, 60 FR 27411.	
7007.4010	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7007.4020	Conditions for permit	10/18/93	05/24/95, 60 FR 27411.	
7007.4030	Limitation on use of offsets	10/18/93	05/24/95, 60 FR 27411.	
	CHAPTER 7009 AMBIENT AIR QUALITY STANDARDS			
7009.0010	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7009.0020	Prohibited emissions	10/18/93	05/24/95, 60 FR 27411.	
7009.0050	Measurement methodology, except for hydrogen sulfide.	10/18/93	05/24/95, 60 FR 27411.	
7009.0060	Measurement methodology for hydrogen sulfide	10/18/93	05/24/95, 60 FR 27411.	
7009.0070	Time of compliance	10/18/93	05/24/95, 60 FR 27411.	
7009.0080	State ambient air quality standards	10/18/93	05/24/95, 60 FR 27411.	
7009.1000	Air pollution episodes	10/18/93	05/24/95, 60 FR 27411.	
7009.1010	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7009.1020	Episode levels	10/18/93	05/24/95, 60 FR 27411.	
7009.1030	Episode declaration	10/18/93	05/24/95, 60 FR 27411.	
7009.1040	Control actions	10/18/93	05/24/95, 60 FR 27411.	
7009.1050	Emergency powers	10/18/93	05/24/95, 60 FR 27411.	
7009.1060	Table 1	10/18/93	05/24/95, 60 FR 27411.	
7009.1070	Table 2: emission reduction objectives for particulate matter.	10/18/93	05/24/95, 60 FR 27411.	
7009.1080	Table 3: emission objectives for sulfur oxides	10/18/93	05/24/95, 60 FR 27411.	
7009.1090	Table 4: emission reduction objectives for nitrogen oxides.	10/18/93	05/24/95, 60 FR 27411.	
7009.1100	Table 5: emission reduction objectives for hydrocarbons.	10/18/93	05/24/95, 60 FR 27411.	
7009.1110	Table 6: emission reduction objectives for carbon monoxide.	10/18/93	05/24/95, 60 FR 27411.	
	General Conformity Rule			
7009.9000	Determining conformity of general federal actions to state or federal implementation plans.	11/20/95	04/23/97, 62 FR 19674.	
	CHAPTER 7011 STANDARDS FOR STATIONARY SOURCES			
7011.0010	Applicability of standards of performance	10/18/93	05/24/95, 60 FR 27411.	
		07/13/98	05/13/02, 67 FR 31963	Revised Subp. 4 and 5
7011.0020	Circumvention	10/18/93	05/24/95, 60 FR 27411.	
7011.0060	Definitions	12/27/94	05/18/99, 64 FR 26880.	
7011.0061	Incorporation by reference	12/27/94	05/18/99, 64 FR 26880.	
7011.0065	Applicability	12/27/94	05/18/99, 64 FR 26880.	
7011.0070	Listed control equipment and control equipment efficiencies.	12/27/94	05/18/99, 64 FR 26880.	
7011.0075	Listed control equipment general requirements	12/27/94	05/18/99, 64 FR 26880.	

EPA—APPROVED MINNESOTA REGULATIONS—Continued

Minnesota citation	Title / subject	State effective date	EPA approval date	Comments
7011.0080	Monitoring and record keeping for listed control equipment.	12/27/94	05/18/99, 64 FR 26880.	
	Opacity			
7011.0100	Scope	10/18/93	05/24/95, 60 FR 27411.	
7011.0105	Visible emission restrictions for existing facilities	07/13/98	05/13/02, 67 FR 31963.	
7011.0110	Visible emission restrictions for new facilities	10/18/93	05/24/95, 60 FR 27411.	
7011.0115	Performance tests	10/18/93	05/24/95, 60 FR 27411.	
7011.0150	Preventing particulate matter from becoming airborne	10/18/93	05/24/95, 60 FR 27411.	
	Indirect Heating Equipment			
7011.0500	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.0505	Determination of applicable standards of performance	10/18/93	05/24/95, 60 FR 27411.	
7011.0510	Standards of performance for existing indirect heating equipment.	10/18/93	05/24/95, 60 FR 27411.	
		07/13/98	05/13/02, 67 FR 31963 ..	Revised Subp. 2.
7011.0515	Standards of performance for new indirect heating equipment.	10/18/93	05/24/95, 60 FR 27411.	
		07/13/98	05/13/02, 67 FR 31963 ..	Revised Subp. 2.
7011.0520	Allowance for stack height for indirect heating equipment.	10/18/93	05/24/95, 60 FR 27411.	
7011.0525	High heating value	10/18/93	05/24/95, 60 FR 27411.	
7011.0530	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.0535	Performance test procedures	10/18/93	05/24/95, 60 FR 27411.	
7011.0540	Derate	10/18/93	05/24/95, 60 FR 27411.	
7011.0545	Table I: Existing indirect heating equipment	10/18/93	05/24/95, 60 FR 27411.	
7011.0550	Table II: New indirect heating equipment	10/18/93	05/24/95, 60 FR 27411.	
	Direct Heating Equipment			
7011.0600	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.0605	Determination of applicable standards of performance	10/18/93	05/24/95, 60 FR 27411.	
7011.0610	Standards of performance for fossil-fuel-burning direct heating equipment.	10/18/93	05/24/95, 60 FR 27411.	
		07/13/98	05/13/02, 67 FR 31963 ..	Revised Subp. 1(A).
7011.0615	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.0620	Performance test procedures	10/18/93	05/24/95, 60 FR 27411.	
7011.0625	Record keeping and reporting for direct heating units combusting solid waste.	04/03/98	08/12/98, 63 FR 43080.	
	Industrial Process Equipment			
7011.0700	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.0705	Scope	10/18/93	05/24/95, 60 FR 27411.	
7011.0710	Standards of performance for pre-1969 industrial process equipment.	10/18/93	05/24/95, 60 FR 27411.	
		07/13/98	05/13/02, 67 FR 31963 ..	Revised Subp. 1(B).
7011.0715	Standards of performance for post-1969 industrial process ′equipment.	10/18/93	05/24/95, 60 FR 27411.	
7011.0720	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.0725	Performance test procedures	10/18/93	05/24/95, 60 FR 27411.	
7011.0730	Table 1	10/18/93	05/24/95, 60 FR 27411.	
7011.0735	Table 2	10/18/93	05/24/95, 60 FR 27411.	
	Portland Cement Plants			
.				
7011.0800	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.0805	Standards of performance for existing portland cement plants.	07/13/98	05/13/02, 67 FR 31963.	
7011.0815	Monitoring of operations	10/18/93	05/24/95, 60 FR 27411.	
7011.0820	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.0825	Performance test procedures	10/18/93	05/24/95, 60 FR 27411.	
	Asphalt Concrete Plants			
7011.0900	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.0903	Compliance with ambient air quality standards	10/18/93	05/24/95, 60 FR 27411.	
7011.0905	Standards of performance for existing asphalt concrete plants.	10/18/93	05/24/95, 60 FR 27411.	

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Minnesota citation	Title / subject	State effective date	EPA approval date	Comments
7011.0909	Standards of performance for new hot mix asphalt plants.	10/18/93	05/24/95, 60 FR 27411.	
7011.0915	Test methods.	10/18/93	05/24/95, 60 FR 27411.	
7011.0920	Performance test procedures	10/18/93	05/24/95, 60 FR 27411.	
Grain Elevators				
7011.1000	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.1005	Standards of performance for dry for bulk agricultural commodity facilities.	10/18/93	05/24/95, 60 FR 27411 ..	Entire rule except Subp. 2.
7011.1010	Nuisance	10/18/93	05/24/95, 60 FR 27411.	
7011.1015	Control requirements schedule	10/18/93	05/24/95, 60 FR 27411.	
Coal Handling Facilities				
7011.1100	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.1105	Standards of performance for certain coal handling facilities.	10/18/93	05/24/95, 60 FR 27411.	
7011.1110	Standards of performance for existing outstate coal handling facilities.	10/18/93	05/24/95, 60 FR 27411.	
7011.1115	Standards of performance for pneumatic coal-cleaning equipment and thermal dryers at any coal handling facility.	10/18/93	05/24/95, 60 FR 27411.	
7011.1120	Exemption	10/18/93	05/24/95, 60 FR 27411.	
7011.1125	Cessation of operations	10/18/93	05/24/95, 60 FR 27411.	
7011.1135	Performance test procedures	10/18/93	05/24/95, 60 FR 27411.	
7011.1140	Dust suppressant agents	10/18/93	05/24/95, 60 FR 27411.	
Incinerators				
.				
7011.1201	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.1202	Standards of performance for existing incinerators	10/18/93	05/24/95, 60 FR 27411.	
7011.1203	Standards of performance for new incinerators.	10/18/93	05/24/95, 60 FR 27411.	
7011.1204	Monitoring of operations	10/18/93	05/24/95, 60 FR 27411.	
7011.1205	Incorporations by reference	10/18/93	05/24/95, 60 FR 27411.	
7011.1206	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.1207	Performance test procedures	10/18/93	05/24/95, 60 FR 27411.	
Sewage Sludge Incinerators				
7011.1300	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.1305	Standards of performance for existing sewage sludge incinerators.	10/18/93	05/24/95, 60 FR 27411.	
		07/13/98	05/13/02, 67 FR 31963 ..	Revised Subp. (C)
7011.1310	Standards of performance for new sewage sludge incinerators.	10/18/93	05/24/95, 60 FR 27411.	
7011.1315	Monitoring of operations	10/18/93	05/24/95, 60 FR 27411.	
7011.1320	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.1325	Performance test procedures	10/18/93	05/24/95, 60 FR 27411.	
Petroleum Refineries				
.				
7011.1400	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.1405	Standards of performance for existing affected facilities at petroleum refineries.	10/18/93	05/24/95, 60 FR 27411.	
		07/13/98	05/13/02, 67 FR 31963 ..	Revised Subp. 1 and 3.
7011.1410	Standards of performance for new affected facilities at petroleum refineries.	10/18/93	05/24/95, 60 FR 27411.	
		07/13/98	05/13/02, 67 FR 31963 ..	Revised Subp. 1, 3(B), 3(C)(2)
7011.1415	Exemptions	10/18/93	05/24/95, 60 FR 27411.	
7011.1420	Emission monitoring	10/18/93	05/24/95, 60 FR 27411.	
7011.1425	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.1430	Performance test procedures	10/18/93	05/24/95, 60 FR 27411.	
Liquid Petroleum and VOC Storage Vessels				
7011.1500	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.1505	Standards of performance for storage vessels	10/18/93	05/24/95, 60 FR 27411.	
7011.1510	Monitoring of operations	10/18/93	05/24/95, 60 FR 27411.	

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Minnesota citation	Title / subject	State effective date	EPA approval date	Comments
7011.1515	Exception	10/18/93	05/24/95, 60 FR 27411.	
	Sulfuric Acid Plants			
7011.1600	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.1605	Standards of performance of existing sulfuric acid production units.	10/18/93	05/24/95, 60 FR 27411.	
7011.1615	Continuous emission monitoring	10/18/93	05/24/95, 60 FR 27411.	
7011.1620	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.1625	Performance test procedures	10/18/93	05/24/95, 60 FR 27411.	
7011.1630	Exceptions	10/18/93	05/24/95, 60 FR 27411.	
	Nitric Acid Plants			
7011.1700	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.1705	Standards of performance for existing nitric acid production units.	10/18/93	05/24/95, 60 FR 27411.	
7011.1715	Emission monitoring	10/18/93	05/24/95, 60 FR 27411.	
7011.1720	Performance test methods	10/18/93	05/24/95, 60 FR 27411.	
7011.1725	Performance test procedures	10/18/93	05/24/95, 60 FR 27411.	
	Inorganic Fibrous Materials			
7011.2100	Definitions	10/18/93	05/24/95, 60 FR 27411.	
7011.2105	Spraying of inorganic fibrous materials	10/18/93	05/24/95, 60 FR 27411.	
	Stationary Internal Combustion Engines			
7011.2300	Standards of performance for stationary internal combustion engines.	10/18/93	05/24/95, 60 FR 27411.	
	CHAPTER 7017 MONITORING AND TESTING REQUIREMENTS			
7017.0100	Establishing violations	02/28/95	I0/14/97, 62 FR 53239.	
	CEMS			
7017.1000	Continuous monitoring	10/18/93	05/24/95, 60 FR 27411.	
	Performance Tests			
7017.2001	Applicability	07/13/98	05/13/02, 67 FR 31963.	
7017.2005	Definitions	07/13/98	05/13/02, 67 FR 31963.	
7017.2010	Incorporation of test methods by reference	07/13/98	05/13/02, 67 FR 31963.	
7017.2015	Incorporation of federal testing requirements by reference.	07/13/98	05/13/02, 67 FR 31963.	
7017.2018	Submittals	07/13/98	05/13/02, 67 FR 31963.	
7017.2020	Performance tests general requirements	07/13/98	05/13/02, 67 FR 31963.	
7017.2025	Operational requirements and limitations	07/13/98	05/13/02, 67 FR 31963.	
7017.2030	Performance test pretest requirements	07/13/98	05/13/02, 67 FR 31963.	
7017.2035	Performance test reporting requirements	07/13/98	05/13/02, 67 FR 31963.	
7017.2040	Certification of performance test results	07/13/98	05/13/02, 67 FR 31963.	
7017.2045	Quality assurance requirements	07/13/98	05/13/02, 67 FR 31963.	
7017.2050	Performance test methods	07/13/98	05/13/02, 67 FR 31963.	
7017.2060	Performance test procedures	07/13/98	05/13/02, 67 FR 31963.	
	CHAPTER 7019 EMISSION INVENTORY REQUIREMENTS			
7019.1000	Shutdowns and breakdowns	10/18/93	05/24/95, 60 FR 27411.	
7019.2000	Reports	10/18/93	05/24/95, 60 FR 27411.	
7019.3000	Emission inventory	10/18/93	05/24/95, 60 FR 27411.	
7019.3010	Calculation of actual emissions for emission inventory	10/18/93	05/24/95, 60 FR 27411.	
	CHAPTER 7023 MOBILE AND INDIRECT SOURCES			
7023.0100	Definitions.	10/18/93	05/24/95, 60 FR 27411.	
7023.0105	Standards of performance for motor vehicles	10/18/93	05/24/95, 60 FR 27411.	
7023.0110	Standards of performance for trains, boats, and construction equipment.	10/18/93	05/24/95, 60 FR 27411.	
7023.0115	Exemption	10/18/93	05/24/95, 60 FR 27411.	
7023.0120	Air pollution control systems restrictions	10/18/93	05/24/95, 60 FR 27411.	

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Minnesota citation	Title / subject	State effective date	EPA approval date	Comments
7023.1010	Definitions	01/08/94	10/29/99, 64 FR 58344	Entire rule except for Subp. 35(B)
7023.1015	Inspection Requirement	01/08/94	10/29/99, 64 FR 58344.	
7023.1020	Description of Inspection and Documents Required	01/08/94	10/29/99, 64 FR 58344.	
7023.1025	Tampering Inspection	01/08/94	10/29/99, 64 FR 58344.	
7023.1030	Exhaust Emission Test	01/08/94	10/29/99, 64 FR 58344	Entire rule except for Subp. 11(B, C)
7023.1035	Reinspections	01/08/94	10/29/99, 64 FR 58344.	
7023.1040	Vehicle Inspection Report	01/08/94	10/29/99, 64 FR 58344.	
7023.1045	Certificate of Compliance	01/08/94	10/29/99, 64 FR 58344.	
7023.1050	Vehicle Noncompliance and Repair	01/08/94	10/29/99, 64 FR 58344.	
7023.1055	Certificate of Waiver	01/08/94	10/29/99, 64 FR 58344	Entire rule except for Subp. 1 (E)(2).
7023.1060	Emission Control Equipment Inspection as a Condition of Waiver.	01/08/94	10/29/99, 64 FR 58344.	
7023.1065	Repair Cost Limit and Low Emission Adjustment	01/08/94	10/29/99, 64 FR 58344.	
7023.1070	Certificate of Temporary Extension, Certificate of Annual Exemption, and Certificate of Exemption.	01/08/94	10/29/99, 64 FR 58344.	
7023.1075	Evidence of Meeting State Inspection Requirements	01/08/94	10/29/99, 64 FR 58344.	
7023.1080	Fleet Inspection Station Permits, Procedures, and Inspection.	01/08/94	10/29/99, 64 FR 58344.	
7023.1085	Inspection Stations Testing Fleet Vehicles	01/08/94	10/29/99, 64 FR 58344.	
7023.1090	Exhaust Gas Analyzer Specifications; Calibration and Qality Control.	01/08/94	10/29/99, 64 FR 58344.	
7023.1095	[repealed, 18 sr 1593]	01/08/94	10/29/99, 64 FR 58344.	
7023.1100	Public Notification	01/08/94	10/29/99, 64 FR 58344.	
7023.1105	Inspection Fees	01/08/94	10/29/99, 64 FR 58344	
Minnesota Statutes				
17.135	Farm Disposal of Solid Waste	1993	05/24/95, 60 FR 27411	Only item (a).
88.01	Definitions	1993	05/24/95, 60 FR 27411	Only Subd. 1, 2, 3, 4, 6, 14, 20, 23, 24, 25, and 26.
88.02	Citation, Wildfire Act	1993	05/24/95, 60 FR 27411.	
88.03	Codification	1993	05/24/95, 60 FR 27411.	
88.16	Starting Fires; Burners; Failure to Report a Fire	1993	05/24/95, 60 FR 27411	Only Subd. 1 and 2
88.17	Permission to Start Fires; Prosecution for Unlawfully Starting Fires.	1993	05/24/95, 60 FR 27411.	
88.171	Open Burning Prohibitions	1993	05/24/95, 60 FR 27411	Only Subd. 1, 2, 5, 6, 7, 8, 9, and 10
Twin Cities Nonattainment Area for Carbon Monoxide				
116.60		1999	10/29/99, 64 FR 58344	Only Subd. 12.
116.61		1999	10/29/99, 64 FR 58344	Only Subd. 1 and 3.
116.62		1999	10/29/99, 64 FR 58344	Only Subd. 2, 3, 5, and 10.
116.63		1999	10/29/99, 64 FR 58344	Only Subd. 4.

(d) *EPA approved state source-specific requirements.*

EPA—APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Comments
Associated Milk Producers, Inc	10900010–001	05/05/97	03/09/01, 66 FR 14087	Title I conditions only.
Commercial Asphalt CO, Plant 905	12300347–002	09/10/99	07/12/00, 65 FR 42861	Title I conditions only.
Continental Nitrogen and Resources Corp.		07/28/92	09/09/94, 59 FR 46553	Findings and Order.
		02/25/94	09/09/94, 59 FR 46553	Amendment One to Findings and Order.
Federal Hoffman, Incorporated		05/27/92	04/14/94, 59 FR 17703	Findings and Order.
		03/23/95	04/03/98, 63 FR 16435	Amendment Two to Findings and Order.
Flint Hills Resources, L.P. (formerly Koch Petroleum).		03/11/03	06/05/03, 68 FR 33631	Amendment Six to Findings and Order.

EPA—APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Comments
Franklin Heating Station	1148–83–OT–1 [10900019]	06/19/98	03/09/01, 66 FR 14087	Title I conditions only.
GAF Building Materials		05/27/92	04/14/94, 59 FR 17703	Findings and Order.
		09/18/97	02/08/99, 64 FR 5936	Amendment Two to Findings and Order.
Gopher Smelting & Refining Co		06/22/93	10/18/94, 59 FR 52431	Findings and Order.
Great Lakes Coal & Dock Co.		08/25/92	02/15/94, 59 FR 7218	Amended Findings and Order.
		12/21/94	06/13/95, 60 FR 31088	Amendment One to Amended Findings and Order.
Harvest States Cooperatives		01/26/93	02/15/94, 59 FR 7218	Findings and Order.
		12/21/94	06/13/95, 60 FR 31088	Amendment One to Findings and Order.
International Business Machine Corp., IBM—Rochester.	10900006–001	06/03/98	03/09/01, 66 FR 14087	Title I conditions only.
J.L. Shiely Co.		08/25/92	02/15/94, 59 FR 7218	Amended Findings and Order.
		12/21/94	06/13/95, 60 FR 31088	Amendment Two to Amended Findings and Order.
		02/21/95	04/03/98, 63 FR 16435	Amendment Three to Amended Findings and Order.
Lafarge Corp., Childs Road facility		11/30/92	02/15/94, 59 FR 7218	Second Amended Findings and Order.
		12/21/94	06/13/95, 60 FR 31088	Amendment One to Second Amended Findings and Order.
		09/23/97	02/08/99, 64 FR 5936	Amendment Two to Second Amended Findings and Order.
Lafarge Corp., Red Rock Terminal	12300353–002	05/07/02	08/19/04, 68 FR 51371	Title I conditions only.
Marathon Ashland Petroleum, LLC	16300003–003	10/26/99	05/20/02, 67 FR 35437	Title I conditions only.
Metropolitan Council Environmental Service, Metropolitan Wastewater Treatment Plant.	12300053–001	03/13/01	09/11/02, 67 FR 57517	Title I conditions only.
Minneapolis Energy Center Inc		05/27/92	04/14/94, 59 FR 17706	Findings and Order for Main Plant, Baker Boiler Plant, and the Soo Line Boiler Plant.
North Star Steel Co.		04/22/93	02/15/94, 59 FR 7218	Third Amended Findings and Order.
		12/21/94	06/13/95, 60 FR 31088	Amendment One to Third Amended Findings and Order.
		09/23/97	02/08/99, 64 FR 5936	Amendment Two to Third Amended Findings and Order.
Northern States Power Co., Riverside Plant.	05300015–001	05/11/99	02/26/02, 67 FR 8727	Title I conditions only.
Olmstead County, Olmstead Waste-to-Energy Facility.	10900005–001	06/05/97	03/09/01, 66 FR 14087	Title I conditions only.
Rochester Public Utilities, Cascade Creek Combustion.	00000610–001	01/10/97	03/09/01, 66 FR 14087	Title I conditions only.
Rochester Public Utilities, Silver Lake Plant.	10900011–001	07/22/97	03/09/01, 66 FR 14087	Title I conditions only.
St. Mary's Hospital	10900008–007	02/28/97	03/09/01, 66 FR 14087	Title I conditions only.
St. Paul Terminals		02/02/96	07/22/97, 62 FR 39120	Findings and Order.
United Defense, LP (formerly FMC/U.S. Navy).	00300020–001	11/25/02	08/18/04, 69 FR 51181	Title I conditions only.
Xcel Energy (formerly Northern States Power) Inver Hills Generating Plant.	03700015–001	07/25/00	06/08/04, 68 FR 31891	Title I conditions only.

(e) *EPA approved nonregulatory provisions.*

EPA—APPROVED MINNESOTA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Comments
Air Quality Surveillance Plan	Statewide	05/08/80, 06/02/80	03/04/81, 46 FR 15138.	
Carbon Monoxide 1993 periodic Emission Inventory.	Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, and Wright Counties.	09/28/95	10/23/97, 62 FR 55170.	
Deletion of TSP Designations.	Statewide		07/10/02, 67 FR 45637.	

EPA—APPROVED MINNESOTA NONREGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Comments
Duluth Carbon Monoxide Redesignation and Maintenance Plan.	St. Louis County (part)	10/30/92	04/14/94, 59 FR 17708.	
Duluth Carbon Monoxide Transportation Control Plan.	St. Louis County	07/3/79 and 07/27/79	06/16/80, 45 FR 40579.	
		10/30/92	04/14/94, 59 FR 17706	Removal of transportation control measure.
Lead Maintenance Plan	Dakota County	06/22/93	10/18/94, 59 FR 52431	Corrected codification information on 05/31/95 at 60 FR 28339.
Lead Monitoring Plan	Statewide	04/26/83, 02/15/84, and 02/21/84.	07/05/84, 49 FR 27502	Entire Lead Plan except for the New Source Review portion.
Oxygenated Fuels Program—Carbon Monoxide Contingency Measure.	Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, and Wright Counties.	04/29/92	02/21/96, 61 FR6547	Laws of Minnesota for 1992 Chapter 575, section 29(b).
Rochester Carbon Monoxide Transportation Control Plan.	Olmstead County	07/3/79 and 07/27/79	06/16/80, 45 FR 40579.	
Rochester PM–10 Redesignation and Maintenance Plan.	Olmstead County	09/07/94	05/31/95, 60 FR 28339.	
Rochester Sulfur Dioxide Redesignation and Maintenance Plan.	Olmstead County	110/4/98	03/09/01, 66 FR 14087.	
Small Business Stationary Source Technical and Environmental Compliance Assistance Plan.	Statewide	04/29/92	03/16/94, 59 FR 12165	MN Laws Ch 546 sections 5 through 9.
St. Cloud Carbon Monoxide Redesignation.	Benton, Sherbourne, and Stearns Counties.	08/31/89	06/28/93, 58 FR 34532.	
St. Cloud Carbon Monoxide Transportation Control Plan.	Benton, Sherbourne, and Stearns Counties.	05/17/79	12/13/79, 44 FR 72116.	
		08/31/89	06/28/93, 58 FR 34529.	
St. Paul PM–10 Redesignation and Maintenance Plan.	Ramsey County	06/20/02	07/26/02, 67 FR 48787.	
Twin Cities Carbon Monoxide Redesignation and Maintenance Plan.	Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, and Wright Counties.	03/23/98	10/29/99, 64 FR 58347.	
Twin Cities Carbon Monoxide Transportation Control Plan.	Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties.	07/3/79 and 07/27/79	06/16/80, 45 FR 40579	
		07/21/81	12/08/81, 46 FR 59972	
		05/20/85 and 04/17/86	12/31/86, 51 FR 47237.	
Twin Cities / Pine Bend Sulfur Dioxide Redesignation and Maintenance Plan.	Anoka, Carver, Dakota, Hennepin, Ramsey, and Washington Counties.	09/07/94	05/31/95, 60 FR 28339	Except for St. Paul Park area.
		10/03/95	05/13/97, 62 FR 26230	St. Paul Park area.

[FR Doc. 05–3453 Filed 2–23–05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[WC Docket No. 04–313, CC Docket No. 01–338; FCC 04–290]

Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules concerning the unbundling obligations of incumbent local exchange carriers (LECs), with respect to the dedicated transport, high-capacity loop, and mass market circuit switching elements of their networks. This document also adopts appropriate transition periods to allow competitive LECs sufficient time to migrate their services to alternative facilities, or to negotiate alternative commercial arrangements, where unbundled network elements (UNEs)

must no longer be made available pursuant to our rules. The rules set forth in this Order on Remand encourage the innovation and investment that come from facilities-based competition. By implementing the Commission's unbundling authority pursuant to section 251 of the Communications Act, in a targeted manner, this Order imposes unbundling obligations only in those situations where the Commission finds that carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition. This approach satisfies the guidance of courts to weigh the costs of unbundling, and ensures that the Commission's rules provide the right incentives for both incumbent and competitive LECs to invest rationally in the telecommunications market in the way that best allows for innovation and sustainable competition.

DATES: Effective March 11, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See Supplementary Information for further filing instructions.*

FOR FURTHER INFORMATION CONTACT: Erin Boone, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–0064 or via the Internet at *erin.boone@fcc.gov*. The complete text of this Order on Remand is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Remand in WC Docket No. 04–313 and CC Docket No. 01–338, adopted *December 15, 2004*, and released *February 4, 2005*. The full text of this document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160. It is also available on the Commission's Web site at *http://www.fcc.gov*.

Synopsis of the Order on Remand

1. *Background.* The Commission took several steps to avoid excessive disruption of the local telecommunications market while it wrote new rules following the D.C. Circuit's decision in *United States Telecom Association* v. *FCC*, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied*, 160 L. Ed 2d 223 (2004), which vacated and remanded significant portions of the unbundling rules set forth in the Commission's *Triennial Review Order*, 68 FR 52276 (Sept. 2, 2003), CC Docket Nos. 01–338, 96–98, 98–147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003). One of these steps included the release, on August 20, 2004, of *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 69 FR 55111, 69 FR 55128 (Sept. 13, 2004), CC Docket No. 01–338, WC Docket No. 04–313, Order and Notice of Proposed Rulemaking, 19 FCC Rcd 16783, 16785–87, paras. 3–7 (2004) (*Interim Order and Triennial Remand NPRM*). The *Interim Order* required carriers to adhere to the commitments they made in their interconnection agreements, applicable statements of generally available terms (SGATs), and relevant state tariffs that were in effect on June 15, 2004 for an ''interim period'' beginning on the effective date of the Interim Order and NPRM and ending on the earlier of (1) six months after that effective date or (2) the effective date of final rules issued in this proceeding. The Commission also set forth and sought comment on a transition plan to govern the period following the interim period. The associated *Triennial Remand NPRM* sought comment on how to respond to the *USTA II* decision in its revised final rules. In this Order on Remand, the Commission promulgates those final rules based on guidance from the courts and comment received in response to the *Triennial Remand NPRM*.

2. *Unbundling Framework.* In the *USTA II* decision, the D.C. Circuit upheld the general impairment framework the Commission established in the *Triennial Review Order*, but sought several clarifications and, in several cases, criticized the manner in which the Commission applied that framework to particular elements. In response to those criticisms, the Commission clarifies the impairment standard adopted in the *Triennial Review Order* in one respect and modifies its unbundling framework in three other respects. First, the Commission clarifies that it evaluates impairment with regard to the capabilities of a reasonably efficient competitor. Second, it sets aside the *Triennial Review Order*'s ''qualifying service'' interpretation of section 251(d)(2), but prohibits the use of UNEs for the exclusive provision of telecommunications services in the mobile wireless and long-distance markets, which the Commission previously has found to be competitive. Third, the Commission notes that in applying its impairment test, it draws reasonable inferences regarding the prospects for competition in one geographic market based on the state of competition in other, similar markets. Fourth, it considers the appropriate role of tariffed incumbent LEC services in its unbundling framework, and determines that in the context of the local exchange market, a general rule prohibiting access to UNEs whenever a requesting carrier is able to compete using an incumbent LEC's tariffed offering would be inappropriate.

3. *Dedicated Interoffice Transport.* In this Order, the Commission tailors its unbundling requirements regarding dedicated interoffice transport narrowly to ensure that unbundling obligations apply only where competitive deployment of these facilities is not economic. The Commission finds that competing carriers are impaired without access to DS1 transport except on routes connecting a pair of wire centers, where both wire centers contain either at least four fiber-based collocators or at least 38,000 business access lines. The Commission also finds that competing carriers are impaired without access to DS3 or dark fiber transport except on routes connecting a pair of wire centers, each of which contains at least three fiber-based collocators or at least 24,000 business lines. Finally, the Commission finds that competing carriers are not impaired without access to entrance facilities connecting an incumbent LEC's network with a competitive LEC's network in any instance. In addition to these findings, the Commission adopts a 12-month plan for competing carriers to transition away from use of DS1- and DS3-capacity dedicated transport where they are not impaired, and an 18-month plan to govern transitions away from dark fiber transport. These transition plans apply only to the embedded customer base, and do not permit competitive LECs to add new dedicated transport UNEs in the absence of impairment. The Commission also requires that during the transition periods, competitive carriers retain access to unbundled dedicated transport at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the transport element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004 and the effective date of this Order.

4. *High-Capacity Loops.* The Commission finds that competitive

LECs are impaired without access to DS3-capacity loops except in any building within the service area of a wire center containing 38,000 or more business lines and four or more fiber-based collocators. In addition, the Commission finds that competitive LECs are impaired without access to DS1-capacity loops except in any building within the service area of a wire center containing 60,000 or more business lines and four or more fiber-based collocators. Finally, the Commission finds that competitive LECs are not impaired without access to dark fiber loops in any instance. In addition to these findings, the Commission adopts a 12-month plan for competing carriers to transition away from use of DS1- and DS3-capacity loops where they are not impaired, and an 18-month plan to govern transitions away from dark fiber loops. These transition plans apply only to the embedded customer base, and do not permit competitive LECs to add new high-capacity loop UNEs in the absence of impairment. The Commission requires that during the transition periods, competitive carriers retain access to unbundled facilities at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the high-capacity loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004 and the effective date of this Order.

5. *Mass Market Local Circuit Switching.* In this Order, the Commission finds that incumbent LECs have no obligation to provide competitive LECs with unbundled access to mass market local circuit switching. The Commission concludes that competitive LECs have deployed a significant, growing number of their own switches, often using new, more-efficient technologies such as packet switches, and could do so in areas they do not yet serve as well. Thus, the Commission concludes that requesting carriers in most cases are not impaired without access to local circuit switching. Moreover, the Commission finds that regardless of any limited potential impairment requesting carriers may still face, the continued availability of unbundled mass market switching would impose significant costs in the form of decreased investment incentives. It therefore determines, pursuant to section 251(d)(2)'s ''at a minimum'' authority, not to require unbundled access to mass market switching even in those areas where competitive LECs might face impairment. In addition, the Commission adopts a 12-month plan for competing carriers to transition away from use of unbundled mass market local circuit switching. This transition plan applies only to the embedded customer base, and does not permit competitive LECs to add new mass market switching UNEs. During the transition period, the Commission states that competitive carriers will retain access to the unbundled network element platform (*i.e.*, the combination of an unbundled loop, unbundled local circuit switching, and shared transport) at a rate equal to the higher of (1) the rate at which the requesting carrier leased that combination of elements on June 15, 2004, plus one dollar, or (2) the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of this Order, for this combination of elements, plus one dollar.

Final Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Interim Order and NPRM* in this proceeding. The Commission sought written comment on the proposals in the *Interim Order and NPRM*, including comment on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) addresses comments received on the IRFA and conforms to the RFA.

Need for, and Objectives of, the Order on Remand

7. This Order responds to the United States Court of Appeals for the District of Columbia's *USTA II* decision, which vacated and remanded significant portions of the *Triennial Review Order*'s unbundling rules. Based on the record compiled in response to the *Interim Order and NPRM*, the Commission adopted, in the *Triennial Review Order*, new unbundling rules implementing section 251 of the 1996 Act. The *Triennial Review Order* reinterpreted the statute's ''impair'' standard and reevaluated incumbent LECs' unbundling obligations with regard to particular elements. Various parties appealed the *Triennial Review Order*, and on March 2, 2004, the D.C. Circuit decided *USTA II*, vacating and remanding several of the *Triennial Review Order*'s unbundling rules. In this Order, we address the remanded issues and take additional steps to encourage the innovation and investment that results from facilities-based competition.

8. Specifically, this Order clarifies the *Triennial Review Order*'s impairment standard in one respect and modifies its application in three respects. *First,* we clarify that we evaluate impairment with regard to the capabilities of a *reasonably efficient* competitor. *Second*, we set aside the *Triennial Review Order*'s ''qualifying service'' interpretation of section 251(d)(2), but prohibit the use of UNEs for the provision of telecommunications services in the mobile wireless and long-distance markets, which we previously have found to be competitive. *Third*, in applying our impairment test, we draw reasonable inferences regarding the prospects for competition in one geographic market based on the state of competition in other, similar markets. *Fourth*, we consider the appropriate role of tariffed incumbent LEC services in our unbundling framework, and determine that in the context of the local exchange markets, a general rule prohibiting access to UNEs whenever a requesting carrier is able to compete using an incumbent LEC's tariffed offering would be inappropriate. We then apply this revised unbundling framework to the dedicated transport network element, the high-capacity loop network element, and the mass market local circuit switching network element. In each case, we adopt a result that will promote the deployment of competitive facilities wherever possible, spreading the benefits of facilities-based competition to market entrants and end-user customers alike, including small businesses falling into each category.

Summary and Discussion of Significant Issues Raised by Public Comments in Response to IRFA

9. In this section, we respond to comments filed in response to the IRFA. To the extent we received comments raising general small business concerns during this proceeding, those comments are discussed throughout the Order and are summarized in part E, below.

10. First, we reject TeleTruth's contention that the Commission fails to assess the impact of its unbundling rules on small Internet Service Providers (ISPs), and that this failure violates the RFA. Although we understand that our rules will have an economic impact in many sectors of the economy, including the ISP market, the RFA only requires the Commission to consider the impact on entities *directly* subject to our rules. The RFA is not applicable to ISPs because, as we previously noted, ISPs are only *indirectly* affected by our unbundling actions and were not formally included in the IRFA or formally included in this FRFA. In the interest of ensuring notice

to all interested parties and out of an abundance of caution, we have previously included ISPs among the entities potentially indirectly affected by our unbundling rules, although we have been explicit in emphasizing that ISPs are only indirectly affected by these rules. On this subject, we note that the D.C. Circuit ''has consistently held that the RFA imposes no obligation to conduct a small entity impact analysis of effects on entities which [the agency conducting the analysis] does not regulate.'' Thus, we emphasize that the RFA imposes no independent obligation to examine the effects an agency's action will have on the customers, clients, or end users of the companies it regulates—including ISPs—unless such entities are, themselves, subject to regulation by the agency. In any event, we have considered the needs of small business customers of competitive (and incumbent) LECs throughout this Order and previous Orders, in each case choosing the outcome that will foster facilities-based competition and the benefits such competition will bring to small businesses and other consumers of telecommunications.

11. We also reject TeleTruth's argument that the Commission violates the RFA by relying on outdated 1997 Census Bureau data to identify the number of ISPs potentially affected by our final rules in the IRFA. The 1997 Census Bureau data were and still are the most current data available. According to TeleTruth, data compiled by both the SBA and Boardwatch/ISP-Planet, an ISP-focused periodical, indicate that the number of ISPs is close to 7,000, rather than the 2,751 ISPs identified by the IRFA. Although TeleTruth cites to higher numbers, the Census Bureau has not released the more recent (2002) results for telecommunications providers or for ISPs. Thus, the IRFA in this proceeding and this FRFA appropriately rely on the most up-to-date 1997 Census Bureau data and therefore comply with the RFA.

12. We disagree with TeleTruth's claim that by relying on 1997 Census Bureau data in the IRFA, the Commission violates the Data Quality Act (DQA). We conclude that the IRFA's description of the ISP marketplace based on 1997 Census Bureau data was consistent with the Commission's DQA guidelines. As an initial matter, the DQA requires federal agencies to issue information quality guidelines ensuring the quality, utility, objectivity and integrity of information that they disseminate, and to provide mechanisms by which affected persons can take action to correct any errors reflected in such information. In 2002, the Commission adopted guidelines implementing the DQA stating that it is dedicated to ensuring that all data that it disseminates reflect a level of quality commensurate with the nature of the information. Specifically, these guidelines require the Commission to review and substantiate the quality of information before it is disseminated to the public and describe the administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with the guidelines. By relying on the most recent Census Bureau data, the Commission complied with DQA guidelines as the Census Bureau is the leading source of high-quality data of the sort set forth in the IRFA—and a source on which we have consistently relied. In this regard, we note that the Census Bureau data and SBA generic small business size standards track each other precisely, as intended by both the Census Bureau and SBA. Moreover, as indicated above, we have updated this FRFA based on the recent preliminary 2002 Census Bureau Industry Series data, mitigating the concern that the data set out in the IRFA was too old to be of use in assessing the impact our conclusions might have on small entities.

13. We also reject TeleTruth's argument that the Commission violates the RFA by failing to conduct proper outreach to small businesses for purposes of compiling a comprehensive record in this proceeding. The Commission has satisfied its RFA obligation to assure that small companies were able to participate in this proceeding. Specifically, the RFA requires the Commission to ''assure that small entities have been given an opportunity to participate in the rulemaking,'' and proposes as example five ''reasonable techniques'' that an agency might employ to do so. In this proceeding, the Commission has complied with the RFA by employing several of these techniques: it (1) has published a ''notice of proposed rulemaking in publications likely to be obtained by small entities''; (2) has ''inclu[ded] * * * a statement that the proposed rule may have a significant economic effect on a substantial number of small entities'' in the *Interim Order and NPRM*; (3) has solicited comments over its computer network; and (4) has acted ''to reduce the cost or complexity of participation in the rulemaking by small entities'' by, among other things, facilitating electronic submission of comments.

14. We also disagree with commenters that claim that the Commission did not specifically consider the impact of eliminating UNEs on small businesses or describe alternatives to minimize any impact in the IRFA. Although the Small Business Administration Office of Advocacy (SBA Advocacy) recommends that we issue a revised IRFA to account for the impact our rules might have on small competitive LECs, we believe it is not necessary since the *Interim Order and NPRM* explained in detail the ruling of the D.C. Circuit in *USTA II,* which gave rise to this proceeding; posed specific questions to commenters regarding the proper implementation of that decision; and solicited comment from all parties. While the NPRM did not specify particular results the Commission would consider—and the IRFA therefore did not catalogue the effects that such particular results might have on small businesses—the Commission provided notice to parties regarding the range of policy outcomes that might result from this order. As indicated above, a summary of the *Interim Order and NPRM* was published in the **Federal Register**, and we believe that such publication constitutes appropriate notice to small businesses subject to this Commission's regulation. Indeed, far from discouraging small entities from participating, the *Interim Order and NPRM* and the associated IRFA elicited extensive comment on issues affecting small businesses. These comments have enabled us to consider the concerns of competitive LECs throughout this order. Moreover, in Part C, below, we attempt to estimate the number of competitive LECs that will be affected by the rules we adopt herein. We therefore reject arguments that small entities were prejudiced by any lack of specificity regarding specific results potentially resulting from this proceeding.

Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

15. 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. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria

established by the Small Business Administration (SBA).

16. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by our action. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

17. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' SBA Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

18. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

19. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services (LECs). The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,310 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

20. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 563 carriers have reported that they are engaged in the provision of either CAP services or competitive LEC services. Of these 563 carriers, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees. In addition, 14 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 14 are estimated to have 1,500 or fewer employees. In addition, 37 carriers have reported that they are ''Other Local Service Providers.'' Of the 37, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed action.

21. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 281 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 254 have 1,500 or fewer employees and 27 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

22. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for OSPs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

23. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

24. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, OSPs, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 65 companies reported that their primary telecommunications service activity was the provision of other toll services. Of these 65 companies, an estimated 62 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that most ''Other Toll Carriers'' are small entities that may be affected by the rules and policies adopted herein.

25. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.''

Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. 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. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

26. *Broadband PCS.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 305, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. In addition, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

27. *Narrowband Personal Communications Services (PCS).* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

28. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. According to the Census Bureau data for 1997, only twelve firms out of a total of 1,238 such firms that operated for the entire year in 1997, had 1,000 or more employees. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

29. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* we adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.

30. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved

these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

31. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

32. In the *Paging Second Report and Order,* the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 379 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Of these, we estimate that 373 are small, under the SBA-approved small business size standard. We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

33. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order,* we adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

34. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the BETRS. The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

35. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

36. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

37. *Fixed Microwave Services.* Fixed microwave services include common

carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

38. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies (UHF) television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

39. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

40. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies proposed herein.

41. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.

42. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

43. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

44. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winners that won 119 licenses.

45. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs). Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in

annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years. The SBA has approved of these definitions. At this time, we cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

46. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. 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. Thus, under this size standard, the great majority of firms can be considered small. These broader Census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

47. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million. ''Very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

48. *Internet Service Providers.* While ISPs are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present FRFA, we have addressed them informally to create a fuller record and to recognize their participation in this proceeding. The SBA has developed a small business size standard for ISPs. This category comprises establishments ''primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.'' Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999. Thus, under this size standard, the great majority of firms can be considered small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

49. Pursuant to sections 251(c) and (d) of the Act, incumbent LECs, including those that qualify as small entities, are required to provide nondiscriminatory access to UNEs to requesting telecommunications carriers in certain circumstances. In this Order, we modify our unbundling rules, as described above. Specifically, we conclude, except as set forth in other Commission orders, that requesting carriers: (1) Shall be afforded unbundled access to DS1-capacity dedicated transport except on routes connecting a pair of wire centers, where both wire centers contain at least four fiber-based collocators or at least 38,000 business access lines; (2) shall be afforded unbundled access to DS3-capacity dedicated transport except on routes connecting a pair of wire centers, each of which contains at least three fiber-based collocators or at least 24,000 business lines; (3) shall be afforded unbundled access to dark fiber dedicated transport except on routes connecting a pair of wire centers, each of which contains at least three fiber-based collocators or at least 24,000 business lines; (4) shall not be afforded unbundled access to entrance facilities in any instance; (5) shall be afforded unbundled access to DS1-capacity loops except in any building within the service area of wire centers with 60,000 or more business lines and 4 or more fiber-based collocators; (6) shall be afforded unbundled access to DS3-capacity loops except in any building within the service area of wire centers with 38,000 or more business lines and 4 or more fiber-based collocators; (7) shall not be afforded unbundled access to dark fiber loops in any instance; and (8) shall not be afforded unbundled access to mass market local circuit switching in any instance. We also set forth specific transition plans to govern competitive carriers' migration from UNEs to alternative arrangements, where necessary. The various compliance requirements contained in this Order will require the use of engineering, technical, operational, accounting, billing, and legal skills. The carriers that are affected by these requirements already possess these skills.

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

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

51. In this Order, we adopt rules implementing section 251(c)(3) of the Communications Act, which requires that incumbent LECs make elements of their networks available on an unbundled basis to new entrants at cost-based rates, pursuant to standards set out in section 251(d)(2). As noted above, these rules respond to the D.C. Circuit's decision in *USTA II.* Particularly, we focus on those items that the court remanded for our consideration. Our actions will affect both telecommunications carriers that request access to UNEs and the incumbent LECs that must provide access to UNEs under section 251(c)(3).

52. In arriving at the conclusions described above, the Commission considered various alternatives, which it rejected or accepted for the reasons set forth in the body of this Order, and made certain changes to the rules to reduce undue regulatory burdens, consistent with the Communications Act and with guidance received from the courts. These efforts to reduce regulatory burden will affect both large and small carriers. The significant alternatives that commenters discussed and that we considered are as follows.

53. *Reasonably Efficient Competitor.* In this *Order,* we clarify that, in assessing impairment pursuant to the standard set forth in the *Triennial Review Order,* we presume a reasonably efficient competitor. Specifically, we presume that a requesting carrier will use reasonably efficient technology and we consider *all* the revenue opportunities that such a competitor can reasonably expect to gain over the facilities, taking into account limitations on entrants' ability to provide multiple services. This clarification, we conclude, will encourage facilities-based competitors, including small businesses, to deploy efficient technologies so as to maximize quality of service and minimize costs. Thus, while we recognize that our approach might prevent inefficient small entities from using UNEs to compete (*i.e.*, in those cases where a reasonably efficient small entity would not require access to UNEs), we believe that the alternative approach, which would reward inefficiency and produce overbroad unbundling rules, would be inconsistent with the Communications Act.

54. *Service Considerations.* In response to the *USTA II* court's guidance, we revise our approach to unbundling for the exclusive provision of long distance and mobile wireless services. Specifically, we abandon the ''qualifying services'' approach set forth in the *Triennial Review Order,* which limited the section 251(d)(2) inquiry to a subset of telecommunications services and which was rejected by the D.C. Circuit. Based on the record, the court's guidance, and the Commission's previous findings, we find that the mobile wireless services market and long distance services market are markets where competition has evolved without access to UNEs. We have therefore determined, pursuant to our ''at a minimum'' authority to consider factors other than impairment when assessing unbundling obligations, to prohibit access to UNEs for exclusive provision of service to those markets. We also considered, but declined to adopt, an approach also barring use of UNEs for provision of other services specified in the Act—namely, telephone exchange service and exchange access service, the two services LECs provide. We recognize that the use restrictions adopted in this Order may prevent small providers of mobile wireless and long distance service from using UNEs to compete. We conclude, however, that given the court's guidance, and the generally competitive state of the mobile wireless and long distance markets, the benefits associated with unbundling would not be commensurate with the costs imposed on incumbent LECs, and would potentially depress deployment of new facilities that would ultimately redound to the benefit of all carriers and end-user customers of every size.

55. *Reasonable Inferences.* In this Order, we adopt an approach that relies, to a far greater degree than our previous analyses, on the inferences that can be drawn from one market regarding the prospects for competitive entry in another. As described in detail in the Order, we rely, where possible, on correlations between business line counts and/or fiber collocations in a particular wire center, on the one hand, and the deployment of competitive dedicated transport or high-capacity loops, on the other. We have considered and rejected the alternative of relying only actual deployment in assessing unbundling obligations. As described more fully in the Order, we have concluded that the ''actual deployment'' approach would be impracticable to administer, would be inconsistent with the *USTA II* decision, and would overstate requesting carriers' UNE needs.

56. *Relevance of Tariffed Alternatives.* In this Order, we address the relevance of special access tariffed offerings to the unbundling inquiry in the local exchange markets where we find UNE access to be appropriate. We find that statutory concerns, administrability concerns, and concerns about anticompetitive price squeeze preclude a rule foreclosing UNE access when carriers are able to compete using special access or other tariffed alternatives. We also find that a competitor's current use of special access does not, on its own, demonstrate that that carrier is not impaired without access to UNEs. We note that to reach a different result would be inconsistent with the Act's text and its interpretation by various courts, would be impracticable, and would create a significant risk of abuse by incumbent LECs. This decision is consistent with the interests of many small businesses, who claim, for example, that they cannot compete against incumbent LECs in the local exchange markets using tariffed alternatives to UNEs.

57. *Dedicated Transport.* In this Order, we limit unbundled access to dedicated transport to those routes on which competitive deployment at a particular capacity level is not economic. Specifically, we find that competing carriers are impaired without access to DS1 transport except on routes connecting a pair of wire centers, where both wire centers contain at least four fiber-based collocators or at least 38,000 business access lines, and that competing carriers are impaired without access to DS3 or dark fiber transport except on routes connecting a pair of wire centers, each of which contains at least three fiber-based collocators or at least 24,000 business lines. Finally, we find that competing carriers are not impaired without access to entrance facilities connecting an incumbent LEC's network with a competitive LEC's network in any instance.

58. In reaching our decisions concerning dedicated transport, we considered the comments by small competitive LECs, which generally sought broader unbundled access to dedicated transport links. We rejected these arguments, finding that they failed to account adequately for the prospects of competitive deployment and for the advantages held out by such deployment, where feasible, for consumers and carriers alike. Similarly, we also rejected a ''matched pair'' approach that would require the existence of actual competitive transport links (whether direct or indirect) before relieving an incumbent's unbundling obligations, because that approach failed to draw reasonable inferences regarding potential deployment. Alternatively, we also considered and rejected arguments that we should employ higher business line and fiber-based collocator thresholds in assessing impairment. While these higher thresholds might have minimized unbundling obligations and thus benefited small (and large) incumbent LECs, we believed that higher thresholds would *understate* the need for unbundling, and would prohibit UNE access on routes where competitive deployment was not economic. Finally, we considered but rejected alternative proposals to adopt conclusions regarding transport that would apply to entire MSAs. A single MSA can encompass urban, suburban, and rural areas, each of which presents different challenges to competitive LECs seeking to self-deploy facilities. Thus, while we recognize that MSA-wide determinations might confer administrability-related efficiencies on

small entities, we believe that our more specific route-based approach is also easily administered, and permits a greater degree of nuance in assessing unbundling obligations.

59. *High-Capacity Loops.* We find that competitive LECs are impaired without access to DS3-capacity loops except in any building within the service area of a wire center containing 38,000 or more business lines and 4 or more fiber-based collocators. Furthermore, competitive LECs are impaired without access to DS1-capacity loops except in any building within the service area of a wire center containing 60,000 or more business lines and 4 or more fiber-based collocators. Finally, we determine that competitive LECs are not impaired without access to dark fiber loops in any instance.

60. As with dedicated transport, we have considered and rejected proposals to adopt either more restrictive or less restrictive unbundling rules, which we recognize might benefit small incumbent LECs or small competitive LECs, respectively. For reasons explained in the Order, we believe our choice of thresholds properly assesses the prospects for competitive duplication of loops at the DS1 and DS3 capacity, incorporating reasonable inferences regarding potential deployment of such facilities from the areas in which competitors actually have deployed high-capacity loops. We have also considered, and rejected as unadministrable, a building-specific approach to loop impairment. While the building-specific approach might allow more nuance than the approach we have chosen, we believe that it would be impracticable to administer, and would invite protracted conflict between carriers as to whether or not unbundling was permitted in each particular building. Such disputes would benefit no party, and might in fact impose disproportionate costs on small incumbent LECs and competitive LECs. Finally, we have considered, and rejected, proposals that we evaluate impairment for high-capacity loops not by wire center, but by broader geographic areas, such as MSAs. As noted above, a single MSA can encompass wide areas presenting a range of topographies and customer densities, and thus a variety of distinct circumstances with regard to the prospects for competitive deployment. As explained in the Order, we believe that our wire-center approach to evaluating impairment with regard to high-capacity loops strikes the proper balance between administrability and case-specificity.

61. *Mass Market Local Circuit Switching.* We find that incumbent LECs have no obligation to provide competitive LECs with unbundled access to mass market local circuit switching. Many commenters suggested a variety of alternatives to this rule, several of which were intended to mitigate the rule's effect on small competitive LECs. Specifically, we considered and rejected arguments that small competitive LECs are impaired in specific circumstances due to unique characteristics of the particular customer markets or geographic markets they seek to serve or because of the competitive carrier's size. For instance, some commenters argued that competitive LECs are uniquely impaired when seeking to serve rural areas. We concluded that these commenters' claims were at odds with our impairment standard, which evaluates impairment based on a ''reasonably efficient competitor,'' not based on the individualized circumstances of a particular requesting carrier, and ''consider[s] all the revenue opportunities that such a competitor can reasonably expect to gain over the facilities, from providing all possible services that an entrant could reasonably expect to sell.'' Moreover, to the extent that small competitive LECs are harmed by our decision not to permit unbundled access to mass market local circuit switching, we believe that the attendant increase in incentives to deploy facilities justify a bar on unbundling even where the competitive carrier might be ''impaired,'' and thus believe it is appropriate to invoke our ''at a minimum'' authority to prohibit unbundling in these cases. Although we recognize that some small carriers might find it more difficult to compete without unbundled access to switching, we believe that the corresponding increase in deployment incentives—for incumbent LECs and competitive LECs alike—justifies our approach here.

62. We have also considered comments that ask the Commission to minimize the impact of our decision on small businesses by imposing particular requirements regarding the incumbent LEC hot cut process. However, as explained above, the record demonstrates that the incumbent LECs from whom competitive carriers are receiving unbundled switching in almost all cases—*i.e.*, the BOCs—have a record of providing hot cuts on a timely basis and have made significant *improvements* in their hot cut processes that should enable them to perform larger volumes of hot cuts to the extent necessary. We believe that the improvements in the hot cut process will ultimately benefit small businesses and should ensure a smooth transition away from mass market switching UNEs.

63. *Transition Plans.* The Order also sets out transition plans to govern the migration away from UNEs where a particular element is no longer available on an unbundled basis. We have considered various comments indicating that many small businesses have built their business plans on the basis of continued access to UNEs and have worked to ensure that the transition plans will give competing carriers a sufficient opportunity to transition to alternative facilities or arrangements. This alternative represents a reasonable accommodation for small entities and others, which we believe will ultimately result in an orderly and efficient transition. Therefore, as set forth in the Order, we have adopted plans to retain unbundled access to dark fiber loops and dark fiber dedicated transport for 18 months, at rates somewhat higher than those at which a carrier had access to those UNEs on June 15, 2004, and to retain unbundled access to DS1 loops, DS3 loops, DS1 dedicated transport, DS3 dedicated transport, and mass market local circuit switching for 12 months, again at rates somewhat higher than those at which a carrier had access to those UNEs on June 15, 2004. We believe that these plans offer sufficient time in which a competitive LEC can determine which specific arrangements must be transitioned and establish alternative means of serving customers currently served using those arrangements. We therefore reject proposals that we adopt longer transitions, which we believe would be unnecessary and therefore inappropriate in the face of a Commission declining to unbundle the element at issue.

Report to Congress

64. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Comptroller General pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Report and Order including the FRFA (or summaries thereof) will be published in the **Federal Register**.

Paperwork Reduction Act

65. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In

addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Ordering Clauses

66. Accordingly, *it is ordered* that pursuant to sections 1, 3, 4, 201–205, 251, 252, 256, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 303(r) and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt, the *Order on Remand* in CC Docket No. 01–338 and WC Docket No. 04–313 *is adopted,* and that part 51 of the Commission's Rules, 47 CFR part 51, is amended as set forth in the rule changes. The requirements of this Order shall become effective on March 11, 2005, pursuant to 5 U.S.C. 553(d)(3).

67. *It is further ordered,* pursuant to sections 1, 3, 4, 201–205, 251, 252, 256, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 303(r) and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that the Emergency Joint Petition for Stay filed in CC Docket Nos. 01–338, 96–98 and 98–147 by the Coalition for High-Speed Online Internet Competition and Enterprise on August 27, 2003; the Joint Petition for Stay filed in CC Docket Nos. 01–338, 96–98 and 98–147 by BellSouth Corporation, Qwest Communications International, Inc., SBC Communications Inc., the United States Telecom Association, and the Verizon telephone companies on September 4, 2003; the Emergency Petition for Stay filed in CC Docket Nos. 01–338, 96–98 and 98–147 by Sage Telecom, Inc. on September 22, 2003; the Emergency Stay Petition filed in CC Docket Nos. 01–338, 96–98 and 98–147 by DCSI Corporation *et al.* on September 22, 2003; the Emergency Petition for Stay filed in CC Docket Nos. 01–338, 96–98 and 98–147 by NuVox Communications, Inc. on September 25, 2003; and the Petition for Emergency Stay filed in CC Docket Nos. 01–338, 96–98 and 98–147 by Allegiance Telecom, Inc., Cbeyond Communications, LLC, El Paso Global Networks, Focal Communications Corporation, McLeodUSA Telecommunications Services, Inc., Mpower Communications Corp. and TDS Metrocom, LLC on September 26, 2003 *are dismissed as moot.*

68. *It is further ordered,* pursuant to sections 1, 3, 4, 201–205, 251, 252, 256, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 303(r) and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that the Petition for Clarification or Reconsideration filed in CC Docket Nos. 01–338, 96–98 and 98–147 by AT&T Wireless on October 2, 2003; the Petition for Reconsideration or Clarification filed in CC Docket Nos. 01–338, 96–98 and 98–147 by the Cellular Telecommunications & Internet Association on October 2, 2003; the Petition for Reconsideration or Clarification filed in CC Docket Nos. 01–338, 96–98 and 98–147 by Nextel Communications, Inc. on October 2, 2003; and the Petition for Reconsideration filed in CC Docket Nos. 01–338, 96–98 and 98–147 by T-Mobile USA, Inc. on October 2, 2003 *are dismissed as moot.*

69. *It is further ordered,* pursuant to sections 1, 3, 4, 201–205, 251, 252, 256, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 303(r) and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that the Petition for Reconsideration filed in CC Docket Nos. 01–338, 96–98 and 98–147 by the National Association of State Utility Consumer Advocates (NASUCA) on October 2, 2003 *is dismissed as moot.*

70. *It is further ordered,* pursuant to sections 1, 3, 4, 201–205, 251, 252, 256, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 303(r) and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that the Petition for Clarification and/or Partial Reconsideration filed in CC Docket Nos. 01–338, 96–98 and 98–147 by BellSouth Corporation on October 2, 2003 *is dismissed as moot* to the extent indicated herein.

71. *It is further ordered,* pursuant to sections 1, 3, 4, 201–205, 251, 252, 256, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 303(r) and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that the Petition for Reconsideration filed in CC Docket No. 01–338 by TSI Telecommunication Services, Inc. on October 3, 2003 *is dismissed as moot.*

72. *It is further ordered,* pursuant to sections 1, 3, 4, 201–205, 251, 252, 256, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 303(r) and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that the Petition for Waiver filed in CC Docket Nos. 01–338, 96–98 and 98–147 by the Telecommunications Regulatory Board of Puerto Rico on December 30, 2003 *is dismissed.*

73. *It is further ordered,* pursuant to sections 1, 3, 4, 201–205, 251, 252, 256, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 303(r) and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that the Petition for Waiver filed in CC Docket Nos. 01–338, 96–98 and 98–147 by BellSouth Corporation on February 11, 2004 *is dismissed as moot.*

74. *It is further ordered,* pursuant to sections 1, 3, 4, 201–205, 251, 252, 256, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 303(r) and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that the Petition for Rulemaking filed by Qwest Communications International, Inc. on March 29, 2004 *is dismissed as moot.*

75. *It is further ordered,* pursuant to sections 1, 3, 4, 201–205, 251, 252, 256, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 303(r) and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that the Petition for Emergency Clarification and/or Errata filed in WC Docket No. 04–313 and CC Docket No. 01–338 by the Association for Local Telecommunications Services, Alpheus Communications, LP, Cbeyond Communications, LLC, Conversent Communications, LLC, GlobalCom, Inc., Mpower Communications Corp., New Edge Networks, Inc., OneEighty Communications, Inc., TDS Metrocom, LLC on August 27, 2004 *is dismissed as moot.*

76. *It is further ordered,* pursuant to sections 1, 3, 4, 201–205, 251, 252, 256, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 303(r) and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that the Emergency Petition for Expedited Determination that Competitive Local Exchange Carriers are Impaired Without DS1 UNE Loops filed in WC Docket No. 04–313 and CC Docket No. 01–338 by XO Communications, Inc. on September 29, 2004 *is denied.*

77. *It is further ordered,* pursuant to sections 1, 3, 4, 201–205, 251, 252, 256, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 303(r) and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that as of the effective date of this Order, the interim period described in the *Interim Order and NPRM,* WC Docket No. 01–338 and CC Docket No. 01–338, and all requirements associated with that

period, shall terminate and be superseded by the transition periods described in this Order.

78. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Order on Remand*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Communications common carriers, and Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ Part 51 of title 47 of the Code of Federal Regulations is amended as follows:

PART 51—INTERCONNECTION

■ 1. The authority citation for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 47 U.S.C. 157 note, unless otherwise noted.

■ 2. Section 51.5 is amended by removing the definitions for ''Non-qualifying service'' and ''Qualifying service'' and by adding five new definitions in alphabetical order to read as follows:

§ 51.5 Terms and Definitions.

* * * * *

Business line. A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. The number of business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, business line tallies:

(1) Shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services,

(2) Shall not include non-switched special access lines,

(3) Shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 ''business lines.''

* * * * *

Fiber-based collocator. A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that

(1) Terminates at a collocation arrangement within the wire center;

(2) Leaves the incumbent LEC wire center premises; and

(3) Is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. Dark fiber obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. 153(1) and any relevant interpretation in this Title.

* * * * *

Mobile wireless service. A mobile wireless service is any mobile wireless telecommunications service, including any commercial mobile radio service.

* * * * *

Triennial Review Remand Order. The Triennial Review Remand Order is the Commission's Order on Remand in CC Docket Nos. 01–338 and 04–313 (released February 4, 2005).

* * * * *

Wire center. A wire center is the location of an incumbent LEC local switching facility containing one or more central offices, as defined in the Appendix to part 36 of this chapter. The wire center boundaries define the area in which all customers served by a given wire center are located.

■ 3. Section 51.309 is amended by revising paragraphs (b), (d), and (g)(2) to read as follows:

§ 51.309 Use of unbundled network elements.

* * * * *

(b) A requesting telecommunications carrier may not access an unbundled network element for the exclusive provision of mobile wireless services or interexchange services.

* * * * *

(d) A requesting telecommunications carrier that accesses and uses an unbundled network element consistent with paragraph (b) of this section may provide any telecommunications services over the same unbundled network element.

* * * * *

(g) * * *

(2) Shares part of the incumbent LEC's network with access services or inputs for mobile wireless services and/or interexchange services.

■ 4. Section 51.317 is revised to read as follows:

§ 51.317 Standards for requiring the unbundling of network elements.

(a) *Proprietary network elements.* A network element shall be considered to be proprietary if an incumbent LEC can demonstrate that it has invested resources to develop proprietary information or functionalities that are protected by patent, copyright or trade secret law. The Commission shall undertake the following analysis to determine whether a proprietary network element should be made available for purposes of section 251(c)(3) of the Act:

(1) Determine whether access to the proprietary network element is ''necessary.'' A network element is ''necessary'' if, taking into consideration the availability of alternative elements outside the incumbent LEC's network, including self-provisioning by a requesting telecommunications carrier or acquiring an alternative from a third-party supplier, lack of access to the network element precludes a requesting telecommunications carrier from providing the services that it seeks to offer. If access is ''necessary,'' the Commission may require the unbundling of such proprietary network element.

(2) In the event that such access is not ''necessary,'' the Commission may require unbundling if it is determined that:

(i) The incumbent LEC has implemented only a minor modification to the network element in order to qualify for proprietary treatment;

(ii) The information or functionality that is proprietary in nature does not differentiate the incumbent LEC's services from the requesting telecommunications carrier's services; or

(iii) Lack of access to such element would jeopardize the goals of the Act.

(b) *Non-proprietary network elements.* The Commission shall determine whether a non-proprietary network element should be made available for purposes of section 251(c)(3) of the Act by analyzing, at a minimum, whether lack of access to a non-proprietary network element ''impairs'' a requesting carrier's ability to provide the service it seeks to offer. A requesting carrier's ability to provide service is ''impaired'' if, taking into consideration the availability of alternative elements outside the incumbent LEC's network,

including elements self-provisioned by the requesting carrier or acquired as an alternative from a third-party supplier, lack of access to that element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market by a reasonably efficient competitor uneconomic.

■ 5. Section 51.319 is amended by removing paragraphs (a)(7) and (e)(4), redesignating paragraphs (a)(8) and (a)(9) as (a)(7) and (a)(8), redesignating paragraph (e)(5) as (e)(4), and by revising paragraphs (a)(4), (a)(5), (a)(6), (d)(2), (d)(4), (e) introductory text, (e)(1), (e)(2), and (e)(3) to read as follows:

§ 51.319 Specific unbundling requirements.

(a) * * *

(4) *DS1 loops.* (i) Subject to the cap described in paragraph (a)(4)(ii) of this section, an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS1 loop on an unbundled basis to any building not served by a wire center with at least 60,000 business lines and at least four fiber-based collocators. Once a wire center exceeds both of these thresholds, no future DS1 loop unbundling will be required in that wire center. A DS1 loop is a digital local loop having a total digital signal speed of 1.544 megabytes per second. DS1 loops include, but are not limited to, two-wire and four-wire copper loops capable of providing high-bit rate digital subscriber line services, including T1 services.

(ii) *Cap on unbundled DS1 loop circuits.* A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 loops to any single building in which DS1 loops are available as unbundled loops.

(iii) *Transition period for DS1 loop circuits.* For a 12-month period beginning on the effective date of the *Triennial Review Remand Order,* any DS1 loop UNEs that a competitive LEC leases from the incumbent LEC as of that date, but which the incumbent LEC is not obligated to unbundle pursuant to paragraphs (a)(4)(i) or (a)(4)(ii) of this section, shall be available for lease from the incumbent LEC at a rate equal to the higher of 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or, 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the *Triennial Review Remand Order,* for that loop element. Where incumbent LECs are not required to provide unbundled DS1 loops pursuant to paragraphs (a)(4)(i) or (a)(4)(ii) of this section, requesting carriers may not obtain new DS1 loops as unbundled network elements.

(5) *DS3 loops.* (i) Subject to the cap described in paragraph (a)(5)(ii) of this section, an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS3 loop on an unbundled basis to any building not served by a wire center with at least 38,000 business lines and at least four fiber-based collocators. Once a wire center exceeds both of these thresholds, no future DS3 loop unbundling will be required in that wire center. A DS3 loop is a digital local loop having a total digital signal speed of 44.736 megabytes per second.

(ii) *Cap on unbundled DS3 loop circuits.* A requesting telecommunications carrier may obtain a maximum of a single unbundled DS3 loop to any single building in which DS3 loops are available as unbundled loops.

(iii) *Transition period for DS3 loop circuits.* For a 12-month period beginning on the effective date of the *Triennial Review Remand Order,* any DS3 loop UNEs that a competitive LEC leases from the incumbent LEC as of that date, but which the incumbent LEC is not obligated to unbundle pursuant to paragraphs (a)(5)(i) or (a)(5)(ii) of this section, shall be available for lease from the incumbent LEC at a rate equal to the higher of 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or, 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the *Triennial Review Remand Order,* for that loop element. Where incumbent LECs are not required to provide unbundled DS3 loops pursuant to paragraphs (a)(5)(i) or (a)(5)(ii) of this section, requesting carriers may not obtain new DS3 loops as unbundled network elements.

(6) *Dark fiber loops.* (i) An incumbent LEC is not required to provide requesting telecommunications carriers with access to a dark fiber loop on an unbundled basis. Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

(ii) *Transition period for dark fiber loop circuits.* For an 18-month period beginning on the effective date of the *Triennial Review Remand Order,* any dark fiber loop UNEs that a competitive LEC leases from the incumbent LEC as of that date shall be available for lease from the incumbent LEC at a rate equal to the higher of 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or, 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the *Triennial Review Remand Order,* for that loop element. Requesting carriers may not obtain new dark fiber loops as unbundled network elements.

* * * * *

(d) * * *

(2) *DS0 capacity (i.e., mass market) determinations.* (i) An incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS0 capacity loops.

(ii) Each requesting telecommunications carrier shall migrate its embedded base of end-user customers off of the unbundled local circuit switching element to an alternative arrangement within 12 months of the effective date of the *Triennial Review Remand Order.*

(iii) Notwithstanding paragraph (d)(2)(i) of this section, for a 12-month period from the effective date of the *Triennial Review Remand Order,* an incumbent LEC shall provide access to local circuit switching on an unbundled basis for a requesting carrier to serve its embedded base of end-user customers. The price for unbundled local circuit switching in combination with unbundled DS0 capacity loops and shared transport obtained pursuant to this paragraph shall be the higher of the rate at which the requesting carrier obtained that combination of network elements on June 15, 2004 plus one dollar, or, the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of the *Triennial Review Remand Order,* for that combination of network elements, plus one dollar. Requesting carriers may not obtain new local switching as an unbundled network element.

* * * * *

(4) *Other elements to be unbundled.* Elements relating to the local circuit switching element shall be made available on an unbundled basis to a requesting carrier to the extent that the requesting carrier is entitled to unbundled local circuit switching as set forth in paragraph (d)(2) of this section.

(i) An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to signaling, call-related databases, and shared transport facilities on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, to the extent that local circuit switching is required to be made available pursuant to paragraph

(d)(2)(iii) of this section. These elements are defined as follows:

(A) *Signaling networks.* Signaling networks include, but are not limited to, signaling links and signaling transfer points.

(B) *Call-related databases.* Call-related databases are defined as databases, other than operations support systems, that are used in signaling networks for billing and collection, or the transmission, routing, or other provision of a telecommunications service. Where a requesting telecommunications carrier purchases unbundled local circuit switching from an incumbent LEC, an incumbent LEC shall allow a requesting telecommunications carrier to use the incumbent LEC's service control point element in the same manner, and via the same signaling links, as the incumbent LEC itself.

(*1*) Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent network databases, and downstream number portability databases by means of physical access at the signaling transfer point linked to the unbundled databases.

(*2*) Service management systems are defined as computer databases or systems not part of the public switched network that interconnect to the service control point and send to the service control point information and call processing instructions needed for a network switch to process and complete a telephone call, and provide a telecommunications carrier with the capability of entering and storing data regarding the processing and completing of a telephone call. Where a requesting telecommunications carrier purchases unbundled local circuit switching from an incumbent LEC, the incumbent LEC shall allow a requesting telecommunications carrier to use the incumbent LEC's service management systems by providing a requesting telecommunications carrier with the information necessary to enter correctly, or format for entry, the information relevant for input into the incumbent LEC's service management system, including access to design, create, test, and deploy advanced intelligent network-based services at the service management system, through a service creation environment, that the incumbent LEC provides to itself.

(*3*) An incumbent LEC shall not be required to unbundle the services created in the advanced intelligent network platform and architecture that qualify for proprietary treatment.

(C) *Shared transport.* Shared transport is defined as the transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network.

(ii) An incumbent LEC shall provide a requesting telecommunications carrier nondiscriminatory access to operator services and directory assistance on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, to the extent that local circuit switching is required to be unbundled by a state commission, if the incumbent LEC does not provide that requesting telecommunications carrier with customized routing, or a compatible signaling protocol, necessary to use either a competing provider's operator services and directory assistance platform or the requesting telecommunications carrier's own platform. Operator services are any automatic or live assistance to a customer to arrange for billing or completion, or both, of a telephone call. Directory assistance is a service that allows subscribers to retrieve telephone numbers of other subscribers.

(e) *Dedicated transport.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dedicated transport on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, as set forth in paragraphs (e) through (e)(4) of this section. A ''route'' is a transmission path between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches. A route between two points (*e.g.*, wire center or switch ''A'' and wire center or switch ''Z'') may pass through one or more intermediate wire centers or switches (*e.g.*, wire center or switch ''X''). Transmission paths between identical end points (*e.g.*, wire center or switch ''A'' and wire center or switch ''Z'') are the same ''route,'' irrespective of whether they pass through the same intermediate wire centers or switches, if any.

(1) *Definition.* For purposes of this section, dedicated transport includes incumbent LEC transmission facilities between wire centers or switches owned by incumbent LECs, or between wire centers or switches owned by incumbent LECs and switches owned by requesting telecommunications carriers, including, but not limited to, DS1-, DS3-, and OCn-capacity level services, as well as dark fiber, dedicated to a particular customer or carrier.

(2) *Availability.* (i) *Entrance facilities.* An incumbent LEC is not obligated to provide a requesting carrier with unbundled access to dedicated transport that does not connect a pair of incumbent LEC wire centers.

(ii) *Dedicated DS1 transport.* Dedicated DS1 transport shall be made available to requesting carriers on an unbundled basis as set forth below. Dedicated DS1 transport consists of incumbent LEC interoffice transmission facilities that have a total digital signal speed of 1.544 megabytes per second and are dedicated to a particular customer or carrier.

(A) *General availability of DS1 transport.* Incumbent LECs shall unbundle DS1 transport between any pair of incumbent LEC wire centers except where, through application of tier classifications described in paragraph (e)(3) of this section, both wire centers defining the route are Tier 1 wire centers. As such, an incumbent LEC must unbundle DS1 transport if a wire center at either end of a requested route is not a Tier 1 wire center, or if neither is a Tier 1 wire center.

(B) *Cap on unbundled DS1 transport circuits.* A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis.

(C) *Transition period for DS1 transport circuits.* For a 12-month period beginning on the effective date of the *Triennial Review Remand Order,* any DS1 dedicated transport UNE that a competitive LEC leases from the incumbent LEC as of that date, but which the incumbent LEC is not obligated to unbundle pursuant to paragraphs (e)(2)(ii)(A) or (e)(2)(ii)(B) of this section, shall be available for lease from the incumbent LEC at a rate equal to the higher of 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or, 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the *Triennial Review Remand Order,* for that dedicated transport element. Where incumbent LECs are not required to provide unbundled DS1 transport pursuant to paragraphs (e)(2)(ii)(A) or (e)(2)(ii)(B) of this section, requesting carriers may not obtain new DS1 transport as unbundled network elements.

(iii) *Dedicated DS3 transport.* Dedicated DS3 transport shall be made available to requesting carriers on an unbundled basis as set forth below. Dedicated DS3 transport consists of

incumbent LEC interoffice transmission facilities that have a total digital signal speed of 44.736 megabytes per second and are dedicated to a particular customer or carrier.

(A) *General availability of DS3 transport.* Incumbent LECs shall unbundle DS3 transport between any pair of incumbent LEC wire centers except where, through application of tier classifications described in paragraph (e)(3) of this section, both wire centers defining the route are either Tier 1 or Tier 2 wire centers. As such, an incumbent LEC must unbundle DS3 transport if a wire center on either end of a requested route is a Tier 3 wire center.

(B) *Cap on unbundled DS3 transport circuits.* A requesting telecommunications carrier may obtain a maximum of 12 unbundled DS3 dedicated transport circuits on each route where DS3 dedicated transport is available on an unbundled basis.

(C) *Transition period for DS3 transport circuits.* For a 12-month period beginning on the effective date of the *Triennial Review Remand Order,* any DS3 dedicated transport UNE that a competitive LEC leases from the incumbent LEC as of that date, but which the incumbent LEC is not obligated to unbundle pursuant to paragraphs (e)(2)(iii)(A) or (e)(2)(iii)(B) of this section, shall be available for lease from the incumbent LEC at a rate equal to the higher of 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or, 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the *Triennial Review Remand Order,* for that dedicated transport element. Where incumbent LECs are not required to provide unbundled DS3 transport pursuant to paragraphs (e)(2)(iii)(A) or (e)(2)(iii)(B) of this section, requesting carriers may not obtain new DS3 transport as unbundled network elements.

(iv) *Dark fiber transport.* Dedicated dark fiber transport shall be made available to requesting carriers on an unbundled basis as set forth below. Dark fiber transport consists of unactivated optical interoffice transmission facilities.

(A) *General availability of dark fiber transport.* Incumbent LECs shall unbundle dark fiber transport between any pair of incumbent LEC wire centers except where, though application of tier classifications described in paragraph (e)(3) of this section, both wire centers defining the route are either Tier 1 or Tier 2 wire centers. As such, an incumbent LEC must unbundle dark fiber transport if a wire center on either end of a requested route is a Tier 3 wire center.

(B) *Transition period for dark fiber transport circuits.* For an 18-month period beginning on the effective date of the *Triennial Review Remand Order,* any dark fiber dedicated transport UNE that a competitive LEC leases from the incumbent LEC as of that date, but which the incumbent LEC is not obligated to unbundle pursuant to paragraphs (e)(2)(iv)(A) or (e)(2)(iv)(B) of this section, shall be available for lease from the incumbent LEC at a rate equal to the higher of 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or, 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the *Triennial Review Remand Order,* for that dedicated transport element. Where incumbent LECs are not required to provide unbundled dark fiber transport pursuant to paragraphs (e)(2)(iv)(A) or (e)(2)(iv)(B) of this section, requesting carriers may not obtain new dark fiber transport as unbundled network elements.

(3) *Wire center tier structure.* For purposes of this section, incumbent LEC wire centers shall be classified into three tiers, defined as follows:

(i) Tier 1 wire centers are those incumbent LEC wire centers that contain at least four fiber-based collocators, at least 38,000 business lines, or both. Tier 1 wire centers also are those incumbent LEC tandem switching locations that have no line-side switching facilities, but nevertheless serve as a point of traffic aggregation accessible by competitive LECs. Once a wire center is determined to be a Tier 1 wire center, that wire center is not subject to later reclassification as a Tier 2 or Tier 3 wire center.

(ii) Tier 2 wire centers are those incumbent LEC wire centers that are not Tier 1 wire centers, but contain at least 3 fiber-based collocators, at least 24,000 business lines, or both. Once a wire center is determined to be a Tier 2 wire center, that wire center is not subject to later reclassification as a Tier 3 wire center.

(iii) Tier 3 wire centers are those incumbent LEC wire centers that do not meet the criteria for Tier 1 or Tier 2 wire centers.

* * * * *

[FR Doc. 05–3511 Filed 2–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–299; MM Docket No. 02–63, RM–10398]

Radio Broadcasting Service; Burbank and Walla Walla, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of New Northwest Broadcasters, LLC, reallots Channel 256C1 from Walla Walla to Burbank, Washington, and modifies Station KUJ–FM's license accordingly. *See* 67 FR 17669, April 11, 2002. We also dismiss the one-step upgrade application (File No. BPH–20041008ACV) filed by New Northwest Broadcasters, LLC, requesting the substitution of Channel 256C1 for 256C2 at Walla Walla, Washington, as moot. Channel 256C1 can be reallotted to Burbank in compliance with the Commission's minimum distance separation requirements at petitioner's presently licensed site. The coordinates for Channel 256C1 at Burbank are 45–57–22 North Latitude and 118–41–11 West Longitude.

DATES: Effective March 21, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 02–63, adopted February 2, 2005, and released February 4, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Burbank, Channel 256C1 and by removing Channel 246C, Channel 256C2, and Channel 265A and adding Channel 246C0 at Walla Walla.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–3512 Filed 2–23–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 171

[Docket No. PHMSA–00–7762 (HM–206C)]

RIN 2137–AD29

Hazardous Materials: Availability of Information for Hazardous Materials Transported by Aircraft

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule adopts without change the April 1, 2005, mandatory compliance date for the notification and record retention requirements for aircraft operators transporting hazardous materials, as adopted in an interim final rule in this proceeding published on September 1, 2004.

DATES: *Effective Date:* The effective date of these amendments is February 24, 2005.

FOR FURTHER INFORMATION CONTACT: John A. Gale or Gigi Corbin, Office of Hazardous Materials Standards, telephone (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 2003, the Research and Special Programs Administration (RSPA, the predecessor agency of the Pipeline and Hazardous Materials Safety Administration (PHMSA)) published a final rule under this docket (68 FR 14341) amending the Hazardous Materials Regulations (HMR) to require an aircraft operator to: (1) Place on the notification of pilot-in-command (NOPC) or in the cockpit of the aircraft a telephone number that can be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft; (2) retain and provide upon request a copy of the NOPC, or the information contained in it, at the aircraft operator's principal place of business, or the airport of departure, for 90 days, and at the airport of departure until the flight leg is completed; and (3) make readily accessible, and provide upon request, a copy of the NOPC, or the information contained in it, at the planned airport of arrival until the flight leg is completed. The March 25, 2003, rule which became effective October 1, 2003, required compliance on October 1, 2004.

On June 22, 2004, the Air Transport Association (ATA) requested that RSPA extend the compliance date from October 1, 2004, to April 1, 2005, to allow its member air carriers additional time to prepare for and implement these new requirements. In response to this request, RSPA published an interim final rule (IFR) on September 1, 2004, delaying the compliance date to April 1, 2005. We invited interested parties to participate in this rulemaking by submitting comments on the IFR.

We received two comments. Neither comment addressed the issue of delayed compliance discussed in this IFR. One commenter submitted comments dealing with issues discussed in the NPRM; the other commenter questioned the length of the retention period for the NOPC (*see* § 175.33(c)) in comparison to the retention period for shipping papers in § 172.201. Both comments are outside the scope of this rulemaking, and are not addressed here. PHMSA is adopting the amendments as presented in the IFR.

II. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This interim final rule is published under the authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) and 49 U.S.C. 44701. Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. Title 49 United States Code § 44701 authorizes the Administrator of the Federal Aviation Administration to promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. Under 49 U.S.C. 40113, the Secretary of Transportation has the same authority to regulate the transportation of hazardous material by air, in carrying out § 44701, that he has under 49 U.S.C. 5103.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget (OMB). This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule adopts without change a compliance date adopted in an interim final rule published on September 1, 2004. The compliance date extension adopted in this final rule does not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the March 25, 2003, final rule.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This rulemaking preempts State, local and Indian tribe requirements but does not impose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses subject item (3) above and preempts State, local, or Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that, if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of this final rule and not later than two years after the date of issuance. This final rule does not change the effective date of Federal preemption of the March 25, 2003, final rule, which was October 1, 2003.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule applies to businesses, some of whom are small entities, that transport hazardous materials by air. This final rule provides an extension of the compliance date for notification and record retention requirements for air carriers. The compliance date extension assures that air carriers have sufficient time to reprogram their systems to meet the new requirements, test the reprogrammed system, develop training materials and train their employees. Therefore, I certify this rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

This final rule does not impose new information collection requirements. We currently have an approved information collection under OMB No. 2137–0034, ''Hazardous Materials Shipping Papers & Emergency Response Information.'' The March 25, 2003, final rule resulted in an increase in the annual paperwork burden and costs. These revisions regarding the maintenance of copies of notification of pilot-in-command were submitted under the NPRM to OMB for review and approval.

PHMSA estimated that the new total information collection and recordkeeping burden for OMB No. 2137–034 would be as follows: ''Hazardous Materials Shipping Papers & Emergency Response Information'' OMB No. 2137–0034.

Total Annual Number of Respondents: 250,000.

Total Annual Responses: 260,000,000.

Total Annual Burden Hours: 6,523,611.

Total Annual Burden Cost: $6,925,000.

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. OMB approved the revised information collection requirement on February 27, 2003.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more, in the aggregate, to any of the following: State, local or tribal governments, or to the private sector.

I. Environmental Assessment

This final rule will improve emergency response to hazardous materials incidents involving aircraft by ensuring information on the hazardous materials involved in an emergency is readily available. Improving emergency response to aircraft incidents will reduce environmental damage associated with such incidents. There are no significant environmental impacts associated with this final rule.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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, (65 FR 19477) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule amending 49 CFR part 171 which was published at 69 FR 53352 on September 1, 2004, is adopted as a final rule without change.

Issued in Washington, DC, on February 3, 2005, under the authority delegated in 49 CFR part 1.

Elaine E. Joost,

Acting Deputy Administrator.

[FR Doc. 05–3485 Filed 2–23–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

Docket No. 041202338–4338–01; I.D. 021805A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processor Vessels Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 Pacific cod interim total allowable catch (TAC) of Pacific cod specified for catcher/processor vessels using hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 22, 2005, until superseded by the notice of 2005 and 2006 final harvest specifications of groundfish for the BSAI, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 Pacific cod interim TAC specified for catcher/processor vessels using hook-and-line gear in the BSAI is established as a directed fishing allowance of 44,695 metric tons by the 2005 interim harvest specifications for groundfish in the BSAI (69 FR 76870, December 23, 2004). See § 679.20(c)(2)(ii)(A), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C)(1)(i).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2005 Pacific cod interim TAC allocated to catcher/processor vessels using hook-and-line gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the fisheries under the 2005 Pacific cod interim TAC specified for catcher/processor vessels using hook-and-line gear in the BSAI.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 18, 2005.

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 112204C]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2005 and 2006 Harvest Specifications for Groundfish

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

ACTION: Final 2005 and 2006 harvest specifications for groundfish and associated management measures; closures.

SUMMARY: NMFS announces final 2005 and 2006 harvest specifications, reserves and apportionments thereof, Pacific halibut prohibited species catch (PSC) limits, and associated management measures for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2005 and 2006 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final 2005 and 2006 harvest specifications and associated management measures are effective at 1200 hrs, Alaska local time (A.l.t.), February 24, 2005, through 2400 hrs, A.l.t., December 31, 2006.

ADDRESSES: Copies of the Final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall or from the Alaska Region Web site at *http://www.fakr.noaa.gov.* Copies of the final 2004 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated November 2004, are available from the North Pacific Fishery Management Council (Council), West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809) or from its Web site at *http://www.fakr.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907–481–1780, or e-mail at *tom.pearson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Amendments 48/48 to the FMP and to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) were approved by NMFS on October 12, 2004. The final rule implementing Amendments 48/48 was published November 8, 2004 (69 FR 64683). Amendments 48/48 revise the administrative process used to establish annual specifications for the groundfish fisheries of the GOA and the BSAI. The goals of Amendments 48/48 in revising the specifications process are to: (1) Manage fisheries based on the best scientific information available, (2) provide for adequate prior public review and comment on Council recommendations, (3) provide for additional opportunity for Secretarial review, (4) minimize unnecessary public confusion and disruption to fisheries, and (5) promote administrative efficiency.

Based on the approval of Amendments 48/48, the Council recommended 2005 and 2006 proposed specifications for GOA groundfish. These proposed specifications were based on the 2003 SAFE report. The 2004 SAFE report, dated November 2004, was used to develop the final 2005 and 2006 groundfish acceptable biological catch (ABC) and overfishing level (OFL) amounts. The 2006 specifications will be updated in early 2006, when final specifications for 2006 and new specifications for 2007 are implemented.

In October 2004, the Council also recommended a biennial harvest specifications process for certain long-lived species and for species for which little new management information is available on other than a biennial basis. Based on current survey schedules, the GOA species for which biennial harvest specifications process would be used are deep water flatfish, rex sole, shallow water flatfish, flathead sole, arrowtooth flounder, slope rockfish, northern rockfish, Pacific ocean perch, shortraker rockfish, rougheye rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, skates, and Atka mackerel. Stock assessment surveys are conducted biennially in the GOA for these species. Because new information is currently updated every two years and harvest amounts are fairly stable from year to year, the harvest specification process for these species is anticipated every two years. If new management information becomes available for any of those species on a more frequent basis, an annual harvest specifications process could still be used. Amendment 48 to the GOA FMP allows harvest specifications to be established for up to two fishing years, and the administrative process to establish these biennial harvest specifications will be done every other year, concurrent with the annual harvest specifications process used for other species.

Allowing for up to two years of specifications during the specification process recognizes the time period of projections that must be used for establishing harvest specifications that will allow for rulemaking in the following year and provides the Council and NMFS the flexibility to conduct either an annual or biennial specification process in response to potential changes in the frequency of stock assessment surveys or in other data or administrative issues. Based on current survey schedules and available information, pollock, trawl sablefish, Pacific cod, and ''other species'' category fisheries in the GOA will be managed using an annual harvest specification process. However, this process will provide specifications for two years. The second year's specifications will be replaced by the new harvest specifications through rulemaking based on the annual harvest specification process. Any proposed changes from using either an annual process or a biennial process for a particular target species will be analyzed during the harvest specification process.

The Council recommended that specifications for the hook-and-line gear and pot gear sablefish individual fishing quota (IFQ) fisheries continue to be limited to one year to ensure that those fisheries are conducted concurrent with the halibut IFQ fishery and are based on the most recent survey information (69 FR 44634, July 27, 2004). Having the sablefish IFQ fisheries concurrent with the halibut IFQ fishery will reduce the potential for discards of halibut and sablefish in these fisheries. Because of the high value of this fishery, the Council recommended the setting of TAC be based on the most recent survey information. Under the current IFQ fishery season start date, sablefish stock assessments based on the most recent survey are available before the beginning of the fishery to allow for rulemaking each year. The sablefish IFQ fisheries remain closed at the beginning of each fishing year, until the final specifications for the sablefish IFQ fisheries are in effect. The trawl sablefish fishery will be managed using specifications for up to a 2-year period, similar to GOA pollock, Pacific cod, and the ''other species'' category.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species and for the ''other species'' category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs, halibut PSC amounts, and seasonal allowances of pollock and inshore/offshore Pacific cod. The final specifications set forth in Tables 1 through 16 of this document satisfy these requirements. For 2005, the sum of the TAC amounts is 291,298 mt. For 2006, the sum of the TAC amounts is 284,023 mt.

The proposed GOA groundfish specifications and Pacific halibut PSC allowances for 2005 and 2006 were published in the **Federal Register** on December 7, 2004 (69 FR 70605). Comments were invited and accepted through January 6, 2005. NMFS received two letters of comment on the proposed specifications. These letters of comment are summarized in the ''Response to Comments'' section of this action. NMFS consulted with the Council during the December 2004 Council meeting in Anchorage, AK. After considering public comments received, as well as biological and economic data that were available at the Council's December 2004 meeting, NMFS is implementing the final 2005 and 2006 groundfish specifications as recommended by the Council.

Regulations at § 679.20(c)(2)(i) establish interim amounts of each proposed TAC and allocations, and proposed PSC allowances established under § 679.21 that become available at 0001 hrs, A.l.t., January 1, and remain available until superceded by the final specifications. NMFS published the interim 2005 harvest specifications in the **Federal Register** on December 17, 2004 (69 FR 74455). With the implementation of Amendment 48 to the GOA FMP, the publication of interim specifications will not be necessary beyond 2005. The final 2005 groundfish specifications, apportionments, and halibut PSC allowances contained in this action supercede the interim 2005 groundfish harvest specifications.

Steller Sea Lion Protection Measures Revisions

In June 2004, the Council unanimously recommended revisions to the Steller sea lion protection measures in the GOA to alleviate part of the economic burden on coastal communities while maintaining protection for Steller sea lions and their critical habitat. NMFS published a final rule to implement these revisions on December 20, 2004 (69 FR 75865) with the effective date of January 19, 2005. These revisions adjust pollock and Pacific cod fishing closures near four Steller sea lion haulouts and revise seasonal management of pollock harvest. The revised pollock harvest management measures would affect the annual specifications by extending the A and C season dates for pollock and provide clarification as to how the Regional Administrator, Alaska Region, NMFS (Regional Administrator), would rollover unharvested amounts of pollock between seasons.

The final rule extends the pollock A season dates from January 20 through February 25 to January 20 through March 10 (§ 679.23(d)(2)(i)) and extends the pollock C season dates from August 25 through September 15 to August 25 through October 1 (§ 679.23(d)(2)(iii)) in

the Western and Central Regulatory Areas of the GOA. The final action also changes regulatory provisions for the rollover of a statistical area's unharvested pollock apportionment into the subsequent season. The rollover amount is limited to 20 percent of the seasonal apportionment for the statistical area. Any unharvested pollock above the 20 percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas (§ 679.20(a)(5)(iii)(B)).

Acceptable Biological Catch (ABC) and TAC Specifications

The final ABC levels are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used in computing ABCs and OFLs. The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers with tier one representing the highest level of information and tier six the lowest level of information.

The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological and harvest information about the condition of groundfish stocks in the GOA in December 2004. This information was compiled by the Council's GOA Plan Team and was presented in the final 2004 SAFE report for the GOA groundfish fisheries, dated November 2004.

The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species or species category.

The SSC, AP, and Council adopted the Plan Team's ABC recommendations for all groundfish species categories. The final ABCs, as adopted by the Council for the 2005 and 2006 fishing years, are listed in Tables 1 and 2.

As in 2004, the SSC and Council recommended that the method of apportioning the sablefish ABC among management areas in 2005 and 2006 include commercial fishery and survey data. NMFS stock assessment scientists believe that the use of unbiased commercial fishery data reflecting catch-per-unit effort provides a desirable input for stock distribution assessments. The use of commercial fishery data is evaluated annually to ensure that unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern GOA and makes available 5 percent of the combined Eastern GOA ABCs to trawl gear for use as incidental catch in other directed groundfish fisheries in the West Yakutat District (see § 679.20(a)(4)(i)).

The AP and Council recommended that the ABC for Pacific cod in the GOA be apportioned among regulatory areas based on the three most recent NMFS' summer trawl surveys. As in previous years, the Plan Team, AP, SSC, and Council recommended that total removals of Pacific cod from the GOA not exceed ABC recommendations. Accordingly, the Council recommended that the 2005 and 2006 TACs be adjusted downward from the ABCs by amounts equal to the 2005 guideline harvest levels (GHL) established for Pacific cod by the State of Alaska (State) for fisheries that occur in State waters in the GOA. The effect of the State's GHL on the Pacific cod TAC is discussed in greater detail below. As in 2004, NMFS will establish for 2005 and 2006 an A season directed fishing allowance (DFA) for the Pacific cod fisheries in the GOA based on the management area TACs less the recent average A season incidental catch of Pacific cod in each management area before June 10 (see § 679.20(d)(1)). The DFA and incidental catch before June 10 will be managed such that total harvest in the A season will be no more than 60 percent of the annual TAC. Incidental catch taken after June 10 will continue to be taken from the B season TAC. This action meets the intent of the Steller Sea Lion Protection Measures by achieving temporal dispersion of the Pacific cod removals and by reducing the likelihood of harvest exceeding 60 percent of the annual TAC in the A season (January 1 through June 10).

The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000 to 800,000 mt. The Council adopted the AP's TAC recommendations. None of the Council's recommended TACs for 2005 and 2006 exceeds the final ABC for any species or species category. NMFS finds that the recommended ABCs and TACs are consistent with the biological condition of the groundfish stocks as described in the 2004 SAFE report and approved by the Council.

Tables 1 and 2 list the final 2005 and 2006 OFL, ABC, TAC, and area apportionments of groundfish in the GOA. The sum of 2005 and of 2006 ABCs for all assessed groundfish are 539,263 and 542,456 mt respectively, which are higher than the 2004 ABC total of 507,092 mt (69 FR 26320, May 12, 2004). The apportionment of TAC amounts among gear types, processing sectors, and seasons is discussed below.

Specification and Apportionment of TAC Amounts

The Council recommended TACs for 2005 and 2006 that are equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, Pacific ocean perch, shortraker rockfish, rougheye rockfish, northern rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, big skate, longnose skate, other skates, and Atka mackerel. The Council recommended TACs that are less than the ABCs for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, and other rockfish.

The apportionment of annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below. The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is apportioned among Statistical Areas 610, 620, and 630, as well as equally among each of the following four seasons: the A season (January 20 through March 10), the B season (March 10 through May 31), the C season (August 25 through October 1), and the D season (October 1 through November 1) (see §§ 693.23(d)(2)(i) through (iv) and 679.20(a)(5)(iii)(B)).

The 2005 and 2006 Pacific cod TACs are affected by the State's developing fishery for Pacific cod in State waters in the Central and Western GOA, as well as in Prince William Sound (PWS). The SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals not exceed the ABC. Accordingly, the Council recommended the 2005 and 2006 Pacific cod TACs be reduced from ABC levels to account for State GHLs in each regulatory area of the GOA. Therefore, the 2005 TACs are reduced from ABCs as follows: (1) Eastern GOA, 407 mt; (2) Central GOA, 8,031 mt; and (3) Western GOA, 5,229 mt. Similarly, the 2006 TACs are reduced from ABCs as follows: (1) Eastern GOA, 358 mt; (2) Central

GOA, 7,063 mt; and (3) Western GOA, 4,599 mt. These amounts reflect the sum of the State's 2005 GHLs in these areas, which are 10 percent, 24.25 percent, and 25 percent of the Eastern, Central, and Western GOA ABCs, respectively. The percentages of ABC used to calculate the GHLs for the State managed Pacific cod fisheries are unchanged from 2004.

NMFS also is establishing seasonal apportionments of the annual Pacific cod TAC in the Western and Central Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot and jig gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (see §§ 679.23(d)(3) and 679.20(a)(11)). These seasonal apportionments of the annual Pacific cod TAC are discussed in greater detail below.

The FMP specifies that the TAC amount for the ''other species'' category is calculated as 5 percent of the combined TAC amounts for target species. The 2005 GOA-wide ''other species'' TAC is 13,871 mt, and the 2006 TAC is 13,525 mt, which is 5 percent of the sum of the combined TAC amounts (277,427 mt for 2005 and 270,498 mt for 2006) for the target species. The sum of the TACs for all GOA groundfish is 291,298 mt for 2005 and 284,023 mt for 2006, which is within the OY range specified by the FMP. The sums of the 2005 and 2006 TACs are higher than the 2004 TAC sum of 271,776 mt (69 FR 26320, May 12, 2004).

NMFS finds that the Council's recommendations for OFL, ABC, and TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000 to 800,000 mt. NMFS has reviewed the Council's recommended TAC specifications and apportionments and hereby approves these specifications under § 679.20(c)(3)(ii). The final 2005 and 2006 ABCs, TACs, and OFLs are shown in Tables 1 and 2.

Changes From the Proposed 2005 and 2006 Harvest Specifications in the GOA

In October 2004, the Council's recommendations for the proposed 2005 and 2006 harvest specifications (69 FR 70605, December 7, 2004) were based largely upon information contained in the final 2003 SAFE report for the GOA groundfish fisheries, dated November 2003. The Council recommended that OFLs and ABCs for stocks in tiers 1 through 3, except for pollock, be based on biomass projections as set forth in the 2003 SAFE report and estimates of groundfish harvests through the 2004 and 2005 fishing years. For stocks in tiers 4 through 6, for which projections could not be made, the Council recommended that OFL and ABC levels be unchanged from 2004 until the final 2004 SAFE report could be completed.

The final 2004 SAFE report (dated November 2004), which was not available when the Council made its recommendations in October 2004, contains the best and most recent scientific information on the condition of the groundfish stocks and was considered in December by the Council in making its recommendations for the final 2005 and 2006 harvest specifications. Based on the final 2004 SAFE report, the sum of the 2005 recommended final TACs for the GOA (291,298 mt) is 27,033 mt more than the proposed sum of TACs (264,265 mt), representing a 10-percent increase overall. The largest increases occurred for pollock, from 71,260 mt to 91,710 mt (29 percent increase); for sablefish, from 13,392 mt to 15,940 mt (19 percent increase); and for deep-water flatfish, from 6,070 mt to 6,820 mt (12 percent increase). The largest decrease occurred for demersal shelf rockfish, from 450 mt to 410 mt (9 percent decrease). Other increases or decreases in both 2005 and 2006 are within these ranges.

The 2005 and 2006 final TAC recommendations for the GOA are within the OY range established for the GOA and do not exceed ABCs for any single species or complex. Compared to the proposed 2005 and 2006 harvest specifications, the Council's final 2005 and 2006 TAC recommendations increase fishing opportunities for species for which the Council had sufficient information to raise TAC levels. These include, pollock, sablefish, and deep-water flatfish. Conversely, the Council reduced TAC levels to provide greater protection for several species; these include Pacific cod, shortraker rockfish, rougheye rockfish, demersal shelf rockfish, and skates. The Council also further divided the TACs of two species categories among individual species (shortraker and rougheye rockfish and big and longnose skates). The intent of this action is to provide greater protection for those individual species that are most sought after within their species categories, most notably shortraker rockfish and big skates. The changes recommended by the Council for the 2005 and 2006 fishing years were based on the best scientific information available, consistent with National Standard 2 of the Magnuson-Stevens Act, and within a reasonable range of variation from the proposed TAC recommendations so that the affected public was fairly apprized and could have made meaningful comments.

TABLE 1.—FINAL 2005 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA[1]

[Values are Rounded to the Nearest Metric Ton.]

Totals	Species	Area [1]	ABC	TAC	Overfishing level
	Pollock [2]	Shumagin (610)	30,380	30,380	
		Chirikof (620)	34,404	34,404	
		Kodiak (630)	18,718	18,718	
		WYK (640)	1,688	1,688	
Subtotal		W/C/WYK	85,190	85,190	144,340
		SEO (650)	6,520	6,520	8,690
Total			91,710	91,710	153,030
	Pacific cod [3]	W	20,916	15,687	
		C	33,117	25,086	

TABLE 1.—FINAL 2005 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA[1]—Continued

[Values are Rounded to the Nearest Metric Ton.]

Totals	Species	Area [1]	ABC	TAC	Overfishing level
		E	4,067	3,660	
Total			58,100	44,433	86,200
	Flatfish [4] (deep-water)	W	330	330	
		C	3,340	3,340	
		WYK	2,120	2,120	
		SEO	1,030	1,030	
Total			6,820	6,820	8,490
	Rex sole	W	1,680	1,680	
		C	7,340	7,340	
		WYK	1,340	1,340	
		SEO	2,290	2,290	
Total			12,650	12,650	16,480
	Flathead sole	W	11,690	2,000	
		C	30,020	5,000	
		WYK	3,000	3,000	
		SEO	390	390	
Total			45,100	10,390	56,500
	Flatfish [5] (shallow-water)	W	21,580	4,500	
		C	27,250	13,000	
		WYK	2,030	2,030	
		SEO	1,210	1,210	
Total			52,070	20,740	63,840
	Arrowtooth flounder	W	26,250	8,000	
		C	168,950	25,000	
		WYK	11,790	2,500	
		SEO	9,910	2,500	
Total			216,900	38,000	253,900
	Sablefish [6]	W	2,540	2,540	
		C	7,250	7,250	
		WYK	2,580	2,580	
		SEO	3,570	3,570	
Subtotal		E	6,150	6,150	
Total			15,940	15,940	19,280
	Pacific ocean perch [7]	W	2,567	2,567	3,076
		C	8,535	8,535	10,226
		WYK	841	841	
		SEO	1,632	1,632	
Subtotal		E			2,964
Total			13,575	13,575	16,266
	Shortraker rockfish [8]	W	155	155	
		C	324	324	
		E	274	274	
Total			753	753	982
	Rougheye rockfish [9]	W	188	188	
		C	557	557	
		E	262	262	

TABLE 1.—FINAL 2005 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA[1]—Continued

[Values are Rounded to the Nearest Metric Ton.]

Totals	Species	Area [1]	ABC	TAC	Overfishing level
Total			1,007	1,007	1,531
	Other rockfish [10, 11]	W	40	40	
		C	300	300	
		WYK	130	130	
		SEO	3,430	200	
Total			3,900	670	5,150
	Northern rockfish [10, 11, 12]	W	808	808	
		C	4,283	4,283	
		E	0	0	
Total			5,091	5,091	6,050
	Pelagic shelf rockfish [13]	W	377	377	
		C	3,067	3,067	
		WYK	211	211	
		SEO	898	898	
Total			4,553	4,553	5,680
	Thornyhead rockfish	W	410	410	
		C	1,010	1,010	
		E	520	520	
Total			1,940	1,940	2,590
	Big skates [14]	W	727	727	
		C	2,463	2,463	
		E	809	809	
Total			3,999	3,999	5,332
	Longnose skates [15]	W	66	66	
		C	1,972	1,972	
		E	780	780	
Total			2,818	2,818	3,757
	Other skates [16]	GW	1,327	1,327	1,769
	Demersal shelf rockfish [18]	SEO	410	410	640
	Atka mackerel	GW	600	600	6,200
	Other species [17, 19]	GW	N/A	13,871	N/A
Total [20]			539,263	291,298	713,667

[1] Regulatory areas and districts are defined at § 679.2.

[2] Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 24 percent, 56 percent, and 20 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 24 percent, 66 percent, and 10 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 49 percent, 21 percent, and 30 percent in Statistical Areas 610, 620, and 630, respectively. These seasonal apportionments for 2005 and 2006 are shown in Tables 5 and 6. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Seasonal apportionments and component allocations of TAC for 2005 and 2006 are shown in Tables 7 and 8.

[4] "Deep water flatfish" means Dover sole, Greenland turbot, and deepsea sole.

[5] "Shallow water flatfish" means flatfish not including "deep water flatfish", flathead sole, rex sole, or arrowtooth flounder.

[6] Sablefish is allocated to trawl and hook-and-line gears for 2005 and 2006 and these amounts are shown in Tables 3 and 4.

[7] "Pacific ocean perch" means *Sebastes alutus.*

[8] "Shortraker rockfish" means *Sebastes borealis.*

[9] "Rougheye rockfish" means *Sebastes aleutianus.*

[10] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the SEO District means slope rockfish.

[11] "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth). In the Eastern GOA only, slope rockfish also includes northern rockfish, *S. polyspinis.*

[12] "Northern rockfish" means *Sebastes polyspinis.*

[13] "Pelagic shelf rockfish" means *Sebastes ciliatus* (dark), *S. variabilis* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).
[14] Big skate means *Raja binoculata.*
[15] Longnose skate means *Raja rhina.*
[16] Other skates means *Bathyraja* spp.
[17] N/A means not applicable.
[18] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).
[19] "Other species" means sculpins, sharks, squid, and octopus. There is no OFL or ABC for "other species", the TAC for "other species" equals 5 percent of the TACs for assessed target species.
[20] The total ABC and OFL is the sum of the ABCs and OFLs for assessed target species.

These footnotes also apply to Table 2.

TABLE 2.—FINAL 2006 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA[1]

[Values are rounded to the nearest metric ton.]

Total	Species	Area [1]	ABC	TAC	Overfishing level
	Pollock [2]	Shumagin (610)	30,452	30,452	
		Chirikof (620)	34,485	34,485	
		Kodiak (630)	18,762	18,762	
		WYK (640)	1,691	1,691	
Subtotal		W/C/WYK	85,390	85,390	103,250
		SEO (650)	6,520	6,520	8,690
Total			91,910	91,910	111,940
	Pacific cod [3]	W	18,396	13,797	
		C	29,127	22,064	
		E	3,557	3,219	
Total			51,100	39,080	65,800
	Flatfish [4] (deep-water)	W	330	330	
		C	3,340	3,340	
		WYK	2,120	2,120	
		SEO	1,030	1,030	
Total			6,820	6,820	8,490
	Rex sole	W	1,680	1,680	
		C	7,340	7,340	
		WYK	1,340	1,340	
		SEO	2,290		2,290
Total			12,650	12,650	16,480
	Flathead sole	W	11,111	2,000	
		C	28,527	5,000	
		WYK	2,842	2,842	
		SEO	370	370	
Total			42,850	10,212	53,800
	Flatfish [5] (shallow-water)	W	21,580	4,500	
		C	27,250	13,000	
		WYK	2,030	2,030	
		SEO	1,210	1,210	
Total			52,070	20,740	63,840
	Arrowtooth flounder	W	27,924	8,000	
		C	179,734	25,000	
		WYK	12,539	2,500	
		SEO	10,543	2,500	
Total			230,740	38,000	270,050
	Sablefish [6]	W	2,407	2,407	
		C	6,870	6,870	
		WYK	2,445	2,445	

TABLE 2.—FINAL 2006 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA[1]—Continued

[Values are rounded to the nearest metric ton.]

Total	Species	Area [1]	ABC	TAC	Overfishing level
		SEO	3,383	3,383	
Subtotal		E	5,828	5,828	
Total			15,105	15,105	17,530
	Pacific ocean perch [7]	W	2,525	2,525	3,019
		C	8,375	8,375	10,008
		WYK	813	813	
		SEO	1,579	1,579	
Subtotal		E			2,860
Total			13,292	13,292	15,887
	Shortraker rockfish [8]	W	155	155	
		C	324	324	
		E	274	274	
Total			753	753	982
	Rougheye rockfish [9]	W	188	188	
		C	557	557	
		E	262	262	
Total			1,007	1,007	1,531
	Other rockfish [10 11]	W	40	40	
		C	300	300	
		WYK	130	130	
		SEO	3,430	200	
Total			3,900	670	5,150
	Northern rockfish [11 12]	W	755	755	
		C	3,995	3,995	
		E	0	0	
Total			4,750	4,750	5,640
	Pelagic shelf rockfish [13]	W	366	366	
		C	2,973	2,973	
		WYK	205	205	
		SEO	871	871	
Total			4,415	4,415	5,510
	Thornyhead rockfish	W	410	410	
		C	1,010	1,010	
		E	520		520
Total			1,940	1,940	2,590
	Big skates [14]	W	727	727	
		C	2,463	2,463	
		E	809	809	
Total			3,999	3,999	5,332
	Longnose skates [15]	W	66	66	
		C	1,972	1,972	
		E	780	780	
Total			2,818	2,818	3,757
	Other skates [16]	GW	1,327	1,327	1,769
	Demersal shelf rockfish [18]	SEO	410	410	640
	Atka mackerel	GW	600	600	6,200

TABLE 2.—FINAL 2006 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA[1]—Continued

[Values are rounded to the nearest metric ton.]

Total	Species	Area [1]	ABC	TAC	Overfishing level
	Other species [17 19]	GW	N/A	13,525	N/A
Total [20]			542,456	284,023	622,918

The footnotes in Table 2 are identical to those presented in Table 1.

Apportionment of Reserves

Regulations at § 679.20(b)(2) require 20 percent of each TAC for pollock, Pacific cod, flatfish, and the ''other species'' category be set aside in reserves for possible apportionment at a later date. In 2004, NMFS reapportioned all of the reserves in the final harvest specifications. NMFS proposed reapportionment of all the reserves for 2005 and 2006 in the proposed GOA groundfish specifications published in the **Federal Register** on December 7, 2004 (69 FR 70605). NMFS received no public comments on the proposed reapportionments. For the final 2005 and 2006 GOA harvest specifications, NMFS has reapportioned all of the reserves for pollock, Pacific cod, flatfish, and ''other species.'' Specifications of TAC shown in Tables 1 and 2 reflect apportionment of reserve amounts for these species and species groups.

Allocations of the Sablefish TAC Amounts to Vessels Using Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TACs for each of the regulatory areas and districts are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear, and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species (see § 679.20(a)(1)). In recognition of the trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended and NMFS concurs that 5 percent of the combined Eastern GOA sablefish TAC be allocated to trawl gear in the WYK District and the remainder to vessels using hook-and-line gear. In the SEO District, 100 percent of the sablefish TAC is allocated to vessels using hook-and-line gear. The Council recommended that only trawl sablefish TAC be established biennially. This recommendation results in an allocation of 307 mt to trawl gear and 2,273 mt to hook-and-line gear in the WYK District and 3,570 mt to hook-and-line gear in the SEO District in 2005, and 291 mt to trawl gear in the WYK District in 2006. Tables 3 and 4 show the allocations of the final 2005 and 2006 sablefish TACs between hook-and-line and trawl gear.

TABLE 3.—FINAL 2005 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR (VALUES ARE ROUNDED TO THE NEAREST METRIC TON.)

Area/District	TAC	Hook-and-line apportionment	Trawl apportionment
Western	2,540	2,032	508
Central	7,250	5,800	1,450
West Yakutat	2,580	2,273	307
Southeast Outside	3,570	3,570	0
Total	15,940	13,675	2,265

TABLE 4.—FINAL 2006 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO TRAWL GEAR (VALUES ARE ROUNDED TO THE NEAREST METRIC TON.)

Area/District	TAC	Hook-and-line apportionment [1]	Trawl apportionment
Western	2,407		481
Central	6,870		1,374
West Yakutat	2,445		291
Southeast Outside	3,383		0
Total	15,105		2,146

[1] The Council recommended that specifications for the hook-and-line gear sablefish IFQ fisheries be limited to 1 year.

Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Under regulations at § 679.20(a)(5)(iii)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 through March 10, from March 10 through May 31, from August 25 through October 1, and from October 1 through November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA in the A and B seasons are apportioned among Statistical Areas 610, 620, and 630, in proportion to the distribution of pollock biomass as determined by a composite of NMFS' winter surveys and in the C and D seasons in proportion to the distribution of pollock biomass as determined by the four most recent NMFS summer surveys. As in 2004, the Council recommended that, during the A season, the winter and summer distribution of pollock be averaged in the Central Regulatory Area to better reflect the distribution of pollock and the performance of the fishery in the area during the A season for the 2005 and 2006 fishing years. Within any fishing year, the underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator, provided that any rollover amount of unharvested pollock would be limited to 20 percent of the seasonal apportionment for the statistical area. Any unharvested pollock above the 20-percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas (§ 679.20(a)(5)(iii)(B)). Because the harvest of pollock is apportioned among four seasons, the 20-percent seasonal apportionment rollover limit would be equivalent annually to the 30-percent annual rollover limit in effect for the 2004 Western and Central pollock fisheries. The WYK and SEO District pollock TACs of 1,688 mt and 6,520 mt in 2005 and 1,691 mt and 6,520 mt in 2006, respectively, are not allocated by season.

Section 679.20(a)(6)(i) requires that 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances be allocated to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed under regulations at § 679.20(e) and (f). At this time, these incidental catch amounts are unknown and will be determined during the fishing year.

The seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal apportionments for the A, B, C, and D seasons for 2005 and 2006 are summarized in Tables 5 and 6, except that amounts of pollock for processing by the inshore and offshore components are not shown.

TABLE 5.—FINAL 2005 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC (VALUES ARE ROUNDED TO THE NEAREST METRIC TON.)

[Area Apportionments Resulting From Seasonal Distribution of Biomass]

Season	Shumagin (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total
A	5,035 (24.12%)	11,692 (56.01%)	4,148 (19.87%)	20,875 (100%)
B	5,035 (24.12%)	13,820 (66.2%)	2,021 (9.68%)	20,876 (100%)
C	10,155 (48.64%)	4,446 (21.3%)	6,274 (30.06%)	20,875 (100%)
D	10,155 (48.64%)	4,446 (21.3%)	6,275 (30.06%)	20,876 (100%)
Annual Total	30,380	34,404	18,718	83,502

TABLE 6.—FINAL 2006 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC (VALUES ARE ROUNDED TO THE NEAREST METRIC TON.)

[Area Apportionments Resulting From Seasonal Distribution of Biomass]

Season	Shumagin (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total
A	5,047 (24.12%)	11,719 (56.01%)	4,159 (19.87%)	20,925 (100%)
B	5,047 (24.12%)	13,852 (66.2%)	2,026 (9.68%)	20,925 (100%)
C	10,179 (48.64%)	4,457 (21.3%)	6,289 (30.06%)	20,925 (100%)
D	10,179 (48.64%)	4,457 (21.3%)	6,288 (30.06%)	20,924 (100%)
Annual Total	30,452	34,485	18,762	83,699

Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot and jig gear, the A season begins on January 1 and ends on June 10, and the B season begins on September 1 and ends on December 31. For trawl gear, the A season begins on January 20 and ends on June 10, and the B season begins on September 1 and ends on November 1 (§ 679.23(d)(3)). After subtraction of incidental catch needs by the inshore and offshore components in other directed fisheries through the A season ending June 10, 60 percent of the annual TAC will be available as a directed fishing allowance during the A season for the inshore and offshore components. The remaining 40 percent of the annual TAC will be available for harvest during the B season and will be apportioned between the inshore and offshore components, as provided in § 679.20(a)(6)(ii). Any amount of the A season apportionment of Pacific cod TAC under or over harvested will be added to or subtracted from the B season apportionment of Pacific cod TAC (see § 679.20(a)(11)(ii)). For purposes of clarification, NMFS points out that the dates for the A season and the B season Pacific cod fishery differ from those of the A, B, C, and D seasons for the pollock fisheries.

Section 679.20(a)(6)(ii) requires that the TAC apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These seasonal apportionments and allocations of the 2005 and 2006 Pacific cod TACs are shown in Tables 7 and 8, respectively.

TABLE 7.—FINAL 2005 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS (VALUES ARE ROUNDED TO THE NEAREST METRIC TON.)

[Area Apportionments Resulting From Seasonal Distribution of Biomass]

Season	Regulatory area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
	Western	15,687	14,118	1,569
A season (60%)		9,412	8,471	941
B season (40%)		6,275	5,647	628
	Central	25,086	22,577	2,509
A season (60%)		15,052	13,547	1,505
B season (40%)		10,034	9,031	1,003
	Eastern	3,660	3,294	366
Total		44,433	39,989	4,444

TABLE 8.—FINAL 2006 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

[Values are rounded to the nearest metric ton.]

Season	Regulatory area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
	Western	13,797	12,417	1,380
A season (60%)		8,278	7,450	828
B season (40%)		5,519	4,967	552
	Central	22,064	19,858	2,206
A season (60%)		13,238	11,914	1,324
B season (40%)		8,826	7,944	882
	Eastern	3,219	2,897	322
Total		39,080	35,172	3,908

Demersal Shelf Rockfish

NMFS reminds all fishermen that full retention of all demersal shelf rockfish (DSR) by federally permitted catcher vessels using hook-and-line or jig gear fishing for groundfish and Pacific halibut in the SEO District of the GOA is now required (see § 679.20(j)). NMFS has published a final rule (69 FR 68095, November 23, 2004) implementing this regulation effective December 23, 2004.

Halibut PSC Limits

In accordance with regulations at § 679.21(d), annual halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be established for pot gear. In December 2004, the Council recommended that NMFS maintain the 2004 halibut PSC limits of 2,000 mt for the trawl fisheries and of 300 mt for the hook-and-line fisheries, with 10 mt of the hook-and-line limit allocated to the DSR fishery in the SEO District and the remainder to the remaining hook-and-line fisheries for each of the 2005 and 2006 groundfish fisheries. Historically, the DSR fishery, defined at § 679.21(d)(4)(iii)(A), has been apportioned this amount in recognition of its small scale harvests. Although observer data are not available to verify actual bycatch amounts, given most

vessels in the DSR fishery are less than 60 ft (18.3 m) length overall (LOA) and thus are exempt from observer coverage, halibut bycatch in the DSR fishery is assumed to be low because of the short soak times for the gear and duration of the DSR fishery. Also, the DSR fishery occurs in the winter when less overlap occurs in the distribution of DSR and halibut.

Section 679.21(d)(4)(iii)(A) authorizes the exemption of specified non-trawl fisheries from the halibut PSC limit. The Council recommended that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the non-trawl halibut limit for 2005 and 2006. The Council recommended these exemptions because: (1) The pot gear fisheries experience low annual halibut bycatch mortality (averaging 11 mt annually from 2001 through 2004); (2) the Individual Fishing Quota (IFQ) program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ; and (3) halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers. Halibut mortality is assumed to be very low, given the small amount of groundfish harvested annually by jig gear (averaging 318 mt annually from 2001 through 2004), and survival rates of any halibut incidentally caught by jig gear and released are assumed to be high.

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP and regulations require that the Council and NMFS consider the following information in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The final 2004 groundfish and PSC specifications (69 FR 9261, February 27, 2004) summarized the Council's and NMFS' findings with respect to each of the FMP considerations set forth here. At this time, the Council's and NMFS' findings are unchanged from those set forth in 2004. The opening date for the third seasonal allowance of the trawl halibut PSC limit and the start date for directed fishing for rockfish by trawl gear is July 5 in 2005 and 2006. This date will facilitate inseason management of the rockfish fisheries and reduce the effect of the rockfish fisheries on the annual NMFS sablefish survey which occurs later in July.

NMFS concurs with the Council's recommendations described here and listed in Table 9. Section 679.21, paragraphs (d)(5)(iii) and (iv) specify that any underages or overages in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 2005 and 2006 fishing years. When establishing the halibut PSC limits, the following types of information were considered as presented in, or summarized from, the 2004 SAFE report, or as otherwise available from NMFS, Alaska Department of Fish and Game, the International Pacific Halibut Commission (IPHC) or public testimony.

Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2004. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through December 31, 2004, is 2,256 mt, 296 mt, and 24 mt, respectively, for a total halibut mortality of 2,576 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2004 fishing year. Trawling closed during the fourth season for the shallow-water complex on September 10 (69 FR 55783, September 16, 2004), trawling closed during the first season for the deep-water fishery complex on March 19 (69 FR 12980, March 19, 2004), during the second season on April 26 (69 FR 23450, April 29, 2004), during the third and fourth seasons on July 25 (69 FR 44973, July 28, 2004), and during the fifth season for all trawling for the remainder of the year on October 1 (69 FR 57655, September 27, 2004). The use of hook-and-line gear for groundfish other than DSR and sablefish closed during the third season for the remainder of the year on October 2 (69 FR 59835, October 6, 2004).

The amount of groundfish that trawl and hook-and-line gear might have harvested if halibut PSC limitations had not restricted the season in 2004 is unknown.

Expected Changes in Groundfish Stocks

In December 2004, the Council adopted higher ABCs for pollock (2005 and 2006), deep-water flatfish (2005 and 2006), arrowtooth flounder (2005 and 2006), Pacific ocean perch (2005), northern rockfish (2005), and pelagic shelf rockfish (2005) than those established for 2004. The Council adopted lower ABCs for Pacific cod (2005 and 2006), flathead sole (2005 and 2006), sablefish (2005 and 2006), Pacific ocean perch (2006), northern rockfish (2006), pelagic shelf rockfish (2006), and demersal shelf rockfish (2005 and 2006) than those established for 2004. For the remaining targets, the Council recommended that ABC levels remain unchanged from 2004. More information on these changes is included in the final SAFE report (November 2004) and in the Council and SSC December 2004 meeting minutes.

Expected Changes in Groundfish Catch

The total TAC amounts for the GOA are 291,298 mt for 2005, and 284,023 mt for 2006, an increase of about 10 percent in 2005 and about 7 percent in 2006 from the 2004 TAC total of 271,776 mt. Those fisheries for which the 2005 and 2006 TACs are lower than in 2004 are Pacific cod (decreased to 44,433 mt in 2005 and 39,080 mt in 2006 from 48,033 mt in 2004), flathead sole (decreased to 10,390 mt in 2005 and 10,212 mt in 2006 from 10,880 mt in 2004), sablefish (decreased to 15,940 mt in 2005 and 15,105 mt in 2006 from 16,550 mt in 2004), northern rockfish (decreased to 4,750 mt in 2006 from 4,870 mt in 2004), pelagic shelf rockfish (decreased to 4,415 mt in 2006 from 4,470 mt in 2004), and demersal shelf rockfish (decreased to 410 mt in 2005 and 2006 from 450 mt in 2004). Those fisheries for which the 2005 or 2006 TACs are higher than in 2004 are pollock (increased to 91,710 mt in 2005 and 91,910 mt in 2006 from 71,260 mt in 2004), deep-water flatfish (increased to 6,820 mt in 2005 and 2006 from 6,070 mt in 2004), Pacific ocean perch (increased to 13,575 mt in 2005 and decreased to 13,292 mt in 2006 from 13,340 mt in 2004), northern rockfish (increased to 5,091 mt in 2005 from 4,870 mt in 2004), pelagic shelf rockfish (increased to 4,553 mt in 2005 from 4,470 mt in 2004), and ''other species'' (increased to 13,871 mt in 2005 and 13,525 mt in 2006 from 12,942 mt in 2004).

Current Estimates of Halibut Biomass and Stock Condition

The most recent halibut stock assessment was conducted by the IPHC in December 2003. The halibut resource is considered to be healthy, with total catch near record levels. The current exploitable halibut biomass in Alaska

for 2004 was estimated to be 215,912 mt.

The exploitable biomass of the Pacific halibut stock apparently peaked at 326,520 mt in 1988. According to the IPHC, the long-term average reproductive biomass for the Pacific halibut resource was estimated at 118,000 mt. Long-term average yield was estimated at 26,980 mt, round weight. The species is fully utilized. Recent average catches (1994–2003) in the commercial halibut fisheries in Alaska have averaged 34,100 mt, round weight. This catch in Alaska is 26 percent higher than the long-term potential yield for the entire halibut stock, which reflects the good condition of the Pacific halibut resource. In December 2004, IPHC staff made preliminary recommendations for commercial catch limits totaling 35,822 mt (round weight equivalents) for Alaska in 2005. Through December 31, 2004, commercial hook-and-line harvests of halibut in Alaska totaled 34,610 mt (round weight equivalents).

In making catch limit recommendations for 2005, IPHC staff have considered the results of the analytic stock assessment, changes in the commercial and survey results used to monitor the stock, recruitment of incoming year classes, and an updated analysis of an appropriate harvest strategy. Changes in the relative abundance results from information obtained from IPHC surveys and the commercial fishery, and the choice of an appropriate harvest rate were the primary factors influencing the IPHC staff's preliminary recommendations.

Additional information on the Pacific halibut stock assessment and the Conditional Constant Catch harvest policy may be found in the IPHC's 2003 Pacific halibut stock assessment (December 2003), available from the IPHC and on its Web site at *http://www.iphc.washington.edu.* The IPHC will consider the 2004 Pacific halibut assessment at its January 2005 annual meeting when it sets the 2005 commercial halibut fishery quotas.

Other Factors

The proposed 2005 and 2006 harvest specifications (69 FR 70605, December 7, 2004) discuss potential impacts of expected fishing for groundfish on halibut stocks, as well as methods available for, and costs of, reducing halibut bycatch in the groundfish fisheries.

TABLE 9.—FINAL 2005 AND 2006 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[Values are in metric tons]

Trawl gear		Hook-and-line gear [1]			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
January 20–April 1	550 (27.5%)	January 1–June 10	250 (86%)	January 1–December 31	10 (100%)
April 1–July 5	400 (20%)	June 10–September 1	5 (2%)		
July 5–September 1	600 (30%)	September 1–December 31.	35 (12%)		
September 1–October 1	150 (7.5%)				
October 1–December 31	300 (15%)				
Total	2,000 (100%)		290 (100%)		10 (100%)

[1] The Pacific halibut PSC limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits.

Section 679.21(d)(3)(ii) authorizes apportionments of the trawl halibut PSC limit to be further apportioned to trawl fishery categories, based on each category's proportional share of the anticipated halibut bycatch mortality during the fishing year and the need to optimize the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are: (1) A deep-water species complex, comprised of sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder; and (2) a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and ''other species'' (see § 679.21(d)(3)(iii)). The final 2005 and 2006 apportionment for these two fishery complexes is presented in Table 10.

TABLE 10.—FINAL 2005 AND 2006 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

[Values are in metric tons]

Season	Shallow-water	Deep-water	Total
January 20–April 1	450	100	550
April 1–July 5	100	300	400
July 5–September 1	200	400	600
September 1–October 1	150	Any remainder	150
Subtotal.			
January 20–October 1	900	800	1,700
October 1–December 31 [1]			300
Total			2,000

[1] No apportionment between shallow-water and deep-water fishery complexes during the 5th season (October 1–December 31).

Halibut Discard Mortality Rates

The Council recommends and NMFS concurs that the recommended halibut discard mortality rates (DMRs) developed by the staff of the IPHC for the 2004 GOA groundfish fisheries be used to monitor halibut bycatch mortality limits established for the 2005 and 2006 GOA groundfish fisheries. The IPHC recommended use of long-term average DMRs for the 2004–2006 groundfish fisheries. The IPHC recommendation also includes a provision that DMRs could be revised should analysis indicate that a fishery's annual DMR deviates substantially (up or down) from the long-term average. Most of the IPHC's assumed DMRs were based on an average of mortality rates determined from NMFS observer data collected between 1993 and 2002. DMRs were lacking for some fisheries, in those instances rates from the most recent years were used. For the ''other species'' and skate fisheries, where insufficient mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery for that gear type was recommended as a default rate. The DMRs proposed for 2005 and 2006 are unchanged from those used in 2004 in the GOA. The DMRs for hook-and-line targeted fisheries range from 8 to 13 percent. The DMRs for trawl targeted fisheries range from 57 to 75 percent. The DMRs for all pot targeted fisheries are 17 percent. The final DMRs for 2005 and 2006 are listed in Table 11. The justification for these DMRs is discussed in Appendix A of the final SAFE report dated November 2004.

TABLE 11.—FINAL 2005 AND 2006 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Listed values are percent of halibut bycatch assumed to be dead]

Gear	Target	Mortality rate
Hook-and-line	Other species	13
	Skates	13
	Pacific cod	13
	Rockfish	8
Trawl	Arrowtooth flounder	69
	Atka mackerel	60
	Deep-water flatfish	57
	Flathead sole	62
	Non-pelagic pollock	59
	Other species	61
	Skates	61
	Pacific cod	61
	Pelagic pollock	75
	Rex sole	62
	Rockfish	67
	Sablefish	62
	Shallow-water flatfish	68
Pot	Other species	17
	Skates	17
	Pacific cod	17

Non-exempt American Fisheries Act (AFA) Catcher Vessel Groundfish Harvest and PSC Sideboard Limitations

Section 679.64 established groundfish harvesting and processing sideboard limitations on AFA catcher/processors and catcher vessels in the GOA. These sideboard limitations are necessary to protect the interests of fishermen and processors who have not directly benefitted from the AFA from fishermen and processors who have received exclusive harvesting and processing privileges under the AFA. In the GOA, listed AFA catcher/processors are prohibited from harvesting any species of fish (see § 679.7(k)(1)(ii)) and from processing any pollock in the GOA and any groundfish harvested in Statistical Area 630 of the GOA (see § 679.7(k)(1)(iv)). Section 679.64(b)(2)(ii) exempts from sideboard limitation those AFA catcher vessels in the GOA less than 125 ft (38.1 m) LOA whose annual BSAI pollock landings totaled less than 5,100 mt and that made 40 or more GOA groundfish landings from 1995 through 1997.

For non-exempt AFA catcher vessels in the GOA, sideboards limitations are based on their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. Section 679.64(b)(3)(iii) establishes the groundfish sideboard limitations in the GOA based on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period. These amounts are listed in Table 12 for 2005 and in Table 13 for 2006. All harvests of sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in Tables 12 and 13.

TABLE 12.—FINAL 2005 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS

[Values are in metric tons]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2005 TAC	2005 non-exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only)			
	January 20–February 25			
	Shumagin (610)	0.6112	5,035	3,077
	Chirikof (620)	0.1427	11,692	1,668
	Kodiak (630)	0.2438	4,148	1,011
	B Season (W/C areas only)			
	March 10–May 31			
	Shumagin (610)	0.6112	5,035	3,077
	Chirikof (620)	0.1427	13,820	1,972
	Kodiak (630)	0.2438	2,021	493
	C Season (W/C areas only)			
	August 25–September 15			
	Shumagin (610)	0.6112	10,155	6,207
	Chirikof (620)	0.1427	4,446	634
	Kodiak (630)	0.2438	6,274	1,530
	D Season (W/C areas only)			
	October 1–November 1			
	Shumagin (610)	0.6112	10,155	6,207
	Chirikof (620)	0.1427	4,446	634
	Kodiak (630)	0.2438	6,275	1,530
	Annual			
	WYK (640)	0.3499	1,688	591
	SEO (650)	0.3499	6,520	2,281
Pacific cod	A Season [1]			
	January 1–June 10			
	W inshore	0.1423	8,471	1,205
	W offshore	0.1026	941	97
	C inshore	0.0722	13,547	978
	C offshore	0.0721	1,505	109
	B Season [2]			
	September 1–December 31			
	W inshore	0.1423	5,647	804
	W offshore	0.1026	628	64
	C inshore	0.0722	9,031	652
	C offshore	0.0721	1,003	72
	Annual			
	E inshore	0.0079	3,294	26
	E offshore	0.0078	366	3
Flatfish deep-water	W	0.0000	330	0
	C	0.0670	3,340	224
	E	0.0171	3,150	54
Rex sole	W	0.0010	1,680	2
	C	0.0402	7,340	295
	E	0.0153	3,630	56
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	131
	E	0.0048	3,390	16
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	3,240	41
Arrowtooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	773
	E	0.0020	5,000	10
Sablefish	W trawl gear	0.0000	508	0
	C trawl gear	0.0720	1,450	104
	E trawl gear	0.0488	307	15
Pacific ocean perch	W	0.0623	2,567	160
	C	0.0866	8,535	739
	E	0.0466	2,473	115
Shortraker rockfish	W	0.0000	155	0
	C	0.0237	324	8
	E	0.0124	274	3
Rougheye rockfish	W	0.0000	188	0
	C	0.0237	557	13

TABLE 12.—FINAL 2005 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are in metric tons]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2005 TAC	2005 non-exempt AFA catcher vessel sideboard
	E	0.0124	282	3
Other rockfish	W	0.0034	40	0
	C	0.2065	300	62
	E	0.0000	330	0
Northern rockfish	W	0.0003	808	0
	C	0.0336	4,283	144
Pelagic shelf rockfish	W	0.0001	377	0
	C	0.0000	3,067	0
	E	0.0067	1,109	7
Thornyhead rockfish	W	0.0308	410	13
	C	0.0308	1,010	31
	E	0.0308	520	16
Big skates	W	0.0090	727	7
	C	0.0090	2,463	22
	E	0.0090	809	7
Longnose skates	W	0.0090	66	1
	C	0.0090	1,972	18
	E	0.0090	780	7
Other skates	GW	0.0090	1,327	12
Demersal shelf rockfish	SEO	0.0020	410	1
Atka mackerel	Gulfwide	0.0309	600	19
Other species	Gulfwide	0.0090	13,871	125

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

TABLE 13.—FINAL 2006 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS

[Values are in metric tons]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2006 TAC	2006 non-exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only)			
	January 20–February 25			
	Shumagin (610)	0.6112	5,047	3,085
	Chirikof (620)	0.1427	11,719	1,672
	Kodiak (630)	0.2438	4,159	1,014
	B Season (W/C areas only)			
	March 10–May 31			
	Shumagin (610)	0.6112	5,047	3,085
	Chirikof (620)	0.1427	13,852	1,977
	Kodiak (630)	0.2438	2,026	494
	C Season (W/C areas only)			
	August 25–September 15			
	Shumagin (610)	0.6112	10,179	6,221
	Chirikof (620)	0.1427	4,457	636
	Kodiak (630)	0.2438	6,289	1,533
	D Season (W/C areas only)			
	October 1–November 1			
	Shumagin (610)	0.6112	10,179	6,221
	Chirikof (620)	0.1427	4,457	636
	Kodiak (630)	0.2438	6,288	1,533
	Annual			
	WYK (640)	0.3499	1,691	592
	SEO (650)	0.3499	6,520	2,281
Pacific cod	A Season[1]			
	January 1–June 10			
	W inshore	0.1423	7,450	1,060

TABLE 13.—FINAL 2006 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are in metric tons]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2006 TAC	2006 non-exempt AFA catcher vessel sideboard
	W offshore	0.1026	828	85
	C inshore	0.0722	11,914	860
	C offshore	0.0721	1,324	95
	B Season[2]			
	September 1–December 31			
	W inshore	0.1423	4,967	707
	W offshore	0.1026	552	51
	C inshore	0.0722	7,944	574
	C offshore	0.0721	882	64
	Annual			
	E inshore	0.0079	2,897	23
	E offshore	0.0078	322	3
Flatfish deep-water	W	0.0000	330	0
	C	0.0670	3,340	224
	E	0.0171	3,150	54
Rex sole	W	0.0010	1,680	2
	C	0.0402	7,340	295
	E	0.0153	3,630	56
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	131
	E	0.0048	3,212	15
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	3,240	41
Arrowtooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	773
	E	0.0020	5,000	10
Sablefish	W trawl gear	0.0000	481	0
	C trawl gear	0.0720	1,374	99
	E trawl gear	0.0488	291	14
Pacific ocean perch	W	0.0623	2,525	157
	C	0.0866	8,375	725
	E	0.0466	2,392	111
Shortraker rockfish	W	0.0000	155	0
	C	0.0237	324	8
	E	0.0124	274	3
Shortraker rockfish	W	0.0000	188	0
	C	0.0237	557	13
	E	0.0124	282	3
Other rockfish	W	0.0034	40	0
	C	0.2065	300	62
	E	0.0000	330	0
Northern rockfish	W	0.0003	755	0
	C	0.0336	3,995	134
Pelagic shelf rockfish	W	0.0001	366	0
	C	0.0000	2,973	0
	E	0.0067	1,076	7
Thornyhead rockfish	W	0.0308	410	13
	C	0.0308	1,010	31
	E	0.0308	520	16
Big skates	W	0.0090	727	7
	C	0.0090	2,463	22
	E	0.0090	809	7
Big and Longnose skates	W	0.0090	66	1
	C	0.0090	1,972	18
	E	0.0090	780	7
Other skates	GW	0.0090	1,327	12
Demersal shelf rockfish	SEO	0.0020	410	1
Atka mackerel	Gulfwide	0.0309	600	19
Other species	Gulfwide	0.0090	13,525	122

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

In accordance with § 679.64(b)(4), PSC sideboard limitations for non-exempt AFA catcher vessels in the GOA are based on the ratio of aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997, relative to the retained catch of all vessels in that fishery from 1995 through 1997. These amounts are shown in Table 14.

TABLE 14.—FINAL 2005 AND 2006 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC)

[Limits for the GOA Values are in metric tons]

PSC species	Season	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2005 and 2006 PSC limit	2005 and 2006 non-exempt AFA catcher vessel PSC limit
Halibut (mortality in mt)	Trawl 1st seasonal allowance, January 20–April 1.	shallow-water	0.340	450	153
		deep-water	0.070	100	7
	Trawl 2nd seasonal allowance, April 1–July 1	shallow-water	0.340	100	34
		deep-water	0.070	300	21
	Trawl 3rd seasonal allowance, July 1–September 1.	shallow-water	0.340	200	68
		deep-water	0.070	400	28
	Trawl 4th seasonal allowance, September 1–October 1.	shallow-water	0.340	150	51
		deep-water	0.070	0	0
	Trawl 5th seasonal allowance, October 1–December 31.	all targets	0.205	300	61

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Regional Administrator determines: (1) That any allocation or apportionment of a target species or ''other species'' category apportioned to a fishery will be reached or, (2) with respect to pollock and Pacific cod, an allocation or apportionment to an inshore or offshore component allocation will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA regulatory area or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the following TAC amounts in Table 15 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2005 and 2006 fishing years.

TABLE 15.—DIRECTED FISHING CLOSURES IN THE GOA 2005 AND 2006

[Amounts needed for incidental catch in other directed fisheries are in mt.]

Target	Regulatory area	Gear/component	Amount
Atka mackerel	entire GOA	all	600
Thornyhead rockfish	entire GOA	all	1,940
Shortraker rockfish	entire GOA	all	753
Rougheye rockfish	entire GOA	all	1,007
Other rockfish	entire GOA	all	670
Sablefish	entire GOA	trawl	2,265 (2005) 2,146 (2006)
Longnose skates	W GOA	all	66
Other skates	entire GOA	all	1,327
Pollock	entire GOA	all/offshore	unknown [1]

[1] Pollock is closed to directed fishing in the GOA by the offshore component under § 679.20(a)(6)(i).

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the above species or species groups as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for those species, regulatory areas, gear types, and components listed in Table 15. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2006.

Section 679.64(b)(5) provides for management of AFA catcher vessel groundfish harvest limits and PSC bycatch limits using directed fishing closures and PSC closures according to procedures set out at §§ 679.20(d)(1)(iv), 679.21(d)(8), and 679.21(e)(3)(v). The Regional Administrator has determined that, in addition to the closures listed above, many of the non-exempt AFA catcher vessel sideboard limits listed in Tables 12 and 13 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2005 and 2006 fishing years. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the directed fishing allowances for the species and species groups in Table 16 as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA catcher vessels in the GOA for the species and specified areas set out in Table 16. These closures will remain in

effect through 2400 hrs, A.l.t., December 31, 2006.

TABLE 16.—2005 AND 2006 NON-EXEMPT AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES IN THE GOA

[Amounts needed for incidental catch in other directed fisheries are in metric tons]

Species	Regulatory area/district	Gear	Amount
Pacific cod	Eastern GOA	all	26 (inshore). 3 (offshore).
Deep-water flatfish	Western GOA	all	0.
Rex sole	Western GOA	all	2.
Flathead sole	Eastern and Western GOA	all	7 and 16 (15 in 2006).
Shallow-water flatfish	Eastern GOA	all	41.
Arrowtooth flounder	Eastern and Western GOA	all	17 and 10.
Northern rockfish	Western GOA	all	0.
Pelagic shelf rockfish	entire GOA	all	0 (W), 0(C), 7(E).
Big skates	entire GOA	all	7(W), 22(C), 7(E).
Longnose skates	Central and Eastern GOA	all	18(C), 7(E).
Demersal shelf rockfish	SEO District	all	1.

Under authority of the interim 2005 specifications (69 FR 74455, December 14, 2004), pollock fishing opened on January 20, 2005, for amounts specified in that notice. NMFS has since closed Statistical Area 610 to directed fishing for pollock effective 1200 hrs, A.l.t., January 23, 2005, through March 10, 2005 (70 FR 3896, January 27, 2005). NMFS closed Statistical Area 630 to directed fishing for pollock effective 1200 hrs, A.l.t., January 29 , 2005 (70 FR 5062, February 1, 2005) until 1200 hrs, A.l.t., February 6, 2005 (70 FR 6781, February 9, 2005) and 1200 hrs, A.l.t., February 14, 2005, until 1200 hrs, A.l.t., March 10, 2005 (70 FR 7901, February 16, 2005). NMFS prohibited directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area GOA, effective 12 noon, A.l.t., January 26, 2005 (70 FR 4039, January 28, 2005).

These closures supercede the closures announced under the authority of the interim 2005 harvest specifications (69 FR 74455, December 14, 2004). While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR 679. NMFS may implement other closures during the 2005 and 2006 fishing years as necessary for effective conservation and management.

Response to Comments

NMFS received 2 letters of comment in response to the 2005 and 2006 proposed harvest specifications. These letters contained 13 separate comments that are summarized and responded to below.

Comment 1: The Council has yet to take any action on the review of the ''Scientific Review of the Harvest Strategy Currently Used in the BSAI and GOA Groundfish Fishery Management Plans.'' The Council's current approach to setting catch rates results in rates that are too high for rockfish.

Response: The report referred to in the comment is: Goodman, Daniel, Marc Mangel, Graeme Parkes, Terry Quinn, Victor Restrepo, Tony Smith, Kevin Stokes. 2002. ''Scientific Review of the harvest Strategy Currently Used in the BSAI and GOA Groundfish Fishery Management Plans.'' Prepared for the North Pacific Fishery Management Council. November 21, 2002.

Evaluation of fishery management strategies has been an ongoing research activity of the NMFS, Alaska Fisheries Science Center (AFSC) for years. Most recently, the Programmatic Supplemental Environmental Impact Statement (PSEIS) for the BSAI and GOA Groundfish FMPs devoted thousands of pages to evaluate both current and alternative fishery management strategies. A working group (WG) has been established to ensure the fisheries are managed based on the best available science, and tasked with continuing and expanding the AFSC's research in the area of management strategy evaluation (MSE). MSE research is ongoing and the WG is expected to make significant advancements in this area over the next few years. The GOA SAFE report (page 387) evaluated the harvest strategy used in the rockfish assessments with particular attention given to the consideration of the harvest rates for rockfish because of their ''low productivity'' (Goodman *et al.*, 2002). The evaluation indicated that the harvest strategy is sufficiently conservative. The stock assessments are updated annually and adjustments will be made if new data indicates a downturn in the fishery populations. Also, the rockfish section of the SSC's minutes from the December 2004 Council meeting states, ''The SSC appreciates the attention given by the SAFE authors and the Plan Teams to the recommendations that the SSC made last year regarding the ''F40 report'' by Goodman *et al.*, the contributions to stock productivity of older female rockfish, local depletion, and the effects of disaggregation of the ABCs.'' At the February 2005 Council meeting, a discussion paper on rockfish management will be presented by Council staff. Also, the Council includes ecosystem research information in an ecosystem considerations appendix to the SAFE reports.

Comment 2: The EA fails to provide the public with a full and fair analysis of the consequence of implementing the FMPs; and there is no FMP level environmental impact statement (EIS) that evaluates the effects of authorizing fishing pursuant to the FMPs.

Response: Pursuant to NEPA, NMFS prepared an EA for this action. The EA comprehensively analyzes the potential impacts of the 2005 and 2006 harvest specifications and provides the evidence to decide whether an agency must prepare and EIS. The analysis in the EA supports a finding of no significant impact on the human environment as a result of the 2005 and 2006 final harvest specifications. Therefore, an EIS is not required.

Comment 3: The commentor is concerned about the serious limitations

and disappointed about the insufficient action taken regarding the Improved Retention/Improved Utilization (IR/IU) program.

Response: This action does not address IR/IU. In 1998, Groundfish FMP Amendments 49/49 were implemented, requiring 100 percent retention of all pollock and Pacific cod in all fisheries, regardless of gear type. This provided incentives for fishermen to avoid catching these species if they were not targeted, and also required that they be retained for processing if they were caught. An overall minimum groundfish retention standard was approved by the Council in June 2003, with increasing retention standards being phased in starting in 2005. NMFS is preparing a proposed rule based on the Council recommendations. Concurrently, the Council is developing a program that allows sectors targeting flatfish species in the BSAI to form fishery cooperatives. This program is intended to program these sectors with the operational tools necessary to adhere to the increased retention standards.

Comment 4: The Council and NMFS have taken no action to ensure that adverse impacts on essential fish habitat (EFH) will not occur during the EIS process and that the choice of reasonable alternatives will not be limited.

Response: NMFS prepared a draft EIS for EFH dated January 2004, which included a broad range of alternatives for minimizing the effects of fishing on EFH. Further information on the draft EIS may be found at the NMFS Alaska Region website at *www.fakr.noaa.gov*. NMFS is revising the EIS to include two additional alternatives based on public comments. The final EFH EIS is scheduled for publication by June 1, 2005. Fishing in accordance with this action in the context of the fishery as a whole could have led to adverse impacts on EFH. Therefore, NMFS prepared an EFH Assessment that incorporates all of the information required in 50 CFR 600.920(e)(3), and initiated EFH consultation pursuant to 50 CFR 600.920(i). The EFH Assessment is contained in the EA prepared for this action. The consultation found that this action continues to minimize to the extent practicable adverse effects on EFH.

Comment 5: Fishing, as allowed under the current specifications, is overfishing and starves all other marine life of food.

Response: None of the groundfish species managed in Alaska are known to be experiencing overfishing or are overfished as defined by the Magnuson-Stevens Act. Ecosystem considerations are part of the harvest specification process to ensure fish harvests impacts on the ecosystem are minimized as much as possible and that all organisms dependent on the marine ecosystem are adequately protected.

Comment 6: All quotas should be cut by 50 percent starting in 2005 and 10 percent each year thereafter. Also, marine sanctuaries should be established.

Response: The commentor provided no reason for the quotas to be reduced. The decisions on the amount of harvest are based on the best available science and socioeconomic considerations. NMFS finds that the ABCs and TACs are consistent with the biological condition of the groundfish stocks as described in the 2004 SAFE report and approved by the Council. Additionally, this action does not address the creation of marine sanctuaries. The concept of establishing marine reserves is explored in the draft environmental impact statement (EIS) for essential fish habitat (EFH), dated January 2004. Further information on the draft EIS may be found at the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov*.

Comment 7: A commentor incorporated the Pew Foundation reports on overfishing and the United Nations report on overfishing into their comment.

Response: The specific concerns and relationship of these reports to this action are not presented by the commentor. Because no further details are provided by the commentor, NMFS is unable to respond further to this comment.

Comment 8: The number of vessels that are allowed to catch fish are far too great.

Response: On January 1, 2000, the NMFS implemented the License Limitation Program (LLP), which limits the number, size, and specific operation of vessels that may be deployed in the groundfish fisheries in the exclusive economic zone off Alaska. By limiting the number of vessels that are eligible to participate in the affected fisheries, the LLP places an upper limit on the amount of capitalization that may occur in those fisheries. This upper limit will prevent future overcapitalization in those fisheries at levels that could occur if such a constraint was not present. The number of vessels participating in the groundfish fisheries off Alaska has decreased approximately 16 percent from 1,228 vessels in 2000 to 1,037 vessels in 2003.

Comment 9: Steller sea lions and other seal populations are being decimated by the commercial fisheries.

Response: Several species of groundfish, notably pollock, Pacific cod, and Atka mackerel, are important prey species for Steller sea lions and are also targeted by the groundfish fisheries. The pollock, Pacific cod, and Atka mackerel fisheries may compete with Steller sea lions by reducing the availability of prey for foraging sea lions. However, this potential competition between commercial fishers and Steller sea lions for pollock, Pacific cod, and Atka mackerel is addressed by regulations that limit the total amount of catch and impose temporal and spatial controls on harvest. These Steller sea lion protection measures are designed to preserve prey abundance and availability for foraging sea lions. These protection measures ensure the groundfish fisheries are unlikely to cause jeopardy of extinction or adverse modification or destruction of critical habitat for the Western distinct population segment of Steller sea lions.

Comment 10: NMFS does not use the ''best'' information. It uses manipulated information submitted by commercial fisheries. NMFS does zero law enforcement to catch illegal raping of the sea.

Response: NMFS used data from sources other than the fishing industry reported data. NMFS uses data from fisheries observers who are biologists working independently to collect biological information aboard commercial fishing vessels and at shoreside processing plants in Alaska. Observers are deployed by private, federally permitted observer providers. The NMFS, AFSC, Resource Assessment and Conservation Engineering Division conducts fishery surveys to measure the distribution and abundance of commercially important fish stocks in the BSAI and GOA. This data is used to investigates biological processes and interactions with the environment to estimate growth, mortality, and recruitment to improve the precision and accuracy of forecasting stock dynamics. Data derived from groundfish surveys are documented in scientific reports and are incorporated into stock assessment advice to the Council, international fishery management organizations, the fishing industry, and the general public. See comment 12 regarding NMFS fishery enforcement.

Comment 11: The time period for the public to comment on this proposed rule should be extended by 120 days.

Response: The commentor provided no reason for the comment period extension request. Because no justification is known for extending the comment period, the comment period remains 30 days for the proposed rule.

Comment 12: The fisherman are taking 3 times what they report.

Response: NMFS disagrees with the commentor's assertion that groundfish fishers systematically under-report their catch. The recordkeeping and reporting requirements in these fisheries are comprehensive, and NMFS and United States Coast Guard law enforcement officers conduct numerous vessel boardings each year. Reporting violations do occur, but they are relatively rare compared to the participation in the overall fishery and are prosecuted pursuant to the Magnuson-Stevens Act.

Comment 13: A commentor provided an article regarding the United Nations recommendations for banning of high seas bottom trawling.

Response: The commentor did not provide the relationship of this action to the article. This action is limited to the EEZ off Alaska and does not address high seas commercial fishing activities. However, NMFS does work on issues concerning high seas commercial fishing activities. One example is the limitation of high seas drift net fishing for salmon in the north Pacific. As a result of this international treaty the United States is empowered to prohibit United States vessels from participating in this activity and enforce the terms of the treaty on the high seas. Also, NMFS, AFSC is conducting studies on the impacts of bottom trawls on the sea floor and the description of bottom types.

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary management measures are to announce 2005 and 2006 final harvest specifications and prohibited species bycatch allowances for the groundfish fishery of the GOA. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2005 and 2006 fishing years and to accomplish the goals and objectives of the FMP. This action affects all fishermen who participate in the GOA fishery. The specific amounts of OFL, ABC, TAC and PSC amounts are provided in tabular form to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Classification

This action is authorized under § 679.20 and is exempt from review under Executive Order 12866.

A Final Regulatory Flexibility Analysis (FRFA) was prepared to evaluate the impacts of the 2005 and 2006 harvest level specifications on directly regulated small entities. This FRFA is intended to meet the statutory requirements of the Regulatory Flexibility Act (RFA).

The proposed rule for the GOA specifications was published in the **Federal Register** on December 7, 2004 (69 FR 70605). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. Copies of the IRFA prepared for this action are available from Alaska, Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall. The public comment period ended on January 6, 2005. No comments were received on the IRFA or regarding the economic impacts of this rule.

The 2005 and 2006 harvest specifications establish harvest limits for the groundfish species and species groups in the GOA. This action is necessary to allow fishing in 2005 and 2006. About 758 small catcher vessels, 24 small catcher-processors, and six small private non-profit CDQ groups may be directly regulated by the GOA specifications.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities. This regulation does not duplicate, overlap, or conflict with any other Federal rules.

The FRFA examined the impacts of the preferred alternative on small entities within fisheries defined by the harvest of species groups whose TACs might be affected by the specifications. The FRFA identified the following adverse impacts from the preferred alternative on small fishing operations harvesting sablefish and Pacific cod in the GOA.

The aggregate gross revenues for an estimated 382 small GOA sablefish entities were estimated to decline by about $5.7 million. A reduction in revenues of this magnitude would have accounted for about 3.0% of total 2003 gross revenues from all sources for these small entities.

The aggregate gross revenues for an estimated 207 small GOA Pacific cod entities were estimated to decline by about $3.9 million. A reduction in revenues of this magnitude would have accounted for about 3.2% of total 2003 gross revenues from all sources for these small entities.

Although the preferred alternative had adverse impacts on some classes of small entities, compared to the fishery in the preceding year, alternatives that had smaller adverse impacts were precluded by biological management concerns. Four alternatives were evaluated, in addition to the preferred alternative. Alternative 1 set TACs equal to the $_{max}F_{ABC}$ fishing rate. Alternative 1 was associated with high TACs, high revenues, and TACs that exceeded the statutory BSAI OY. Alternative 2, the preferred alternative, set TACs to produce the fishing rates recommended by the Council on the basis of Plan Team and SSC recommendations. Alternative 3 set TACs to produce fishing rates equal to half the $_{max}F_{ABC}$, and Alternative 4 set TACs to produce fishing rates equal to the last five years' average fishing rate. Alternative 5 set TACs equal to zero.

GOA Pacific cod fishermen would have had larger gross revenues under two other alternatives, Alternatives 1 and 4, than under the preferred alternative. GOA sablefish fishermen would not have had larger gross revenues under any alternative. The sablefish TACs are set equal to the recommended ABC. The ABCs are recommended by the Council on the basis of the biological recommendations made to it by its Plan Teams and its SSC. Higher TACs would not be consistent with prudent biological management of the fishery. The situation is very similar for Pacific cod. Although the Pacific cod TACs under the preferred alternative are lower than the ABC, these lower TACs reflect guideline harvest levels for Pacific cod set by the State of Alaska for its own waters. To protect the resource, the sum of the State's GHL and the Federal TAC are not allowed to exceed the ABC. Thus, this TAC also has been set as high as possible while still protecting the biological health of the stock. The Pacific cod Federal TACs and State GHLs under Alternatives 1 and 4 would have exceeded the ABCs. Alternative 2 was chosen because it provided Pacific cod fishermen with larger gross revenues than Alternatives 3 or 5, and sablefish fishermen larger gross revenues than Alternatives 3, 4, or 5.

Under the provisions of 5 U.S.C. 553(d)(1), an agency can waive a delay in the effective date of a substantive rule if it relieves a restriction. Unless this delay is waived, fisheries that are currently closed (see **SUPPLEMENTARY INFORMATION**) because the interim TACs were reached would remain closed until the final harvest specifications became effective. Those closed fisheries are restrictions on the industry that can be

relieved by making the final harvest specifications effective on publication.

Under the provisions of 5 U.S.C. 553(d)(3), an agency can waive a delay in the effective date for good cause found and published with the rule. For all other fisheries not currently closed because the interim TACs were reached, the likely possibility exists for their closures prior to the expiration of a 30-day delayed effectiveness period because their interim TACs or PSC allowances could be reached. Determining which fisheries may close is impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing-up fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries and causing them to close at an accelerated pace. The interim harvest specifications currently in effect are not sufficient to allow directed fisheries to continue predictably, resulting in unnecessary closures and disruption within the fishing industry and the potential for regulatory discards. The final harvest specifications establish increased TACs and PSC allowances to provide continued directed fishing for species that would otherwise be prohibited under the interim harvest specifications. These final harvest specifications were developed as quickly a possible, given Plan Team review in November 2004, Council consideration and recommendations in December 2004, and NOAA fisheris review and development in January–February 2005. Additionally, if the final harvest specifications are not effective by February 27, 2005, which is the start of the Pacific halibut season as specified by the IPHC, the longline sablefish fishery will not begin concurrently with the Pacific halibut season. This would cause sablefish that is caught with Pacific halibut to be discarded, as both longline sablefish and Pacific halibut are managed under the same IFQ program. These final harvest specifications were developed as quickly as possible, given plan team review in November 2004, Council consideration and recommendations in December 2004, and NMFS review and development in January through February 2005.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub L. 106–31, Sec. 3027; and Pub L. 106–554, Sec. 209.

Dated: February 17, 2005.

Rebecca Lent,

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

[FR Doc. 05–3581 Filed 2–23–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 112204A]

Fisheries of the Exclusive Economic Zone off Alaska; Bering Sea and Aleutian Islands; 2005 and 2006 Final Harvest Specifications for Groundfish

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

ACTION: 2005 and 2006 final harvest specifications for groundfish; apportionment of reserves; closures.

SUMMARY: NMFS announces 2005 and 2006 final harvest specifications and prohibited species catch (PSC) allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2005 and 2006 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The 2005 and 2006 final harvest specifications and associated apportionment of reserves are effective at 1200 hrs, Alaska local time (A.l.t.), February 24, 2005 through 2400 hrs, A.l.t., December 31, 2006.

ADDRESSES: Copies of the Final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall or from the Alaska Region Web site at *http://www.fakr.noaa.gov.* Copies of the final 2004 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2004, are available from the North Pacific Fishery Management Council (Council), West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809) or from its Web site at *http://www.fakr.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228 or e-mail *mary.furuness@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish fisheries in the BSAI. The Council prepared the FMP, and NMFS approved it under the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the ''other species'' category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (see § 679.20(a)(1)(i)). Also specified are apportionments of TACs, and Community Development Quota (CDQ) reserve amounts, PSC allowances, and prohibited species quota (PSQ) reserve amounts. Regulations at § 679.20(c)(3) further require NMFS to consider public comment on the proposed annual TACs and apportionments thereof and the proposed PSC allowances, and to publish final harvest specifications in the **Federal Register**. The final harvest specifications set forth in Tables 1 through 17 of this action satisfy these requirements. For 2005 and 2006, the sum of TACs for each year is 2 million mt.

The 2005 and 2006 proposed harvest specifications and PSC allowances for the groundfish fishery of the BSAI were published in the **Federal Register** on December 8, 2004 (69 FR 70974). Comments were invited and accepted through January 7, 2005. NMFS received three letters of comment on the proposed harvest specifications. These letters of comment are summarized and responded to in the Response to Comments section. NMFS consulted with the Council during the December 2004 Council meeting in Anchorage, AK. After considering public comments, as well as biological and economic data that were available at the Council's December meeting, NMFS is implementing the 2005 and 2006 final harvest specifications as recommended by the Council.

Regulations at § 679.20(c)(2)(ii) establish the interim amounts of each

proposed initial TAC (ITAC) and allocations thereof, of each CDQ reserve established by § 679.20(b)(1)(iii), and of the proposed PSC allowances and PSQ reserves established by § 679.21 that become available at 0001 hours, A.l.t., January 1, and remain available until superseded by the final harvest specifications. NMFS published the 2005 interim harvest specifications in the **Federal Register** on December 23, 2004 (69 FR 76870). Regulations at § 679.20(c)(2)(ii) do not provide for an interim harvest specification for either the hook-and-line or pot gear sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) program. The 2005 final harvest specifications, PSC allowances and PSQ reserves contained in this action supersede the 2005 interim harvest specifications.

Acceptable Biological Catch (ABC) and TAC Harvest Specifications

The final ABC levels are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and overfishing levels (OFLs) involves sophisticated statistical analyses of fish populations and is based on a successive series of six levels, or tiers, of reliable information available to fishery scientists. Tier one represents the highest data quality and tier six the lowest level of data quality available.

In December 2004, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed current biological information about the condition of groundfish stocks in the BSAI. This information was compiled by the Council's Plan Team and is presented in the final 2004 SAFE report for the BSAI groundfish fisheries, dated November 2004. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. The SAFE report is available for public review (see **ADDRESSES**). From these data and analyses, the Plan Team estimates an ABC for each species or species category.

In December 2004, the SSC, AP, and Council reviewed the Plan Team's recommendations. Except for pollock, atka mackerel, rock sole, and the ''other species'' category, the SSC, AP, and Council endorsed the Plan Team's ABC recommendations. For the 2006 OFL and ABC recommendations for Atka mackerel, rock sole and Bering Sea pollock the SSC used a downward revised projection of catch that results in higher OFLs and ABCs. For Aleutian Islands pollock, the SSC recommended using tier 5 management that calculates a lower ABC than the Plan Team's recommendation using tier 3 management. For Bogoslof pollock, the SSC recommended using a procedure that reduces the ABC proportionately to the ratio of current stock biomass to target stock biomass. For ''other species'', the SSC recommended using tier 6 management for the sharks and octopus species, that calculated lower ABCs, instead of the Plan Team's recommended tier 5 management. The Plan Team also recommended separate OFLs and ABCs for the species in the ''other species'' category, however, the current FMP specifies management at the group level. Since 1999, the SSC has recommended a procedure that moves gradually to a higher ABC for ''other species'' over a 10-year period instead of a large increase in one year. The 2005 and 2006 ABC amounts reflect the 7th and 8th years incremental increase in the ABC for ''other species.'' For all species, the AP endorsed the ABCs recommended by the SSC, and the Council adopted them.

The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required optimum yield (OY) range of 1.4 million to 2.0 million mt. The Council adopted the AP's 2005 and 2006 TAC recommendations, except for the 2005 rock sole, flathead sole, ''other flatfish'', yellowfin sole, Alaska plaice, Bering Sea pollock and''other species''category. The Council increased TAC amounts for rock sole, flathead sole, ''other flatfish'' by 500 mt each and the yellowfin sole TAC by 3,200 mt. It decreased the Bering Sea subarea pollock TAC by 2,500 mt, the Alaska plaice TAC by 2,000 mt, and the ''other species'' TAC by 200 mt. None of the Council's recommended TACs for 2005 or 2006 exceed the final 2005 or 2006 ABC for any species category. NMFS finds that the recommended OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as described in the 2004 SAFE report that was approved by the Council.

Other Rules Affecting the 2005 and 2006 Harvest Specifications

Amendments 48/48 to the FMP and to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) were approved by NMFS on October 12, 2004. The final rule implementing Amendments 48/48 was published November 8, 2004, (69 FR 64683). Amendments 48/48 revise the administrative process used to establish annual specifications for the groundfish fisheries of the GOA and the BSAI. The goals of Amendments 48/48 in revising the harvest specifications process are to (1) manage fisheries based on the best scientific information available, (2) provide for adequate prior public review and comment on Council recommendations, (3) provide for additional opportunity for Secretarial review, (4) minimize unnecessary disruption to fisheries and public confusion, and (5) promote administrative efficiency.

Based on the approval of Amendments 48/48, the Council recommended 2005 and 2006 final harvest specifications for BSAI groundfish. The 2006 harvest specifications will be updated in early 2006, when final harvest specifications for 2006 and new harvest specifications for 2007 are implemented.

In June 2004, the Council adopted Amendment 82 to the FMP. This amendment would establish a program for management of the Aleutian Islands (AI) directed pollock fishery. Section 803 of the Consolidated Appropriations Act of 2004 (CAA), Public Law (Pub. L.) No. 108–199, requires the AI directed pollock fishery to be allocated to the Aleut Corporation for economic development in Adak, Alaska. Prior to the CAA, the AI directed pollock fishery was managed pursuant to the American Fisheries Act (AFA), Pub. L. No. 105–277, Title II of Division C. The AFA allocated the AI directed pollock fishery to specific harvesters and processors named in the AFA. The CAA supersedes that portion of the AFA. Together, the CAA and the AFA effectively allocated the AI directed pollock fishery to the Aleut Corporation after subtraction of the CDQ directed fishing allowance and incidental catch allowance (ICA) from the AI pollock TAC. The implementation of section 803 of the CAA requires amending AFA provisions in the FMP and in the regulations at 50 CFR part 679. This would be accomplished by Amendment 82 which was approved by the Secretary of Commerce on February 9, 2005.

Until the regulations for Amendment 82 are effective, NMFS will prohibit the non-CDQ AI directed pollock fishery in the final harvest specifications for 2005 and 2006 based on statutory language of section 803 of the CAA. The AI pollock TAC recommended by the Council under provisions of proposed

Amendment 82 are included in the 2005 and 2006 final harvest specifications to allow the Administrator, Alaska Region, NMFS, (Regional Administrator), to open the AI directed pollock fishery if and when the regulations for Amendment 82 are effective. As stated above, this prohibition is authorized by section 803 of the CAA, which prohibits fishing or processing of any part of the AI non-CDQ pollock allocation except with permission of the Aleut Corporation or its designated agent. For additional information, see the November 16, 2004, notice of availability (69 FR 67107) and the December 7, 2004, proposed rule for Amendment 82 (69 FR 70589).

Changes From the 2005 and 2006 Proposed Harvest Specifications in the BSAI

In October 2004, the Council's recommendations for the 2005 and 2006 proposed harvest specifications (69 FR 70974, December 8, 2004) were based largely upon information contained in the final 2003 SAFE report for the BSAI groundfish fisheries, dated November 2003. The Council recommended that OFLs and ABCs for stocks in tiers 1 through 3 be based on biomass projections as set forth in the 2003 SAFE report and estimates of groundfish harvests through the 2004 fishing year. For stocks in tiers 4 through 6, for which projections could not be made, the Council recommended that OFL and ABC levels be unchanged from 2004 until the final 2004 SAFE report could be completed. The final 2004 SAFE report (dated November 2004), which was not available when the Council made its recommendations in October 2004, contains the best and most recent scientific information on the condition of the groundfish stocks and was considered in December by the Council in making its recommendations for the 2005 and 2006 final harvest specifications. Based on the final 2004 SAFE report, the sum of the 2005 recommended final TACs for the BSAI (2,000,000 mt) is the same as the sum of the 2005 proposed TACs. The sum of the 2006 recommended final TACs for the BSAI (2,000,000 mt) is 1,577 mt higher than the 2006 proposed TACs (1,998,423 mt). This represents a .08-percent increase overall. Those species for which the final 2005 TAC is lower than the proposed 2005 TAC are Bogoslof pollock (decreased to 10 mt from 50 mt), Pacific cod (decreased to 206,000 mt from 215,952 mt), AI sablefish (decreased to 2,620 mt from 2,790 mt), Alaska plaice (decreased to 8,000 mt from 10,000 mt), and AI ''other rockfish'' (decreased to 590 mt from 634 mt). Those species for which the final 2005 TAC is higher than the proposed 2005 TAC are Bering Sea pollock (increased to 1,478,500 from 1,474,450 mt), Bering Sea sablefish (increased to 2,440 mt from 2,418 mt), rock sole (increased to 41,500 mt from 41,450 mt), flathead sole (increased to 19,500 mt from 19,000 mt), ''other flatfish'' (increased to 3,500 mt from 3,000 mt), yellowfin sole (increased to 90,686 mt from 86,075 mt), Pacific ocean perch (increased to 12,600 mt from 12,020 mt), shortraker rockfish (increased to 596 mt from 526 mt), rougheye rockfish (increased to 223 from 195 mt), and ''other species'' (increased to 29,000 mt from 27,205 mt). Those species for which the final 2006 TAC is lower than the proposed 2006 TAC are Bogoslof pollock (decreased to 10 mt from 50 mt), Pacific cod (decreased to 195,000 mt from 215,500 mt), AI sablefish (decreased to 2,480 mt from 2,589 mt), Bering Sea greenland turbot (decreased to 2,500 mt from 2,700 mt), and AI ''other rockfish'' (decreased to 590 mt from 634). Those species for which the final 2006 TAC is higher than the proposed 2006 TAC are Bering Sea pollock (increased to 1,487,756 from 1,474,000 mt), Bering Sea sablefish (increased to 2,310 mt from 2,244 mt), rock sole (increased to 42,000 mt from 41,000 mt), flathead sole (increased to 20,000 mt from 19,000 mt), yellowfin sole (increased to 90,000 mt from 86,075 mt), Pacific ocean perch (increased to 12,600 mt from 12,170 mt), shortraker rockfish (increased to 596 mt from 526 mt), rougheye rockfish (increased to 223 from 195 mt), and ''other species'' (increased to 29,200 mt from 27,205 mt). As mentioned in the 2005 and 2006 proposed harvest specifications, NMFS is apportioning the amounts shown in Table 2 from the non-specified reserve to increase the ITAC of several target species.

The 2005 and 2006 final TAC recommendations for the BSAI are within the OY range established for the BSAI and do not exceed ABCs for any single species/complexes. Compared to the 2005 proposed harvest specifications, the Council's 2005 final TAC recommendations increase fishing opportunities for fishermen and economic benefits to the nation for species for which the Council had sufficient information to raise TAC levels. These include Bering Sea pollock, Bering Sea sablefish, yellowfin sole, AI Pacific ocean perch, shortraker rockfish, rougheye rockfish, and ''other species.'' Conversely, the Council reduced TAC levels to provide greater protection for several species, these include Bogoslof pollock, Pacific cod, AI sablefish, Bering Sea Pacific ocean perch, AI ''other rockfish.'' The changes recommended by the Council were based on the best scientific information available, consistent with National Standard 2 of the Magnuson-Stevens Act, and within a reasonable range of variation from the proposed TAC recommendations so that the affected public was fairly apprized and could have made meaningful comments.

Table 1 lists the 2005 and 2006 final OFL, ABC, TAC, ITAC and CDQ reserve amounts of groundfish in the BSAI. The apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1.—2005 AND 2006 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI.[1]

[Amounts are in metric tons]

Species	Area	2005					2006				
		OFL	ABC	TAC	ITAC[2]	CDQ[3]	OFL	ABC	TAC	ITAC[2]	CDQ[3]
Pollock[4]	BS[2]	2,100,000	1,960,000	1,478,500	1,330,650	147,850	1,944,000	1,617,000	1,487,756	1,338,980	148,776
	AI[2]	39,100	29,400	19,000	17,100	1,900	39,100	29,400	19,000	17,100	1,900
	Bogoslof	39,600	2,570	10	10	.....	39,600	2,570	10	10	.....
Pacific cod	BSAI	265,000	206,000	206,000	175,100	15,450	226,000	195,000	195,000	165,750	14,625
Sablefish[5]	BS	2,950	2,440	2,440	2,013	336	2,690	2,310	2,310	982	87
	AI	3,170	2,620	2,620	2,129	442	2,880	2,480	2,480	527	47
Atka mackerel	BSAI	147,000	124,000	63,000	53,550	4,725	127,000	107,000	63,000	53,550	4,725
	EAI/BS	.....	24,550	7,500	6,375	563	.....	21,190	7,500	6,375	563
	CAI	.....	52,830	35,500	30,175	2,663	.....	45,580	35,500	30,175	2,663
	WAI	.....	46,620	20,000	17,000	1,500	.....	40,230	20,000	17,000	1,500
Yellowfin sole	BSAI	148,000	124,000	90,686	77,083	6,801	133,000	114,000	90,000	76,500	6,750
Rock sole	BSAI	157,000	132,000	41,500	35,275	3,113	145,000	122,000	42,000	35,700	3,150
Greenland turbot	BSAI	19,200	3,930	3,500	2,975	263	11,100	3,600	3,500	2,975	263
	BS	.....	2,720	2,700	2,295	203	.....	2,500	2,500	2,125	188
	AI	.....	1,210	800	680	60	.....	1,100	1,000	850	75
Arrowtooth flounder	BSAI	132,000	108,000	12,000	10,200	900	103,000	88,400	12,000	10,200	900
Flathead sole	BSAI	70,200	58,500	19,500	16,575	1,463	56,100	48,400	20,000	17,000	1,500
Other flatfish[6]	BSAI	28,500	21,400	3,500	2,975	263	28,500	21,400	3,000	2,550	225
Alaska plaice	BSAI	237,000	189,000	8,000	6,800	600	115,000	109,000	10,000	8,500	750
Pacific ocean perch	BSAI	17,300	14,600	12,600	10,710	945	17,408	14,600	12,600	10,710	945
	BS	.....	2,920	1,400	1,190	105	.....	2,920	1,400	1,190	105
	EAI	.....	3,210	3,080	2,618	231	.....	3,210	3,080	2,618	231
	CAI	.....	3,165	3,035	2,580	228	.....	3,165	3,035	2,580	228
	WAI	.....	5,305	5,085	4,322	381	.....	5,305	5,085	4,322	381
Northern rockfish	BSAI	9,810	8,260	5,000	4,250	375	9,480	8,040	5,000	4,250	375
Shortraker rockfish	BSAI	794	596	596	507	45	794	596	596	507	45
Rougheye rockfish	BSAI	298	223	223	190	17	298	223	223	190	17
Other rockfish[7]	BSAI	1,870	1,400	1,050	893	79	1,870	1,400	1,050	893	79
	BS	.....	810	460	391	35	.....	810	460	391	35
	AI	.....	590	590	502	44	.....	590	590	502	44
Squid	BSAI	2,620	1,970	1,275	1,084	.....	2,620	1,970	1,275	1,084	.....
Other species[8]	BSAI	87,920	53,860	29,000	24,650	2,175	87,920	57,870	29,200	24,820	2,190
Total	.....	3,509,332	3,044,769	2,000,000	1,774,719	186,608	3,093,360	2,547,259	2,000,000	1,772,778	187,350

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock and the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

[3] Except for pollock, squid and the hook-and-line or pot gear allocation of sablefish, one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see §§ 679.20(b)(1)(iii) and 679.31).

[4] Under § 679.20(a)(5)(i)(A)(*1*), the annual Bering Sea pollock TAC after subtraction for the CDQ directed fishing allowance—10 percent and the ICA—3.35 percent, is further allocated by sector for a directed pollock fishery as follows: inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Under regulations that would be effective with the final rule implementing Amendment 82, the annual AI pollock TAC, after first subtracting for the CDQ directed fishing allowance—10 percent and second the ICA—2,000 mt, would be allocated to the Aleut Corporation for a directed pollock fishery.

[5] Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear and 7.5 percent of the sablefish TAC allocated to trawl gear is reserved for use by CDQ participants (see § 679.20(b)(1)(iii)).

[6] "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder and Alaska plaice.

[7] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[8] "Other species" includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

Reserves and the Incidental Catch Allowance (ICA) for Pollock

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for pollock and the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. Regulations at § 679.20(b)(1)(iii) require that one-half of each TAC amount placed in the non-specified reserve (7.5 percent), with the exception of squid, be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Regulations at § 679.20(a)(5)(i)(A) also require that 10 percent of the BSAI pollock TACs be allocated to the pollock CDQ directed fishing allowance. The entire Bogoslof District pollock TAC is allocated as an ICA (see § 679.20(a)(5)(ii)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a PSQ reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Under regulations at § 679.20(a)(5)(i)(A)(*1*), NMFS allocates a pollock ICA of 3.35 percent of the Bering Sea subarea pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance is based on an examination of the incidental catch of pollock, including CDQ vessels, in target fisheries other than pollock from 1998 through 2004. During this 6-year period, the incidental catch of pollock ranged from a low of 2 percent in 2003, to a high of 5 percent in 1999, with a 6-year average of 3 percent. Under regulations that would be effective with the final rule implementing Amendment 82, NMFS is specifying a 2,000 mt ICA for AI subarea pollock after subtraction of the 10 percent CDQ directed fishing allowance. The Aleut Corporation's directed pollock fishing allowance will be closed until regulations implementing Amendment 82 (if approved) become effective.

The regulations do not designate the remainder of the non-specified reserve by species or species group, and any amount of the reserve may be apportioned to a target species or to the ''other species'' category during the year, providing that such apportionments do not result in overfishing, see § 679.20(b)(1)(ii). The Regional Administrator has determined that the ITACs specified for the species listed in Table 2 need to be supplemented from the non-specified reserve because U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocations. Therefore, in accordance with § 679.20(b)(3), NMFS is apportioning the amounts shown in Table 2 from the non-specified reserve to increase the ITAC to an amount that is equal to TAC minus the CDQ reserve.

TABLE 2.—2005 APPORTIONMENT OF RESERVES TO ITAC CATEGORIES

[Amounts are in metric tons]

Species—area or subarea	2005 reserve amount	2005 final ITAC	2006 reserve amount	2006 final ITAC
Atka mackerel—Eastern Aleutian District and Bering Sea subarea	563	6,938	563	6,938
Atka mackerel—Central Aleutian District	2,663	32,838	2,663	32,838
Atka mackerel—Western Aleutian District	1,500	18,500	1,500	18,500
Pacific ocean perch—Eastern Aleutian District	231	2,849	231	2,849
Pacific ocean perch—Central Aleutian District	228	2,808	228	2,808
Pacific ocean perch—Western Aleutian District	381	4,703	381	4,703
Pacific cod—BSAI	15,450	190,550	14,625	180,375
Shortraker rockfish-BSAI	45	552	45	552
Rougheye rockfish-BSAI	17	207	17	207
Northern rockfish-BSAI	375	4,625	375	4,625
Other rockfish—Bering Sea subarea	35	426	35	426
Total	21,488	264,996	20,663	254,821

Allocation of Pollock TAC Under the AFA

Regulations at § 679.20(a)(5)(i)(A), require, after subtracting first the 10 percent for the CDQ program and second the 3.35 percent for the ICA, the Bering Sea subarea pollock to be allocated as a directed fishing allowance (DFA) as follows: 50 percent to the inshore component, 40 percent to the catcher/processor component, and 10 percent to the mothership component. In the Bering Sea subarea, the A season, January 20—June 10, is allocated 40 percent of the DFA and the B season, June 10—November 1, is allocated 60 percent of the DFA. The AI directed pollock fishery allocation to the Aleut Corporation remains after subtracting first the 10 percent for the CDQ DFA and second the 2,000 mt for the ICA. The Aleut Corporation directed pollock fishery is closed to directed fishing until the management provisions for the AI directed pollock fishery become effective under Amendment 82. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery. Table 3 lists these 2005 and 2006 amounts.

The regulations also contain several specific requirements concerning pollock and pollock allocations under § 679.20(a)(5)(i)(A)(*4*). First, 8.5 percent of the pollock allocated to the catcher/processor sector will be available for harvest by AFA catcher vessels with catcher/processor sector endorsements, unless the Regional Administrator receives a cooperative contract that provides for the distribution of harvest between AFA catcher/processors and AFA catcher vessels in a manner agreed to by all members. Second, AFA catcher/processors not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the catcher/processor sector. Table 3 lists the 2005 and 2006 allocations of pollock TAC. Tables 10 through 17 list other provisions of the AFA, including inshore pollock cooperative allocations and listed catcher/processor and catcher vessel harvesting sideboard limits.

Table 3 also lists seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest within the SCA, as defined at

§ 679.22(a)(7)(vii), is limited to 28 percent of the annual directed fishing allowance (DFA) until April 1. The remaining 12 percent of the 40 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If the 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated percentage of the DFA. Table 3 lists by sector these 2005 and 2006 amounts.

TABLE 3.—2005 AND 2006 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2005 Allocations	2005 A season [1]		2005 B season [1] B season DFA	2006 Allocations	2006 A season [1]		2006 B season [1] B season DFA
		A season DFA	SCA harvest limit [2]			A season DFA	SCA harvest limit [2]	
Bering Sea subarea	1,478,500	.....	.....	.....	1,487,756	.....	.....	.....
CDQ DFA	147,850	59,140	41,398	88,710	148,776	59,510	41,657	89,265
ICA [1]	44,577	.....	.....	.....	44,856	.....	.....	.....
AFA Inshore	643,037	257,215	180,050	385,822	647,062	258,825	181,177	388,237
AFA Catcher/Processors [3]	514,429	205,772	144,040	308,658	517,650	207,060	144,942	310,590
Catch by C/Ps	470,703	188,281	.....	282,422	473,650	189,460	.....	284,190
Catch by CVs [3]	43,726	17,491	.....	26,236	44,000	17,600	.....	26,400
Unlisted C/P Limit [4]	2,572	1,029	.....	1,543	2,588	1,035	.....	1,553
AFA Motherships	128,607	51,443	36,010	77,164	129,412	51,765	36,235	77,647
Excessive Harvesting Limit [5]	225,063	.....	.....	.....	226,472	.....	.....	.....
Excessive Processing Limit [6]	385,822	.....	.....	.....	388,237	.....	.....	.....
Total Bering Sea DFA	1,478,500	573,569	401,499	860,354	1,487,756	577,160	404,012	865,740
Aleutian Islands subarea [1]	19,000	.....	.....	.....	19,000	.....	.....	.....
CDQ DFA	1,900	760	.....	1,140	1,900	760	.....	1,140
ICA	2,000	1,200	.....	800	2,000	1,200	.....	800
Aleut Corporation	15,100	9,800	.....	5,300	15,100	9,800	.....	5,300
Bogoslof District ICA [7]	10	.....	.....	.....	10	.....	.....	.....

[1] Under § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock after subtraction for the CDQ DFA—10 percent and the ICA—3.35 percent, the pollock TAC is allocated as a DFA as follows: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. In the Bering Sea subarea, the A season, January 20–June 10, is allocated 40 percent of the DFA and the B season, June 10–November 1 is allocated 60 percent of the DFA. The Aleutian Islands (AI) directed pollock fishery allocation to the Aleut Corporation remains after first subtracting for the CDQ DFA—10 percent and second the ICA—2,000 mt. The Aleut Corporation directed pollock fishery is closed to directed fishing until the management provisions for the AI directed pollock fishery become effective under Amendment 82. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3] Under § 679.20(a)(5)(i)(A)(4), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Under § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Under § 679.20(a)(5)(i)(A)(6) NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

[6] Under § 679.20(a)(5)(i)(A)(7) NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only, and are not apportioned by season or sector.

Allocation of the Atka Mackerel ITAC

Under § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea Atka mackerel ITAC may be allocated to jig gear. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended, and NMFS approved, a 1 percent allocation of the Atka mackerel ITAC in the Eastern Aleutian District and the Bering Sea subarea to the jig gear in 2005 and 2006. Based on an ITAC and a reserve apportionment which together total 6,938 mt, the jig gear allocation is 69 mt.

Regulations at § 679.20(a)(8)(ii)(A) apportion the Atka mackerel ITAC into two equal seasonal allowances. After subtraction of the jig gear allocation, the first seasonal allowance is made available for directed fishing from January 1 (January 20 for trawl gear) to April 15 (A season), and the second seasonal allowance is made available from September 1 to November 1 (B season) (see Table 4).

Under § 679.20(a)(8)(ii)(C)(1), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian Districts. A lottery system is used for the HLA Atka mackerel directed fisheries to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two districts, see § 679.20(a)(8)(iii).

TABLE 4.—2005 AND 2006 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC [1]

[Amounts are in metric tons]

Subarea and component	2005 and 2006 TAC	CDQ reserve	CDQ reserve HLA limit [4]	ITAC	Seasonal allowances [2]			
					A season [3]		B season [3]	
					Total	HLA limit [4]	Total	HLA limit [4]
Western AI District	20,000	1,500	900	18,500	9,250	5,550	9,250	5,550
Central AI District	35,500	2,663	1,598	32,838	16,419	9,851	16,419	9,851
EAI/BS subarea [5]	7,500	563		6,938				
Jig (1%) [6]				69				
Other gear (99%)				6,868	3,434		3,434	
Total	63,000	4,725		58,275	29,103		29,103	

[1] Regulations at §§ 679.20(a)(8)(ii) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.
[2] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.
[3] The A season is January 1 (January 20 for trawl gear) to April 15 and the B season is September 1 to November 1.
[4] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2005 and 2006, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.
[5] Eastern Aleutian District and the Bering Sea subarea.
[6] Regulations at § 679.20 (a)(8)(i) require that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea ITAC be allocated to jig gear. The amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod ITAC

Under § 679.20(a)(7)(i)(A), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. Under regulations at § 679.20(a)(7)(i)(B), the portion of the Pacific cod ITAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processors. Under regulations at § 679.20(a)(7)(i)(C)(*1*), a portion of the Pacific cod ITAC allocated to hook-and-line or pot gear is set aside as an ICA of Pacific cod in directed fisheries for groundfish using these gear types. Based on anticipated incidental catch in these fisheries, the Regional Administrator specifies an ICA of 500 mt. The remainder of Pacific cod ITAC is further allocated to vessels using hook-and-line or pot gear as the following DFAs: 80 percent to hook-and-line catcher/processors, 0.3 percent to hook-and-line catcher vessels, 3.3 percent to pot catcher/processors, 15 percent to pot catcher vessels, and 1.4 percent to catcher vessels under 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear.

Due to concerns about the potential impact of the Pacific cod fishery on Steller sea lions and their critical habitat, the apportionment of the ITAC disperses the Pacific cod fisheries into two seasonal allowances (see §§ 679.20(a)(7)(iii)(A) and 679.23(e)(5)). For pot and most hook-and-line gear, the first seasonal allowance of 60 percent of the ITAC is made available for directed fishing from January 1 to June 10, and the second seasonal allowance of 40 percent of the ITAC is made available from June 10 (September 1 for pot gear) to December 31. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is January 20 to April 1 and is allocated 60 percent of the ITAC. The second season, April 1 to June 10, and the third season, June 10 to November 1, are each allocated 20 percent of the ITAC. The trawl catcher vessel allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processor allocation is allocated 50 percent in the first season, 30 percent in the second season, and 20 percent in the third season. For jig gear, the first season and third seasons are each allocated 40 percent of the ITAC and the second season is allocated 20 percent of the ITAC. Table 5 lists the 2005 and 2006 allocations and seasonal apportionments of the Pacific cod ITAC. In accordance with §§ 679.20(a)(7)(ii)(D) and 679.20(a)(7)(iii)(B), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

TABLE 5.—2005 AND 2006 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD ITAC

[Amounts are in metric tons]

Gear sector	Percent	2005 Share of gear sector total	2005 Subtotal percentages for gear sectors	2005 Share of gear sector total	2005 Seasonal apportionment [1]		2006 Share of gear sector total	2006 Subtotal percentages for gear sectors	2006 Share of gear sector total	2006 Seasonal apportionment [1]	
					Date	Amount				Date	Amount
Total hook-and-line/pot gear.	51	97,181					91,991				
Hook-and-line/pot ICA				500					500		
Hook-and-line/pot subtotal		96,681					91,491				
Hook-and-line C/P			80	77,344	Jan 1–Jun 10	46,407		80	73,193	Jan 1–Jun 10	43,916
					Jun 10–Dec 31	30,938				Jun 10–Dec 31	29,277
Hook-and-line CV			0.3	290	Jan 1–Jun 10	174		0.3	274	Jan 1–Jun	165
					Jun 10–Dec 31	116					110
Pot C/P			3.3	3,190	Jan 1–Jun 10	1,914		3.3	3,019	Jan 1–Jun 10	1,812
					Sept 1–Dec 31	1,276				Sept 1–Dec 31	1,208
Pot CV			15	14,502	Jan 1–Jun 10	8,701		15	13,724	Jan 1–Jun 10	8,234
					Sept 1–Dec 31	5,801				Sept 1–Dec 31	5,489

TABLE 5.—2005 AND 2006 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD ITAC—Continued

[Amounts are in metric tons]

Gear sector	Percent	2005 Share of gear sector total	2005 Subtotoal percentages for gear sectors	2005 Share of gear sector total	2005 Seasonal apportionment [1]		2006 Share of gear sector total	2006 Subtotal percentages for gear sectors	2006 Share of gear sector total	2006 Seasonal apportionment [1]	
					Date	Amount				Date	Amount
CV < 60 feet LOA using Hook-and-line or Pot gear.	.....	.....	1.4	1,354	.....	.....	.....	1.4	1,281	.....	.....
Total Trawl Gear	47	89,559	.....	.....	.....	.....	84,776	.....	.....	.....	.....
Trawl CV	.....	.....	50	44,779	Jan 20–Apr 1	31,345	.....	50	42,388	Jan 20–Apr 1	29,672
					Apr 1–Jun10	4,478	.....	.....	.....	Apr 1–Jun 10	4,239
					Jun 10–Nov 1	8,956	.....	.....	.....	Jun 10–Nov 1	8,478
Trawl CP	.....	.....	50	44,779	Jan 20–Apr 1	22,390	.....	50	42,388	Jan 20–Apr 1	21,194
					Apr 1–Jun 10	13,434	.....	.....	.....	Apr 1–Jun 10	12,716
					Jun 10–Nov 1	8,956	.....	.....	.....	Jun 10–Nov 1	8,478
Jig	2	3,811	.....	.....	Jan 1–Apr 30	1,524	3,608	.....	.....	Jan 1–Apr 30	1,443
	.....	.....	.....	.....	Apr 30–Aug 31	762	.....	.....	.....	Apr 30–Aug 31	722
	.....	.....	.....	.....	Aug 31–Dec 31	1,524	.....	.....	.....	Aug 31–Dec 31	1,443
Total	100	190,550	.....	.....	.....	.....	180,375	.....	.....	.....	.....

[1] For most non-trawl gear the first season is allocated 60 percent of the ITAC and the second season is allocated 40 percent of the ITAC. For jig gear, the first season and third seasons are each allocated 40 percent of the ITAC and the second season is allocated 20 percent of the ITAC. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is allocated 60 percent of the ITAC and the second and third seasons are each allocated 20 percent of the ITAC. The trawl catcher vessels' allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processors' allocation is allocated 50 percent in the first season, 30 percent in the second season and 20 percent in the third season. Any unused portion of a seasonal Pacific cod allowance will be reapportioned to the next seasonal allowance.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4)(iii) and (iv) require that sablefish TACs for the Bering Sea and AI subareas be allocated between trawl and hook-and-line or pot gear. Gear allocations of the TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear and for the AI subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Regulations at § 679.20(b)(1)(iii)(B) require that 20 percent of the hook-and-line and pot gear allocation of sablefish be apportioned to the CDQ reserve. Additionally, regulations at § 679.20(b)(1)(iii)(A) require that 7.5 percent of the trawl gear allocation of sablefish (one half of the reserve) be apportioned to the CDQ reserve.

The Council recommended that specifications for the hook-and-line gear and pot gear sablefish individual fishing quota (IFQ) fisheries continue to be limited to one year to ensure that those fisheries are conducted concurrent with the halibut IFQ fishery and are based on the most recent survey information (69 FR 44634, July 27, 2004). Having the sablefish IFQ fisheries concurrent with the halibut IFQ fishery will reduce the potential for discards of halibut and sablefish in these fisheries. Because of the high value of this fishery, the Council recommended the setting of TAC be based on the most recent survey information. Under the current IFQ fishery season start date, sablefish stock assessments based on the most recent survey are available before the beginning of the fishery to allow for rulemaking each year. The sablefish IFQ fisheries remain closed at the beginning of each fishing year, until the final specifications for the sablefish IFQ fisheries are in effect. The trawl sablefish fishery will be managed using specifications for up to a two-year period, similar to GOA pollock, Pacific cod and the ''other species'' category. Table 6 specifies the 2005 and 2006 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 6.—2005 AND 2006 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

Subarea and gear	Percent of TAC	2005 Share of TAC	2005 ITAC [1]	2005 CDQ reserve	2006 Share of TAC	2006 ITAC	2006 CDQ reserve
Bering Sea:							
Trawl [2]	50	1,220	1,037	92	1,155	982	87
Hook-and-line/pot gear [3]	50	1,220	976	244	.....	.....	.....
Total	100	2,440	2,013	336	2,310	982	87
Aleutian Islands:							
Trawl [2]	25	655	557	49	620	527	47
Hook-and-line/pot gear [3]	75	1,965	1,572	393	.....	.....	.....
Total	100	2,620	2,129	442	2,480	527	47

[1] Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the CDQ program.

[3] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. The Council recommended that specifications for the hook-and-line gear sablefish IFQ fisheries be limited to 1 year.

Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring

PSC limits for halibut are set forth in regulations at § 679.21(e). For the BSAI trawl fisheries, the limit is 3,675 mt of halibut mortality and for non-trawl fisheries, the limit is 900 mt of halibut mortality. Regulations at § 679.21(e)(1)(vii) specify a 2005 and 2006 chinook salmon PSC limit for the pollock fishery to be 29,000 fish. Regulations at § 679.21(e)(1)(i) allocate 7.5 percent, or 2,175 chinook salmon, as the PSQ for the CDQ program and the remaining 26,825 chinook salmon to the non-CDQ fisheries. Amendment 82 and its implementing rule would establish an AI chinook salmon limit of 700 fish. Regulations at 679.21(e)(1)(i) would allocate 7.5 percent, or 53 chinook salmon, as an AI PSQ for the CDQ program and the remaining 647 chinook salmon to the non-CDQ fisheries. Regulations at § 679.21(e)(1)(viii) specify a 2005 and 2006 non-chinook salmon PSC limit of 42,000 fish. Regulations at § 679.21(e)(1)(i) allocate 7.5 percent or 3,150 non-chinook salmon as the PSQ for the CDQ program and the remaining 38,850 non-chinook salmon to the non-CDQ fisheries. PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

The red king crab mature female abundance is estimated from the 2004 survey data to be 35.4 million king crab and the effective spawning biomass is estimated to be 61.9 million pounds (27,500 mt). Based on the criteria set out at § 679.21(e)(1)(ii), the 2005 and 2006 PSC limit of red king crab in Zone 1 for trawl gear is 197,000 animals as a result of the mature female abundance being above 8.4 million king crab and the effective spawning biomass estimate being greater than 55 million pounds (24,948 mt).

Regulations at § 679.21(e)(3)(ii)(B) establish criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS to up to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/''other flatfish'' fishery category and are based on the need to optimize the groundfish harvest relative to red king crab bycatch. The Council recommended, and NMFS approves, a red king crab bycatch limit equal to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/''other flatfish'' fishery category within the RKCSS.

Based on 2004 survey data, the *Chionoecetes bairdi* crab abundance is estimated to be 437.41 million animals. Given the criteria set out at § 679.21(e)(1)(iii), the 2005 and 2006 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2 as a result of the *C. bairdi* crab abundance estimate of over 400 million animals.

Under § 679.21(e)(1)(iv), the PSC limit for *C. opilio* crab is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2004 survey estimate of 4.421 billion animals, the calculated limit is 5,008,993 animals. Under § 679.21(e)(1)(iv)(B), the 2005 and 2006 *C. opilio* crab PSC limit will be 5,008,993 animals minus 150,000 animals which results a limit of 4,858,993 animals.

Under § 679.21(e)(1)(vi), the PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 2005 and 2006 herring biomass is 201,180 mt. This amount was derived using 2004 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the 2005 and 2006 herring PSC limit is 2,012 mt.

Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for halibut and crab is allocated as a PSQ reserve for use by the groundfish CDQ program. Regulations at § 679.21(e)(3) require the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories. Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the non-trawl halibut PSC limit into PSC bycatch allowances among five fishery categories. Table 7 lists the fishery bycatch allowances for the trawl and non-trawl fisheries.

Regulations at § 679.21(e)(4)(ii) authorize exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS, after consultation with the Council, is exempting pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because these fisheries use selective gear types that take few halibut compared to other gear types such as non-pelagic trawl. In 2004, total groundfish catch for the pot gear fishery in the BSAI was approximately 18,719 mt with an associated halibut bycatch mortality of about 4 mt. The 2004 groundfish jig gear fishery harvested about 216 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and thus are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

As in past years, the Council recommended the sablefish IFQ fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of 50 CFR part 679). The sablefish IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or his or her hired master is aboard and is holding unused halibut IFQ. NMFS is approving the Council's recommendation. This provision results in reduced halibut discard in the sablefish fishery. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. The estimates for 1996 through 2004 have not been calculated; however, NMFS has no information indicating that it would be significantly different.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are: (1) Seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species, (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass, (4) expected variations in bycatch rates throughout the year, (5) expected start of fishing effort, and (6) economic effects of seasonal PSC apportionments on industry sectors. In December 2004, the Council's AP recommended seasonal PSC apportionments in order to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based upon the above criteria.

The Council recommended, and NMFS approves, the PSC apportionments specified in Table 7.

TABLE 7.—2005 AND 2006 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

Trawl fisheries	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1 [1]	*C. opilio* (animals) COBLZ [1]	*C. bairdi* (animals)	
					Zone 1 [1]	Zone 2 [1]
Yellowfin sole	886	183	33,843	3,101,915	340,844	1,788,459
January 20–April 1	262					
April 1–May 21	195					
May 21–July 5	49					
July 5–December 31	380					
Rock sole/other flat/flathead sole [2]	779	27	121,413	1,082,528	365,320	596,154
January 20–April 1	448					
April 1–July 5	164					
July 5–December 31	167					
Turbot/arrowtooth/sablefish [3]		12		44,946		
Rockfish: July 5–December 31	69	10		44,945		10,988
Pacific cod	1,434	27	26,563	139,331	183,112	324,176
Midwater trawl pollock		1,562				
Pollock/Atka mackerel/other [4]	232	192	406	80,903	17,224	27,473
Red King Crab Savings Subarea [6]						
(non-pelagic trawl)			42,495			
Total trawl PSC	3,400	2,012	182,225	4,494,569	906,500	2,747,250
Non-trawl Fisheries						
Pacific cod–Total	775					
January 1–June 10	320					
June 10–August 15	0					
August 15–December 31	455					
Other non-trawl–Total	58					
May 1–December 31	58					
Groundfish pot and jig	exempt					
Sablefish hook-and-line	exempt					
Total non-trawl PSC	833					
PSC reserve [5]	342		14,775	364,424	73,500	222,750
PSC grand total	4,575	2,012	197,000	4,858,993	980,000	2,970,000

[1] Refer to § 679.2 for definitions of areas.
[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole and arrowtooth flounder.
[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[4] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.
[5] With the exception of herring, 7.5 percent of each PSC limit is allocated to the CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.
[6] In December 2004, the Council recommended that Red King Crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/"other flatfish" fishery category (see § 679.21(e)(3)(ii)(B)).

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator will use observed halibut bycatch rates, assumed discard mortality rates (DMR), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information contained in the annual SAFE report.

The Council recommended, and NMFS concurs, that the recommended halibut DMR developed by the staff of the International Pacific Halibut Commission (IPHC) for the 2005 and 2006 BSAI groundfish fisheries be used to monitor halibut bycatch allowances established for the 2005 and 2006 groundfish fisheries (see Table 8). These DMRs were developed by the IPHC using the 10-year mean DMRs for the BSAI non-CDQ groundfish fisheries. Plots of annual DMRs against the 10-year mean indicated little change since 1990 for most fisheries. DMRs were more variable for the smaller fisheries which typically take minor amounts of halibut bycatch. The IPHC will analyze observer data annually and recommend changes to the DMR where a fishery DMR shows large variation from the mean. The IPHC has been calculating the CDQ fisheries DMR since 1998 and a 10-year mean is not available. The Council recommended and NMFS concurs with the DMR recommended by the IPHC for 2005 and 2006 CDQ fisheries. The justification for these DMRs is discussed in Appendix A of the final SAFE report dated November 2004.

TABLE 8.—2005 AND 2006 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI FISHERIES

Fishery	Preseason assumed mortality (percent)
Hook-and-line gear fisheries:	
Greenland turbot	15
Other species	11
Pacific cod	11
Rockfish	16
Trawl gear fisheries:	
Atka mackerel	78
Flathead sole	67
Greenland turbot	72
Non-pelagic pollock	76
Pelagic pollock	85
Other flatfish	71
Other species	67
Pacific cod	68
Rockfish	74
Rock sole	77
Sablefish	49
Yellowfin sole	78
Pot gear fisheries:	
Other species	8
Pacific cod	8
CDQ trawl fisheries:	
Atka mackerel	85
Flathead sole	67
Non-pelagic pollock	85
Pelagic pollock	90
Rockfish	74
Yellowfin sole	84
CDQ hook-and-line fisheries:	
Greenland turbot	15
Pacific cod	10
CDQ pot fisheries:	
Pacific cod	8
Sablefish	33

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Regional Administrator determines that any allocation or apportionment of a target species or ''other species'' category has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (see § 697.20(d)(1)(iii)). Similarly, under regulations at § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, *C. bairdi* crab or *C. opilio* crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

The Regional Administrator has determined that the remaining allocation amounts in Table 9 will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2005 and 2006 fishing year:

TABLE 9.—2005 AND 2006 DIRECTED FISHING CLOSURES [1]

[Amounts are in metric tons]

Area	Species	2005 Incidental catch allowance	2006 Incidental catch allowance
Bogoslof District	Pollock	10	10
Aleutian Islands subarea	Non-CDQ Pollock	2,000	2,000
	''Other rockfish''	502	502
Bering Sea subarea	Pacific ocean perch	1,190	1,190
	''Other rockfish''	426	426
Bering Sea and Aleutian Islands	Northern rockfish	4,625	4,625
	Shortraker rockfish	552	552
	Rougheye rockfish	207	207
	''Other species''	24,650	24,820
	CDQ Northern rockfish	375	375
	CDQ Shortraker rockfish	45	45

TABLE 9.—2005 AND 2006 DIRECTED FISHING CLOSURES [1]—Continued

[Amounts are in metric tons]

Area	Species	2005 Incidental catch allowance	2006 Incidental catch allowance
	CDQ Rougheye rockfish	17	17
	CDQ "Other species"	2,175	2,190

[1] Maximum retainable amounts may be found in Table 11 to CFR part 679.

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the above species or species groups as zero.

Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for these species in the specified areas and these closures are effective immediately through 2400 hrs, A.l.t., December 31, 2006.

In addition, the BSAI Zone 1 annual red king crab allowance specified for the trawl rockfish fishery (see § 679.21(e)(3)(iv)(D)) is 0 mt and the BSAI first seasonal halibut bycatch allowance specified for the trawl rockfish fishery is 0 mt. The BSAI annual halibut bycatch allowance specified for the trawl Greenland turbot/arrowtooth flounder/sablefish fishery categories is 0 mt (see § 679.21(e)(3)(iv)(C)). Therefore, in accordance with § 679.21(e)(7)(ii) and (v), NMFS is prohibiting directed fishing for rockfish by vessels using trawl gear in Zone 1 of the BSAI and directed fishing for Greenland turbot/arrowtooth flounder/sablefish by vessels using trawl gear in the BSAI effective immediately through 2400 hrs, A.l.t., December 31, 2006. NMFS is also prohibiting directed fishing for rockfish outside Zone 1 in the BSAI through 1200 hrs, A.l.t., July 5, 2005.

Under authority of the 2005 interim harvest specifications (69 FR 76870, December 23, 2004), NMFS prohibited directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI effective 1200 hrs, A.l.t., January 20, 2005, through 1200 hrs, A.l.t., September 1, 2005 (70 FR 3311, January 24, 2005). NMFS opened the first directed fisheries in the HLA in area 542 and area 543 effective 1200 hrs, A.l.t., January 22, 2005. The first HLA fishery in area 542 remained open through 1200 hrs, A.l.t., February 5, 2005 and in area 543 remained open through 1200 hrs, A.l.t., January 29, 2005. The second directed fisheries in the HLA in area 542 and area 543 opened effective 1200 hrs, A.l.t., February 7, 2005. The second HLA fishery in area 542 remained open through 1200 hrs, A.l.t., February 21, 2005 and in area 543 remained open through 1200 hrs, A.l.t., February 14, 2005. NMFS prohibited directed fishing for Pacific cod by catcher vessels 60 feet (18.3 meters) length overall and longer using pot gear in the BSAI, effective 12 noon, A.l.t., February 13, 2005 (70 FR 7900, February 16, 2005). NMFS prohibited directed fishing for Atka mackerel in the Central Aleutian District of the BSAI, effective 12 noon, A.l.t., February 17, 2005.

These closures remain effective under authority of these 2005 and 2006 final harvest specifications. These closures supersede the closures announced under the authority of the 2005 interim harvest specifications (69 FR 76870, December 23, 2005). While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR 679.

Bering Sea Subarea Inshore Pollock Allocations

Section 679.4(l) sets forth procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. Table 10 lists the 2005 and 2006 Bering Sea subarea pollock allocations to the seven inshore catcher vessel pollock cooperatives based on 2005 cooperative allocations that have been approved and permitted by NMFS for the 2005 fishing year. The Bering Sea subarea allocations may be revised pending adjustments to cooperatives' membership in 2006. Allocations for cooperatives and open access vessels are not made for the AI subarea because the CAA requires the non-CDQ directed pollock fishery in the AI subarea to be fully allocated to the Aleut Corporation.

TABLE 10.—2005 AND 2006 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

[Amounts are in metric tons]

Cooperative name and member vessels	Sum of member vessel's official catch histories [1]	Percentage of inshore sector allocation	2005 Annual cooperative allocation	2006 Annual cooperative allocation
Akutan Catcher Vessel Association ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA, DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MARK I, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM, PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER	245,922	28.130	180,886	182,018
Arctic Enterprise Association BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER	36,807	4.210	27,073	27,242

TABLE 10.—2005 AND 2006 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS—Continued

[Amounts are in metric tons]

Cooperative name and member vessels	Sum of member vessel's official catch histories [1]	Percentage of inshore sector allocation	2005 Annual cooperative allocation	2006 Annual cooperative allocation
Northern Victor Fleet Cooperative ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL	73,656	8.425	54,177	54,516
Peter Pan Fleet Cooperative AJ, AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PACIFIC CHALLENGER, PROVIDIAN, TOPAZ, WALTER N	23,850	2.728	17,542	17,652
Unalaska Cooperative ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN	106,737	12.209	78,510	79,001
UniSea Fleet Cooperative ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, MAR-GUN, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE, STARWARD	213,521	24.424	157,054	158,037
Westward Fleet Cooperative ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC KNIGHT, PACIFIC PRINCE, VIKING, WESTWARD I	173,744	19.874	127,795	128,595
Open access AFA vessels	0	0.00	0	0
Total inshore allocation	874,238	100	643,037	647,062

[1] According to regulations at § 679.62(e)(1), the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

In accordance with section 679.20(a)(5)(i)(A)(*3*), NMFS must further divide the inshore sector allocation into separate allocations for cooperative and open access fishing. In addition, according to section 679.22(a)(7)(vii), NMFS must establish harvest limits inside the SCA and provide a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA until April 1. Accordingly, Table 11 lists the Bering Sea subarea pollock allocation to the inshore cooperative and open access sectors and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 11.

TABLE 11.—2005 AND 2006 BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY

[Amounts are in metric tons]

Sector	2005 A season TAC	2005 A season SCA harvest limit [1]	2005 B season TAC	2006 A season TAC	2006 A season SCA harvest limit [1]	2006 B season TAC
Inshore cooperative sector:						
Vessels > 99 ft	n/a	154,632	n/a	n/a	155,600	n/a
Vessels ≤ 99 ft	n/a	25,418	n/a	n/a	25,577	n/a
Total	257,215	180,050	385,822	258,825	181,177	388,237
Open access sector	0	0 [2]	0	0	0 [2]	0
Total inshore sector	257,215	180,050	385,822	258,825	181,177	388,237

[1] The Steller sea lion conservation area (SCA) is established at § 679.22(a)(7)(vii).

[2] The SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(7)(vii)(C)(*2*) which specifies that "the Regional Administrator will prohibit directed fishing for pollock by vessels greater than 99 ft (30.2 m) LOA, catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit before April 1 to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA until April 1."

Listed AFA Catcher/Processor Sideboard Limits

According to section 679.64(a), the Regional Administrator will restrict the ability of listed AFA catcher/processors to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). Table 12 lists the 2005 and 2006 catcher/processor sideboard limits.

All groundfish other than pollock that are harvested by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from

the sideboard limits in Table 12. However, groundfish other than pollock that are delivered to listed catcher/processors by catcher vessels will not be deducted from the 2005 and 2006 sideboard limits for the listed catcher/processors.

TABLE 12.—2005 AND 2006 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS

[Amounts are in metric tons]

Target species	Area	1995–1997			2005 ITAC available to trawl C/Ps	2005 C/P sideboard limit	2006 ITAC available to trawl C/Ps	2006 C/P sideboard ard limit
		Retained catch	Total catch	Ratio of retained catch to total catch				
Pacific cod trawl	BSAI	12,424	48,177	0.258	44,779	11,553	42,388	10,936
Sablefish trawl	BS	8	497	0.016	1,037	17	982	16
	AI	0	145	0.000	557	0	527	0
Atka mackerel	Central AI							
	A season [1]	n/a	n/a	0.115	16,419	1,888	16,419	1,888
	HLA limit [2]				9,851	1,133	9,851	1,133
	B season [1]	n/a	n/a	0.115	16,419	1,888	16,419	1,888
	HLA limit [2]				9,851	1,133	9,851	1,133
	Western AI							
	A season [1]	n/a	n/a	0.200	9,250	1,850	9,250	1,850
	HLA limit [2]				5,550	1,110	5,550	1,110
	B season [1]	n/a	n/a	0.200	9,250	1,850	9,250	1,850
	HLA limit [2]				5,550	1,110	5,550	1,110
Yellowfin sole	BSAI	100,192	435,788	0.230	77,083	17,729	76,500	17,595
Rock sole	BSAI	6,317	169,362	0.037	35,275	1,305	34,700	1,284
Greenland turbot	BS	121	17,305	0.007	2,295	16	2,125	15
	AI	23	4,987	0.005	680	3	850	4
Arrowtooth flounder	BSAI	76	33,987	0.002	10,200	20	10,200	20
Flathead sole	BSAI	1,925	52,755	0.036	16,575	597	17,000	612
Alaska plaice	BSAI	14	9,438	0.001	6,800	7	8,500	9
Other flatfish	BSAI	3,058	52,298	0.058	2,550	148	2,550	148
Pacific ocean perch	BS	12	4,879	0.002	1,190	2	1,190	2
	Eastern AI	125	6,179	0.020	2,849	57	2,849	57
	Central AI	3	5,698	0.001	2,808	3	2,808	3
	Western AI	54	13,598	0.004	4,703	19	4,703	19
Northern rockfish	BSAI	91	13,040	0.007	4,625	32	4,625	32
Shortraker rockfish	BSAI	50	2,811	0.018	552	10	552	10
Rougheye rockfish	BSAI	50	2,811	0.018	207	4	207	4
Other rockfish	BS	18	621	0.029	426	12	426	12
	AI	22	806	0.027	502	14	502	14
Squid	BSAI	73	3,328	0.022	1,084	24	1,084	24
Other species	BSAI	553	68,672	0.008	24,650	197	24,820	199

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual ITAC specified for the Western Aleutian District, and 11.5 percent of the annual ITAC specified for the Central Aleutian District.

[2] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2005 and 2006, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

Section 679.64(a)(5) establishes a formula for PSC sideboard limits for listed AFA catcher/processors. These amounts are equivalent to the percentage of the PSC amounts taken in the groundfish fisheries other than pollock by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995 through 1997 (see Table 13). These amounts were used to calculate the relative amount of PSC that was caught by pollock catcher/processors shown in Table 13. That relative amount of PSC was then used to determine the PSC sideboard limits for listed AFA catcher/processors in the 2005 and 2006 groundfish fisheries other than pollock.

PSC that is caught by listed AFA catcher/processors participating in any groundfish fishery other than pollock listed in Table 13 would accrue against the 2005 and 2006 PSC sideboard limits for the listed AFA catcher/processors. Section 679.21(e)(3)(v) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA catcher/processors once a 2005 or 2006 PSC sideboard limit listed in Table 13 is reached.

Crab or halibut PSC that is caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 13.—2005 AND 2006 BSAI AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS [1]

PSC species	1995—1997			2005 and 2006 PSC available to trawl vessels	2005 and 2006 C/P sideboard limit
	PSC catch	Total PSC	Ratio of PSC catch to total PSC		
Halibut mortality	955	11,325	0.084	3,400	286
Red king crab	3,098	473,750	0.007	182,225	1,276

TABLE 13.—2005 AND 2006 BSAI AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS [1]—Continued

PSC species	1995—1997			2005 and 2006 PSC available to trawl vessels	2005 and 2006 C/P sideboard limit
	PSC catch	Total PSC	Ratio of PSC catch to total PSC		
C. opilio [2]	2,323,731	15,139,178	0.153	4,494,569	687,669
C. bairdi:					
Zone 1 [2]	385,978	2,750,000	0.140	906,500	126,910
Zone 2 [2]	406,860	8,100,000	0.050	2,747,250	137,363

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[2] Refer to § 679.2 for definitions of areas.

AFA Catcher Vessel Sideboard Limits

Under section 679.64(a), the Regional Administrator restricts the ability of AFA catcher vessels to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Section 679.64(b) establishes a formula for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). Tables 14 and 15 list the 2005 and 2006 AFA catcher vessel sideboard limits.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the sideboard limits listed in Table 14.

TABLE 14.—2005 AND 2006 BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD LIMITS

[Amounts are in metric tons]

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2005 ITAC	2005 Catcher vessel sideboard limits	2006 ITAC	2006 Catcher vessel sideboard limits
Pacific cod	BSAI					
	Jig gear	0.0000	3,811	0	3,608	0
	Hook-and-line CV					
	Jan 1–Jun10	0.0006	173	0	165	0
	Jun 10–Dec 31	0.0006	116	0	110	0
	Pot gear CV					
	Jan 1–Jun 10	0.0006	8,701	5	8,234	5
	Sept 1–Dec 31	0.0006	5,801	3	5,489	3
	CV < 60 feet LOA using hook-and-line or pot gear.	0.0006	1,354	1	1,281	1
	Trawl gear CV					
	Jan 20–Apr 1	0.8609	31,345	26,985	29,672	25,545
	Apr 1–Jun 10	0.8609	4,478	3,449	4,239	3,265
	Jun 10–Nov 1	0.8609	8,956	6,899	8,478	6,531
Sablefish	BS trawl gear	0.0906	1,037	94	982	89
	AI trawl gear	0.0645	557	36	537	35
Atka mackerel	Eastern AI/BS					
	Jig gear	0.0031	69	0	69	0
	Other gear					
	Jan 1–Apr 15	0.0032	3,156	10	3,156	10
	Sept 1–Nov 1	0.0032	3,156	10	3,156	10
	Central AI					
	Jan–Apr 15	0.0001	16,419	2	16,419	2
	HLA limit	0.0001	9,851	1	9,851	1
	Sept 1–Nov 1	0.0001	16,419	2	16,419	2
	HLA limit	0.0001	9,851	1	9,851	1
	Western AI					
	Jan–Apr 15	0.0000	9,250	0	9,250	0
	HLA limit		5,550	0	5,550	0
	Sept 1–Nov 1	0.0000	9,250	0	9,250	0
	HLA limit		5,550	0	5,550	0
Yellowfin sole	BSAI	0.0647	77,083	4,987	76,500	4,950
Rock sole	BSAI	0.0341	35,275	1,203	35,700	1,217
Greenland Turbot	BS	0.0645	2,295	148	2,125	137
	AI	0.0205	680	14	850	17
Arrowtooth flounder	BSAI	0.0690	10,200	704	10,200	704
Alaska plaice	BSAI	0.0441	6,800	300	8,500	375
Other flatfish	BSAI	0.0441	2,975	131	2,550	112

TABLE 14.—2005 AND 2006 BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD LIMITS—Continued

[Amounts are in metric tons]

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2005 ITAC	2005 Catcher vessel sideboard limits	2006 ITAC	2006 Catcher vessel sideboard limits
Pacific ocean perch	BS	0.1000	1,190	119	1,190	119
	Eastern AI	0.0077	2,849	22	2,849	22
	Central AI	0.0025	2,808	7	2,808	7
	Western AI	0.0000	4,703	0	4,703	0
Northern rockfish	BSAI	0.0084	4,625	39	4,625	39
Shortraker rockfish	BSAI	0.0037	552	2	552	2
Rougheye rockfish	BSAI	0.0037	207	1	207	1
Other rockfish	BS	0.0048	426	2	426	2
	AI	0.0095	502	5	502	5
Squid	BSAI	0.3827	1,084	415	1,084	415
Other species	BSAI	0.0541	24,650	1,334	24,820	1,343
Flathead Sole	BS trawl gear	0.0505	16,575	837	17,100	864

The AFA catcher vessel PSC limit for halibut and each crab species in the BSAI, for which a trawl bycatch limit has been established, will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997, relative to the retained catch of all vessels in that fishery from 1995 through 1997. Table 15 lists the 2005 and 2006 PSC sideboard limits for AFA catcher vessels.

Halibut and crab PSC that are caught by AFA catcher vessels participating in any groundfish fishery for groundfish other than pollock listed in Table 15 will accrue against the 2005 and 2006 PSC sideboard limits for the AFA catcher vessels. Sections 679.21(d)(8) and (e)(3)(v) provide authority to close directed fishing for groundfish other than pollock for AFA catcher vessels once a 2005 or 2006 PSC sideboard limit listed in Table 15 for the BSAI is reached. The PSC that is caught by AFA catcher vessels, while fishing for pollock in the BSAI, will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 15.—2005 AND 2006 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]

[Amounts are in metric tons]

PSC species	Target fishery category [2]	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2005 and 2006 PSC limit	2005 and 2006 AFA catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	0.6183	1,434	887
	Pacific cod hook-and-line or pot	0.0022	775	2
	Yellowfin sole	.....	.....	.....
	January 20–April 1	0.1144	262	30
	April 1–May 21	0.1144	195	22
	May 21–July 5	0.1144	49	6
	July 5–December 31	0.1144	380	43
	Rock sole/flathead sole/other flatfish [5]	.....	.....	.....
	January 20–April 1	0.2841	448	127
	April 1–July 5	0.2841	164	47
	July 5–December 31	0.2841	167	47
	Turbot/Arrowtooth/Sablefish	0.2327	0	0
	Rockfish (July 1–December 31)	0.0245	69	2
	Pollock/Atka mackerel/other species	0.0227	232	5
Red King Crab	Pacific cod	0.6183	26,563	16,424
Zone 1 [3,4]	Yellowfin sole	0.1144	33,843	3,872
	Rock sole/flathead sole/other flatfish [5]	0.2841	121,413	34,493
	Pollock/Atka mackerel/other species	0.0227	406	9
C. opilio	Pacific cod	0.6183	139,331	86,148
COBLZ [3]	Yellowfin sole	0.1144	3,101,915	354,859
	Rock sole/flathead sole/other flatfish [5]	0.2841	1,082,528	307,546
	Pollock/Atka mackerel/other species	0.0227	80,903	1,836
	Rockfish	0.0245	44,945	1,101
	Turbot/Arrowtooth/Sablefish	0.2327	44,946	10,459
C. bairdi	Pacific cod	0.6183	183,112	113,218
Zone 1 [3]	Yellowfin sole	0.1144	340,844	38,993
	Rock sole/flathead sole/other flatfish [5]	0.2841	365,320	103,787

TABLE 15.—2005 AND 2006 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]—Continued

[Amounts are in metric tons]

PSC species	Target fishery category [2]	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2005 and 2006 PSC limit	2005 and 2006 AFA catcher vessel PSC sideboard limit
	Pollock/Atka mackerel/other species	0.0227	17,224	391
C. bairdi	Pacific cod	0.6183	324,176	200,438
Zone 2 [3]	Yellowfin sole	0.1144	1,788,459	204,600
	Rock sole/flathead sole/other flatfish [5]	0.2841	596,154	169,367
	Pollock/Atka mackerel/other species	0.0227	27,473	624
	Rockfish	0.0245	10,988	269

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] Refer to § 679.2 for definitions of areas.
[4] In December 2004, the Council recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/"other flatfish" fishery category (see § 679.21(e)(3)(ii)(B)).
[5] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

Sideboard Directed Fishing Closures

AFA Catcher/Processor and Catcher Vessel Sideboard Closures

The Regional Administrator has determined that many of the AFA catcher/processor and catcher vessel sideboard limits listed in Tables 16 and 17 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2005 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the sideboard limits listed in Tables 16 and 17 as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by listed AFA catcher/processors for the species in the specified areas set out in Table 16 and directed fishing by non-exempt AFA catcher vessels for the species in the specified areas set out in Table 17.

TABLE 16.—2005 AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES [1]

[Amounts are in metric tons]

Species	Area	Gear types	2005 Sideboard limit	2006 Sideboard limit
Sablefish trawl	BS	Trawl	17	16
	AI	Trawl	0	0
Rock sole	BSAI	all	1,305	1,284
Greenland turbot	BS	all	16	15
	AI	all	3	4
Arrowtooth flounder	BSAI	all	20	20
Pacific ocean perch	BS	all	2	2
	Eastern AI	all	57	57
	Central AI	all	3	3
	Western AI	all	19	19
Northern rockfish	BSAI	all	32	32
Shortraker rockfish	BSAI	all	10	10
Rougheye rockfish	BSAI	all	4	4
Other rockfish	BS	all	12	12
	AI	all	14	14
Squid	BSAI	all	24	24
"Other species"	BSAI	all	197	199

[1] Maximum retainable amounts may be found in Table 11 to CFR part 679.

TABLE 17.—2005 AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES [1]

[Amounts are in metric tons]

Species	Area	Gear types	2005 Sideboard limit	2006 Sideboard limit
Pacific cod	BSAI	hook-and-line	0	0
	BSAI	pot	9	9
	BSAI	jig	0	0
Sablefish	BS	trawl	94	89

TABLE 17.—2005 AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES [1]—Continued

[Amounts are in metric tons]

Species	Area	Gear types	2005 Sideboard limit	2006 Sideboard limit
	AI	trawl	36	35
Atka mackerel	Eastern AI/BS	jig	0	0
	Eastern AI/BS	other	20	20
	Central AI	all	4	4
	Western AI	all	0	0
Greenland Turbot	BS	all	148	137
	AI	all	14	17
Arrowtooth flounder	BSAI	all	704	704
Pacific ocean perch	BS	all	119	119
	Eastern AI	all	22	22
	Central AI	all	7	7
	Western AI	all	0	0
Northern rockfish	BSAI	all	39	39
Shortraker rockfish	BSAI	all	2	2
Rougheye rockfish	BSAI	all	1	1
Other rockfish	BS	all	2	5
	AI	all	5	5
Squid	BSAI	all	415	415
"Other species"	BSAI	all	1,334	1,343

[1] Maximum retainable amounts may be found in Table 11 to CFR part 679.

Response to Comments

NMFS received 3 letters of comment in response to the proposed 2005 and 2006 harvest specifications. These letters contained 17 separate comments that are summarized and responded to below.

Comment 1: The Council has yet to take any action on the review of the ''Scientific Review of the Harvest Strategy Currently Used in the BSAI and GOA Groundfish Fishery Management Plans.'' The Council's current approach to setting catch rates results in rates that are too high for rockfish.

Response: The report referred to in the comment is:

Goodman, Daniel, Marc Mangel, Graeme Parkes, Terry Quinn, Victor Restrepo, Tony Smith, Kevin Stokes. 2002. ''Scientific Review of the Harvest Strategy Currently Used in the BSAI and GOA Groundfish Fishery Management Plans.'' Prepared for the North Pacific Fishery Management Council. November 21, 2002.

Evaluation of fishery management strategies has been an ongoing research activity of the NMFS, Alaska Fisheries Science Center (AFSC) for years. Most recently, the Programmatic Supplemental Environmental Impact Statement (PSEIS) for the BSAI and GOA Groundfish FMPs devoted thousands of pages to evaluate both current and alternative fishery management strategies. A working group (WG) has been established to ensure the fisheries are managed based on the best available science, and tasked with continuing and expanding the AFSC's research in the area of management strategy evaluation (MSE). MSE research is ongoing and the WG is expected to make significant advancements in this area over the next few years. The GOA SAFE report (page 387) evaluated the harvest strategy used in the rockfish assessments with particular attention given to the consideration of the harvest rates for rockfish because of their ''low productivity'' (Goodman *et al.* 2002). The evaluation indicated that the harvest strategy is sufficiently conservative. The stock assessments are updated annually and adjustments will be made if new data indicates a downturn in the fishery populations. Also, the rockfish section of the SSC's minutes from the December 2004 Council meeting states, ''The SSC appreciates the attention given by the SAFE authors and the Plan Teams to the recommendations that the SSC made last year regarding the ''F40 report'' by Goodman *et al.*, the contributions to stock productivity of older female rockfish, local depletion, and the effects of disaggregation of the ABCs.'' At the February 2005 Council meeting, a discussion paper on rockfish management will be presented by Council staff. Also, the Council includes ecosystem research information in an ecosystem considerations appendix to the SAFE reports.

Comment 2: The EA fails to provide the public with a full and fair analysis of the consequence of implementing the FMPs; and there is no FMP level environmental impact statement (EIS) that evaluates the effects of authorizing fishing pursuant to the FMPs.

Response: Pursuant to NEPA, NMFS prepared an EA for this action. The EA comprehensively analyzes the potential impacts of the 2005 and 2006 harvest specifications and provides the evidence to decide whether an agency must prepare an EIS. The analysis in the EA supports a finding of no significant impact on the human environment as a result of the 2005 and 2006 final harvest specifications. Therefore, an EIS is not required.

Comment 3: The commentor is concerned about the serious limitations and disappointed about the insufficient action taken regarding the Improved Retention/Improved Utilization (IR/IU) program.

Response: This action does not address IR/IU. In 1998, Groundfish FMP Amendments 49/49 were implemented, requiring 100 percent retention of all pollock and Pacific cod in all fisheries, regardless of gear type. This provided incentives for fishermen to avoid catching these species if they were not targeted, and also required that they be retained for processing if they were caught. An overall minimum groundfish retention standard was approved by the Council in June 2003, with increasing retention standards being phased in starting in 2005. NMFS is preparing a proposed rule based on the Council recommendations. Concurrently, the Council is developing a program that allows sectors targeting flatfish species in the BSAI to form fishery

cooperatives. This program is intended to provide these sectors with the operational tools necessary to adhere to the increased retention standards.

Comment 4: The Council and NMFS have taken no action to ensure that adverse impacts on essential fish habitat (EFH) will not occur during the EIS process and that the choice of reasonable alternatives will not be limited.

Response: NMFS prepared a draft EIS for EFH dated January 2004, which included a broad range of alternatives for minimizing the effects of fishing on EFH. Further information on the draft EIS may be found at the NMFS Alaska Region Web site at *www.fakr.noaa.gov*. NMFS is revising the EIS to include two additional alternatives based on public comments. The final EFH EIS is scheduled for publication by June 1, 2005. Fishing in accordance with this action in the context of the fishery as a whole could have led to adverse impacts on EFH. Therefore, NMFS prepared an EFH Assessment that incorporates all of the information required in 50 CFR 600.920(e)(3), and initiated EFH consultation pursuant to 50 CFR 600.920(i). The EFH Assessment is contained in the EA prepared for this action. The consultation found that this action continues to minimize to the extent practicable adverse effects on EFH.

Comment 5: Fishing, as allowed under the current specifications, is overfishing and starves all other marine life of food.

Response: None of the groundfish species managed in Alaska are known to be experiencing overfishing or are overfished as defined by the Magnuson-Stevens Act. Ecosystem considerations are part of the harvest specification process to ensure fish harvests impacts on the ecosystem are minimized as much as possible and that all organisms dependent on the marine ecosystem are adequately protected.

Comment 6: All quotas should be cut by 50 percent starting in 2005 and 10 percent each year thereafter. Also, marine sanctuaries should be established.

Response: The commentor provided no reason for the quotas to be reduced. The decisions on the amount of harvest are based on the best available science and socioeconomic considerations. NMFS finds that the ABCs and TACs are consistent with the biological condition of the groundfish stocks as described in the 2004 SAFE report and approved by the Council. Additionally, this action does not address the creation of marine sanctuaries. The concept of establishing marine reserves is explored in the draft environmental impact statement (EIS) for essential fish habitat (EFH), dated January 2004. Further information on the draft EIS may be found at the NMFS Alaska Region Web site at *www.fakr.noaa.gov.*

Comment 7: A commentor incorporated the Pew Foundation reports on overfishing and the United Nations report on overfishing into their comment.

Response: The specific concerns and relationship of these reports to this action are not presented by the commentor. Because no further details are provided by the commentor, NMFS is unable to respond further to this comment.

Comment 8: The number of vessels that are allowed to catch fish are far to great.

Response: On January 1, 2000, the NMFS implemented the License Limitation Program (LLP), which limits the number, size, and specific operation of vessels that may be deployed in the groundfish fisheries in the exclusive economic zone off Alaska. By limiting the number of vessels that are eligible to participate in the affected fisheries, the LLP places an upper limit on the amount of capitalization that may occur in those fisheries. This upper limit will prevent future overcapitalization in those fisheries at levels that could occur if such a constraint was not present. The number of vessels participating in the groundfish fisheries off Alaska has decreased approximately 16 percent from 1,228 vessels in 2000 to 1,037 vessels in 2003.

Comment 9: Steller sea lions and other seal populations are being decimated by the commercial fisheries.

Response: Several species of groundfish, notably pollock, Pacific cod, and Atka mackerel, are important prey species for Steller sea lions and are also targeted by the groundfish fisheries. The pollock, Pacific cod, and Atka mackerel fisheries may compete with Steller sea lions by reducing the availability of prey for foraging sea lions. However, this potential competition between commercial fishers and Steller sea lions for pollock, Pacific cod, and Atka mackerel is addressed by regulations that limit the total amount of catch and impose temporal and spatial controls on harvest. These Steller sea lion protection measures are designed to preserve prey abundance and availability for foraging sea lions. These protection measures ensure the groundfish fisheries are unlikely to cause jeopardy of extinction or adverse modification or destruction of critical habitat for the Western distinct population segment of Steller sea lions.

Comment 10: NMFS does not use the ''best'' information. It uses manipulated information submitted by commercial fisheries. NMFS does zero law enforcement to catch illegal raping of the sea.

Response: NMFS used data from sources other than the fishing industry reported data. NMFS uses data from fisheries observers who are biologists working independently to collect biological information aboard commercial fishing vessels and at shoreside processing plants in Alaska. Observers are deployed by private, federally permitted observer providers. The NMFS, AFSC, Resource Assessment and Conservation Engineering Division conducts fishery surveys to measure the distribution and abundance of commercially important fish stocks in the BSAI and GOA. This data is used to investigate biological processes and interactions with the environment to estimate growth, mortality, and recruitment to improve the precision and accuracy of forecasting stock dynamics. Data derived from groundfish surveys are documented in scientific reports and are incorporated into stock assessment advice to the Council, international fishery management organizations, the fishing industry, and the general public. See comment 12 regarding NMFS fishery enforcement.

Comment 11: The time period for the public to comment on this proposed rule should be extended by 120 days.

Response: The commentor provided no reason for the comment period extension request. Because no justification is known for extending the comment period, the comment period remains 30 days for the proposed rule.

Comment 12: The fisherman are taking 3 times what they report.

Response: NMFS disagrees with the commentor's assertion that groundfish fishers systematically under-report their catch. The recordkeeping and reporting requirements in these fisheries are comprehensive, and NMFS and United States Coast Guard law enforcement officers conduct numerous vessel boardings each year. Reporting violations do occur, but they are relatively rare compared to the participation in the overall fishery and are prosecuted pursuant to the Magnuson-Stevens Act.

Comment 13: A commentor provided an article regarding the United Nations recommendations for banning of high seas bottom trawling.

Response: The commentor did not provide the relationship of this action to the article. This action is limited to the EEZ off Alaska and does not address high seas commercial fishing activities.

However, NMFS does work on issues concerning high seas commercial fishing activities. One example is the limitation of high seas drift net fishing for salmon in the north Pacific. As a result of this international treaty the United States is empowered to prohibit United States vessels from participating in this activity and enforce the terms of the treaty on the high seas. Also, NMFS, AFSC is conducting studies on the impacts of bottom trawls on the sea floor and the description of bottom types.

Comment 14: It is unclear why there is a slight difference between the 2005 and 2006 A/B season apportionments of the Aleut Corporation fishery.

Response: The values for 2005 and 2006 Aleut Corporation fisheries should be 9,800 mt for the A season and 5,300 mt for the B season. There was an error in the proposed specifications and it has been corrected in the final specifications based on the December Council recommendations.

Comment 15: The decrease in the AI pollock ABC from the proposed amount of 39,400 mt to the final amount of 29,400 mt will change the amount of the Aleut Corporation's A season fishery from 13,800 mt under the proposed harvest specifications to 9,800 mt under the final specifications. This should not affect the CDQ or ICA amounts, or the A season apportionments of the CDQ and ICA.

Response: The Aleut Corporations's A season allocation of pollock decreases from 13,800 mt under the proposed specifications to 9,800 mt under the final specifications. The CDQ and ICA amounts are the same as under the proposed and final specifications.

Comment 16: The commentor agrees that is it appropriate to maintain the 40/60 seasonal apportionment of the CDQ allocation.

Response: The CDQ pollock allocation in the AI will continue to be conducted with the same seasonal apportionments as currently specified for the AI and BS subareas and CDQ components under § 679.20(a)(5)(i)(B).

Comment 17: The ICA does not need to be set at 2,000 mt in the initial specifications.

Response: NMFS emphasizes that this is the first year of new management for AI pollock. In 2003, the total catch of AI pollock was 1,653 mt. NMFS is establishing an ICA of 2,000 mt to ensure enough pollock is available to support bycatch needs in other groundfish fisheries and to minimize the potential of disrupting the AI directed pollock fishery.

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary management measures are to announce 2005 final harvest specifications and prohibited species bycatch allowances for the groundfish fishery of the BSAI. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2005 and 2006 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. This action affects all fishermen who participate in the BSAI fishery. The specific amounts of OFL, ABC, TAC and PSC amounts are provided in tabular form to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Classification

This action is authorized under § 679.20 and is exempt from review under Executive Order 12866.

A Final Regulatory Flexibility Analysis (FRFA) was prepared to evaluate the impacts of the 2005 and 2006 harvest level specifications on directly regulated small entities. This FRFA is intended to meet the statutory requirements of the Regulatory Flexibility Act (RFA).

The proposed rule for the BSAI specifications was published in the **Federal Register** on December 8, 2004 (69 FR 70974). A correction was published on December 22, 2004 (69 FR 76682). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. Copies of the IRFA prepared for this action are available from Alaska, Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall. The public comment period ended on January 7, 2005. No comments were received on the IRFA or regarding the economic impacts of this rule.

The 2005 and 2006 harvest specifications establish harvest limits for the groundfish species and species groups in the BSAI. This action is necessary to allow fishing in 2005 and 2006. About 758 small catcher vessels, 24 small catcher-processors, and six small private non-profit CDQ groups may be directly regulated by the BSAI specifications.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities. This regulation does not duplicate, overlap, or conflict with any other Federal rules.

The FRFA examined the impacts of the preferred alternative on small entities within fisheries defined by the harvest of species groups whose TACs might be affected by the specifications. The FRFA identified the following adverse impacts of the preferred alternative on small fishing operations harvesting sablefish and Pacific cod in the BSAI and on CDQ groups operating in the BSAI.

The aggregate gross revenues for an estimated 53 small BSAI sablefish entities were estimated to decline by about $1.6 million. A reduction in revenues of this magnitude would have accounted for about 2.7 percent of total 2003 gross revenues from all sources for these small entities.

The aggregated gross revenues for an estimated 120 small BSAI Pacific cod entities were estimated to decline by about $1.7 million. A reduction in revenues of this magnitude would have accounted for about 1.3% of total 2003 gross revenues from all sources for these small entities.

The aggregate gross revenues for six small BSAI CDQ group entities were estimated to decline by about $1.2 million between 2004 and 2006. This is less than 1 percent of the gross revenues for these allocations in 2004.

Although the preferred alternative had adverse impacts on some classes of small entities, compared to the fishery in the preceding year, alternatives that had smaller adverse impacts were precluded by biological management concerns. Four alternatives were evaluated, in addition to the preferred alternative. Alternative 1 set TACs equal to the ${}_{max}F_{ABC}$ fishing rate. Alternative 1 was associated with high TACs, high revenues, and TACs that exceeded the statutory BSAI OY. Alternative 2, the preferred alternative, set TACs to produce the fishing rates recommended by the Council on the basis of Plan Team and SSC recommendations. Alternative 3 set TACs to produce fishing rates equal to half the ${}_{max}F_{ABC}$, and Alternative 4 set TACs to produce fishing rates equal to the last five years' average fishing rate. Alternative 5 set TACs equal to zero.

The BSAI Pacific cod fishermen and CDQ groups would have had larger gross revenues under Alternative 1 than under the preferred alternative. The BSAI sablefish fishermen would not have had larger gross revenues under

any alternative. While Pacific cod fishermen and CDQ groups would have had higher gross revenues under Alternative 1, total BSAI TACs would have been greater than the two million mt BSAI OY required by law. An increase in the TAC for Pacific cod would have had to come at the expense of TACs provided to other operations. Moreover, and most importantly, both the Pacific cod and sablefish TACs set under the preferred alternative were set equal to the ABCs recommended by the Council's BSAI Plan Team and its SSC. Higher TACs would not be consistent with prudent biological management of the fishery; therefore, Alternative 2 was chosen instead of Alternative 1 because it sets TACs as high as possible while still protecting the biological health of the stock. Alternative 2 was chosen instead of Alternatives 3, 4, or 5 because it provided these groups larger gross revenues than Alternatives 3, 4, or 5.

Under the provisions of 5 U.S.C. 553(b)(B), an agency can waive the requirement for prior notice and opportunity for public comment if for good cause it finds that such notice and comment is impracticable, unnecessary, or contrary to public interest. Certain fisheries, such as those for Pacific cod, Atka mackerel, and Pacific ocean perch, are intensive fast-paced fisheries. Other fisheries, such as those for flatfish and rockfish, are critical as directed fisheries and as incidental catch in other fisheries. U.S. fishing vessels have demonstrated the capacity to catch full TAC allocations in all these fisheries. Any delay in allocating full TAC in these fisheries would cause disruption to the industry and potential economic harm through unnecessary discards. These final harvest specifications which contain this TAC allocation were developed as quickly as possible, given Plan Team review in November 2004, Council consideration and recommendations in December 2004, and NOAA Fisheries review and development in January–February 2005. For the foregoing reasons and pursuant to 50 CFR 679.20(b)(3) and 5 U.S.C. 553(b)(B), NMFS finds good cause to waive the requirement for prior notice and opportunity for public comment for the apportionment of a portion of the non-specified reserve to fisheries that it has determined appropriate (see Table 2) to increase the ITAC to an amount that is equal to TAC minus the CDQ reserve in order to allow for the orderly conduct and efficient operation of these fisheries because such notice and comment is impracticable and contrary to the public interest.

Under the provisions of 5 U.S.C. 553(d)(1), an agency can waive a delay in the effective date of a substantive rule if it relieves a restriction. Unless this delay is waived, fisheries that are currently closed (see **SUPPLEMENTARY INFORMATION**) because the interim TACs were reached would remain closed until the final harvest specifications became effective. Those closed fisheries are restrictions on the industry that can be relieved by making the final harvest specifications effective on publication.

Under the provisions of 5 U.S.C. 553(d)(3), an agency can waive a delay in the effective date for good cause found and published with the rule. For all other fisheries not currently closed because the interim TACs were reached, the likely possibility exists for their closures prior to the expiration of a 30-day delayed effectiveness period because their interim TACs or PSC allowances could be reached. Determining which fisheries may close is impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing-up fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries and causing them to close at an accelerated pace. The interim harvest specifications currently in effect are not sufficient to allow directed fisheries to continue predictably, resulting in unnecessary closures and disruption within the fishing industry and the potential for regulatory discards. The final harvest specifications establish increased TACs and PSC allowances to provide continued directed fishing for species that would otherwise be prohibited under the interim harvest specifications. These final harvest specifications were developed as quickly as possible, given Plan Team review in November 2004, Council consideration and recommendations in December 2004, and NOAA fisheries review and development in January–February 2005. Additionally, if the final harvest specifications are not effective by February 27, 2005, which is the start of the Pacific halibut season as specified by the IPHC, the longline sablefish fishery will not begin concurrently with the Pacific halibut season. This would cause sablefish that is caught with Pacific halibut to be discarded, as both longline sablefish and Pacific halibut are managed under the same IFQ program.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub L. 106–31, Sec. 3027; Pub L. 106–554, Sec. 209 and Pub. L. 108–199, Sec. 803.

Dated: February 17, 2005.

Rebecca Lent,

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

[FR Doc. 05–3582 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 70, No. 36
Thursday, February 24, 2005

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 991

[Docket No. AO–F&V–991–A3; FV03–991–01]

Hops Produced in Washington, Oregon, Idaho and California; Proposed Marketing Agreement and Order No. 991; Opportunity To File Additional Argument

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; opportunity to file additional argument on representative period for proposed marketing agreement and order.

SUMMARY: This notice provides the opportunity to file additional argument relating to the establishment of an appropriate representative base period for the allocation of initial base under a proposed marketing agreement and order concerning hops grown in Washington, Oregon, Idaho and California. The proposal to establish a hop marketing order was submitted by the Hop Marketing Order Proponent Committee (committee), a group of industry members who support a marketing order for hops. A public hearing on the proposal was held in October 2003, where USDA heard testimony and received evidence from industry participants. This invitation for additional argument is intended to assist USDA in its further consideration of the proposal before rendering a recommended decision.

DATES: Written arguments must be filed by March 28, 2005.

ADDRESSES: Four copies of all written arguments should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776, or you may send your comments by the electronic process available at the Federal eRulemaking portal at *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW. Third Avenue, Suite 385, Portland, Oregon 97204; Telephone (503) 326–2724 or Fax (503) 326–7440; or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on July 23, 2003, and published in the July 28, 2003, issue of the **Federal Register** (68 FR 44244); Notice of postponement of public hearing on proposed marketing agreement and order issued on August 8, 2003, and published in the August 14, 2003, issue of the **Federal Register** (68 FR 48575); Notice of rescheduling of public hearing on proposed marketing agreement and order issued on September 3, 2003, and published in the September 8, 2003, issue of the **Federal Register** (68 FR 52860).

This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

A public hearing on the proposed marketing agreement and order for hops produced in Washington, Oregon, Idaho, and California was held October 15 through 17, 2003, in Portland, Oregon and October 20 through 24, 2003, in Yakima, Washington.

The proposed marketing order would authorize volume control measures in the form of producer allotments to regulate the marketing of alpha acid in hops in the production area. Alpha acid is the bittering agent used in brewing beer that is the primary marketable component of hops. Under producer allotment programs, the means for allocating the annual salable quantity is to establish an allotment base for each producer. This base is established in terms of prior production during a representative period.

At the hearing, the Proponents recommended a representative base period of the marketing years 1997, 1998, 1999, 2000, 2001, and 2002. Individual allotment base would be based on each hop producer's single highest alpha acid production year during the 6-year period. Each producer's annual alpha acid production during the representative period would be calculated based on the producer's hop production volume for each variety and the alpha acid percentage for each variety grown.

The hearing record also contained testimony supporting a representative base period using more recent years. Base allotments would be calculated using the six marketing years immediately preceding any eventual implementation of a marketing order as the representative base period.

This opportunity allows interested persons to provide additional argument on two alternative representative base periods: (1) 1997 through 2002; and (2) the six most recent crop years preceding the implementation of any order. A thirty-day period is provided to allow interested persons to respond. USDA then will consider these arguments before issuing a recommended decision on the proposal.

(Authority: 7 U.S.C. 601–674)

Dated: February 16, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–3481 Filed 2–23–05; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AB95

General Administrative Regulations, Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Administrative Regulations (7 CFR part 400, subpart V—Submission of Policies, Provisions of Policies, and Rates of Premium), to include provisions regarding the necessary revisions to the Plan of Operations and administration of the premium reduction plans authorized under section 508(e)(3) of the Federal Crop Insurance Act (Act).

DATES: Written comments and opinions on this proposed rule will be accepted until close of business April 25, 2005, and will be considered when the rule is to be made final. Comments on the information collection requirements must be received on or before April 25, 2005.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Reinsurance Services Division, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, Ag Stop 0805, Washington, DC 20250. Comments titled ''Premium Reduction Plan'' may be sent via the Internet to *RMA.PRP@rma.usda.gov*, or the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments. Faxed comments may be faxed to (202) 690–2095, Attn: PRP Rule comments. If you are planning on submitting by mail, please be advised to submit your comments not later than 30 days after the date of publication of the rule to be assured of consideration when the rule is made final. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: For further information, contact Lee Ziegler, Economist, Reinsurance Services Division, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, Room 6739–S, Washington, DC 20250; telephone number (202) 720–0191, e-mail address: *lee.ziegler@rma.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Independent Review

The Risk Management Agency (RMA) provided five independent reviewers with a copy of the Federal Crop Insurance Act (Act), the current procedures, the Board of Directors' Memorandum, the submissions received from the approved insurance providers and a series of questions regarding the premium reduction plans, including: (1) An estimation of the effects of producer use of insurance as a risk management tool; (2) the impact on the delivery system such as agents, claims adjustment, approved insurance providers, and service; (3) the impact on small, minority and limited resource farmers; (4) whether phase-in should be required; (5) cost allocation for complex plans; (6) the affect of the use of affiliated entities; and (7) the impact on agent compensation plans.

In summary, the reviewers stated that implementation of a premium reduction plan could result in a modest increase in participation in the crop insurance program, although increases in coverage levels are more likely. Depending on how the premium reduction plans are structured, there could be significant changes in the delivery system through possible consolidation among agents or approved insurance providers, fewer part-time agents, and an increase in highly knowledgeable agents. The impact on small producers, limited resource farmers, women and minority producers is expected to be small. In proportion to the complexity of the premium reduction plans, verification of costs could have a significant impact on the workloads of the approved insurance providers and RMA and accounting guidelines may have to be developed that would increase the workload.

Complete copies of the reports of the independent reviewers is available to the public on RMA's Web site at *http://www.rma.usda.gov*. However, confidential business information has been redacted from such reports.

Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection and record keeping requirements included in this rule have been submitted for approval to OMB. Please submit written comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this rule.

Comments are being solicited from the public concerning this proposed information collection and record keeping requirements. This outside input will help:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission responses).

Title: General Administrative Regulation; Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans.

Abstract: FCIC proposes to amend the General Administrative Regulations (7 CFR part 400, subpart V—Submission of Policies, Provisions of Policies, and Rates of Premium), to include provisions regarding the necessary procedures that are applicable to revised Plans of Operations submitted by approved insurance providers for the purpose of obtaining approval of premium reduction plans as authorized under section 508(e)(3) of the Act.

Purpose: To amend 7 CFR part 400 by revising subpart V, to include specific information that must be submitted by approved insurance providers for the purpose of obtaining approval of premium reduction plans. This rule will have a separate paperwork package submitted to OMB to ensure that all the burden hours are accounted for.

Burden statement: This rule is necessary to ensure that RMA receives complete revised Plans of Operations from approved insurance providers for the purpose of obtaining approval of premium reduction plans.

The burden associated with this rule, with the exception of reading the rule, is in the modification to the Plans of Operations. FCIC estimates that annually 15 people (excluding Federal employees) will spend 2 hours reading this document for a total of 30 hours (15 × 2 = 30). FCIC estimates people in 6 positions (financial manager, accountant, computer programmer, underwriter, manager, and office assistant) will respond for a total of 90 respondents (6 positions × 15 submissions = 90). FCIC estimates 180 annual responses (15 × 12 = 180) due to 15 approved insurance providers submitting revised Plans of Operations complying with twelve requirements. To determine approximate annual burden hours, FCIC estimates 15 entities will prepare a revised Plan of Operations and will spend the following amount of time for each of the twelve requirements: (a) Identifying the approved insurance provider, naming the person who may be contacted for further information regarding the revised Plan of Operations, and naming the person who will be responsible for administration of the premium reduction plan—1.25 hours (15 approved insurance providers × 5 minutes = 1.25 hours); (b) preparing a detailed description of any and all terms and conditions that affect its availability—15 hours (15 approved insurance providers × 1 hour = 15); (c) preparing a detailed statement as to the amount of the premium reduction that is proposed to be offered to each eligible producer, how it will be calculated, and how it will be reported to RMA—60 hours (15 approved insurance providers × 4 hours = 60); (d) preparing a detailed proposal of how the approved insurance provider intends to deliver the premium reduction plan to producers—60 hours (15 approved insurance providers × 60 hours = 60); (e) preparing a detailed marketing plan focused solely on how the premium reduction will be promoted to small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR, 457.8, women and minority producers—30 hours (15 approved insurance providers × 2 hours = 30); (f) preparing a detailed statement explaining how the approved insurance provider proposes to revise its procedures for the delivery, operation or administration of the Federal crop insurance program in order to achieve the specified efficiency and how the premium reduction will correspond to the efficiency—45 hours (15 approved insurance providers × 3 hours = 45); (g) revision of applicable expense exhibits required by the Standard Reinsurance Agreement, or the applicable regulations if required by RMA, that are revised to reflect the implementation of the premium reduction plan and any documentation necessary to support the revisions—240 hours (15 approved insurance providers × 16 hours = 240); (h) A statement, based on the applicable expense exhibits, that summarizes the A&O costs before implementation of the efficiency, the cost savings associated with the efficiency, the administrative and operating (A&O) costs after implementation of the efficiency, the expected A&O subsidy and the projected total dollar amount of premium reduction to be provided to producers—30 hours (15 approved insurance providers × 2 hours = 30); (i) a financial reserve plan—60 hours (15 approved insurance providers × 4 hours = 60); (j) preparing a detailed description of all profit sharing arrangements paid by the approved insurance provider—45 hours (15 approved insurance providers × 3 hours = 45); (k) certification by approved insurance providers of the reasonableness, accuracy, and completeness of all cost projections relating to the efficiencies and the total dollar in premium reduction for the reinsurance year the premium reduction plan will be offered = 30 hours (15 approved insurance providers × 2 hours = 30); (l) certification that a copy of its marketing strategy under subsection (d) has been provided to the State Department of Insurance for all states where the premium reduction plan will be offered for its review to determine whether the licensing of agents and the conduct of agents in the solicitation and sale of insurance under the proposed premium reduction plan is in accordance with applicable state insurance laws—15 hours (15 approved insurance providers × 1 hour = 15).

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 42 hours per response.

Respondents: Approved insurance providers who wish to revise their Plans of Operations for the purpose of obtaining approval of a premium reduction plan.

Estimated Annual Number of Respondents: 90.

Estimated Annual Number of Responses Per Respondent: 2.

Estimated Annual Number of Responses: 180.

Estimated Total Annual Burden of Respondents: The total public burden for this rule is estimated at 7,560 hours. Record keeping requirements: FCIC requires records to be kept for three years, and all records required by FCIC are retained as part of the normal business practice. Therefore, FCIC is not estimating additional burden related to record keeping.

Government Paperwork Elimination Act (GPEA) Compliance

In its efforts to comply with GPEA, FCIC requires all approved insurance providers delivering the crop insurance program to make all insurance documents available electronically and to permit producers to transact business electronically. Further, to the maximum extent practicable, FCIC transacts its business with approved insurance providers electronically.

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132

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

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action does not increase the burden on any entity because it merely clarifies the process to submit premium reduction plans of insurance to the FCIC Board of Directors for approval. The current requirements of the Standard Reinsurance Agreement and procedures for premium reduction plans approved by the Board contain provisions to ensure that small entities have access to policies and plans of

insurance, including premium reduction plans. The requirement to apply for a premium reduction plan is the same for small entities as it is for large entities. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith, unless otherwise specified in the rule. The appeals procedures at 7 CFR 400.169 and 7 CFR part 24 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

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

Background

Under the Act, authority over the Federal crop insurance program is provided to FCIC, which is managed by the Board. However, section 226A of the Department of Agriculture Reorganization Act of 1994, gave the RMA supervision of FCIC and the administration and oversight over the programs authorized under the Act. The Board delegated certain functions to the Manager of FCIC, which are carried out through RMA. The Board also retained certain authorities or requires briefing by the Manager to the Board prior to the Manager taking certain actions. For the purposes of the background information, FCIC and RMA are collectively referred to as ''RMA.''

In October 1994, Congress amended the Act to add section 508(e)(3), which states: ''If an approved insurance provider determines that the provider may provide insurance more efficiently than the expense reimbursement amount established by the Corporation [FCIC], the approved insurance provider may reduce, subject to the approval of the Corporation [FCIC], the premium charged the insured by an amount corresponding to the efficiency. The approved insurance provider shall apply to the Corporation [FCIC] for authority to reduce the premium before making such a reduction, and the reduction shall be subject to the rules, limitations, and procedures established by the Corporation [FCIC].''

This means that an approved insurance provider can apply to RMA for authority to reduce premiums payable by producers if the approved insurance provider is able to provide insurance more efficiently than the administrative and operating expense reimbursement paid by RMA. RMA administers such reimbursements under a cooperative financial assistance agreement between FCIC and the approved insurance providers known as the Standard Reinsurance Agreement (SRA). The SRA contains various requirements, limitations and procedures that approved insurance providers must follow to sell and service Federal crop insurance to producers in accordance with Federal law and regulations and to qualify for Federal reinsurance, premium subsidy, and administrative and operating expense reimbursement under the Act.

Since section 508(e)(3) involves administrative and operating expense reimbursement, a term contained in the SRA, RMA had a choice. The implementation of this provision could have been accomplished by simply incorporating it into the SRA, like any other term and condition of RMA reinsurance, or RMA could implement this provision through an amendment to the regulations governing the Federal crop insurance program contained in 7 CFR part 400. Initially, RMA determined to implement the provision through the SRA. Effective for the 1997 reinsurance year, the SRA was amended to add a section III.I., which stated, ''In the event the Company determines that it can deliver multiple peril crop insurance policies more efficiently than the amount of premium subsidy attributed to the administrative and operating expenses paid under this section, it may apply to FCIC for authority to reduce the amount of premium charges to the policyholder by an amount commensurate with the amount of the efficiency.'' Effective for the 1998 reinsurance year, the SRA language was changed slightly to read, ''In the event the Company determines that it can deliver eligible crop insurance contracts for less than the A&O subsidy paid under this section, it may apply to FCIC for approval to reduce the amount of producer premium charged to policyholders by an amount corresponding to the value of the efficiency.''

In 1999, the Federal crop insurance program was facing numerous issues regarding rebating, patronage refunds, and insured-owned and record-controlling entities. It became clear that some parties, in addition to approved insurance providers, may be directly affected and concerned about these issues. Therefore, RMA decided to solicit comments and address these concerns through a rulemaking process. Because of the similarity of premium reduction plans to rebates, which at the time were prohibited, RMA decided to clarify the situation by including some rules and limitations on premium reduction plans in this rulemaking activity. The proposed rule was published in May 1999.

During the rulemaking process, the Agricultural Risk Protection Act of 2000 (ARPA) was enacted. Section 103 of ARPA amended section 508(b)(5) of the Act and authorized cooperatives and trade associations to pay the catastrophic risk protection fee on behalf of their members in states where rebating was permitted and in contiguous states. Section 508(b)(5) of the Act also authorized cooperatives and trade associations who received funds from an approved insurance provider to pay a portion of the premium for their members if permitted by state law. The provisions contained in section 103 of ARPA were significantly different than what was proposed by RMA in its May 1999 proposed rule. RMA determined that the provisions regarding rebating and patronage refunds in the proposed rule were no longer applicable.

RMA determined the issues that remained from the proposed rule after enactment of section 103 of ARPA should be handled administratively. With respect to the issue of premium reduction plans, RMA elected to continue to handle the issue through the SRA as it had done in the past, since the SRA requires approved insurance providers to comply with the procedures and directives of RMA. RMA determined it could issue procedures under the SRA if necessary.

In July 2002, a revised Plan of Operation for a premium reduction plan

for the 2003 crop year was received by the Board from an approved insurance provider under section 508(h) of the Act. The approved insurance provider claimed the authority for the submission came from section 523(d) of the Act. Section 523(d) of the Act applies when approved insurance providers believe the risk premium charged to producers is too high and that the premium can still be actuarially sound if less total premium is charged. It was not until the revised Plan of Operations was reviewed by the Board that it was discovered the approved insurance provider was seeking to reduce the producer paid portion of the premium because the approved insurance provider claimed it could deliver the crop insurance program for less money than received for the administrative and operating expense reimbursement. This meant it would be more appropriate to consider the revised Plan of Operations under section 508(e)(3) of the Act than section 523(d) of the Act.

After reviewing this approved insurance provider's revised Plan of Operations for premium reduction plan, the Board determined that procedures were necessary to address certain issues raised by the revised Plan of Operations that had not previously been raised regarding premium reduction plans, including the issue of an approved insurance provider that was new to the crop insurance program and, therefore, lacked a track record to assess the extent of any proposed efficiencies. In December 2002, the Board provided guidance and conditions for the development of such approval procedures to the Manager of FCIC in Board Memorandum No. 694, Docket No. CI–PDP–02–1 (Board Memorandum). Under such guidance, premium reduction plans are required to be offered initially in a limited number of states and expanded over time as the capacity and ability of the approved insurance provider to deliver the plan is determined. Further, the Manager is required to report the performance of any premium reduction plan to the Board at each meeting.

For the 2003 crop year, the approved insurance provider's proposed premium reduction plan reduced producer paid premium by an amount equal to 3.5 percent of net book premium for all Federally reinsured plans of insurance for corn, grain sorghum, soybeans, sugar beets, and wheat in Iowa, Illinois, Nebraska, Kansas, Minnesota, Indiana, and North Dakota. The premium reduction was based on administrative efficiencies attained by the approved insurance provider through sales of the premium reduction plan over the Internet, through their operational and distribution systems, and certain reductions in agent commissions. RMA evaluated the approved insurance provider's proposed premium reduction plan, determined that it met the conditions imposed by the Board and approved the plan in January 2003, effective for the 2003 crop year.

Part of the Board's guidance required that the conditions of approval contained in the Board Memorandum must apply to all subsequent approved insurance providers. Consistent with the Board Memorandum, RMA established procedures that were reviewed by the Board and transmitted to the approved insurance providers through Manager's Bulletin MGR–03–008.

Some of the substantive provisions included in the procedures and Board Memorandum were the requirement that there not be a reduction in service to policyholders; assurance that the premium reduction plan is not unfairly discriminatory; requiring detailed information regarding any efficiency, its previous costs and the costs to be incurred after application of the efficiency; ensuring that a premium reduction plan will not place an excessive operational or financial hardship on the approved insurance provider; requiring descriptions and examples of how any premium reduction will be calculated and presented to the policyholder; requiring the determination of the number of producers affected and the projected total amount of any reduction; and requiring that any efficiency be subject to verification by RMA.

In addition, the procedures included accounting for startup costs for newly approved insurance providers; ensuring the use of licensed agents; requiring greater detail in the expense documentation, including certification from a certified public accountant regarding the reasonableness, accuracy and completeness of the accounting statements; comprehensive reviews by the approved insurance provider of the potential impact of the premium reduction plan and any steps to be taken to address potential vulnerabilities; and requiring semi-annual reports by the approved insurance provider to assist RMA in monitoring the program.

The approved insurance provider's premium reduction plan was reviewed at the end of the 2003 crop year to determine whether it met stated efficiencies. RMA's analysis found that it was less than one percent short of meeting its stated efficiencies on a dollar basis. The revised Plan of Operations contained a contingency plan to allow for a further reduction of costs to ensure it attained the efficiencies claimed. The contingency was applied and RMA determined that the approved insurance provider was in compliance with the procedures, the Board's conditions, and section 508(e)(3) of the Act.

For the 2004 crop year, the approved insurance provider sought expansion of its premium reduction plan. RMA evaluated its revised Plan of Operations for the 2004 crop year under the procedures and reviewed the revised Plan of Operations with the Board. To address potential concerns regarding the possibility of unfair discrimination, the Board required the approved insurance provider make the premium reduction plan available to producers of all crops in the states it was approved to offer the premium reduction plan, not just selected crops. The Board viewed the expansion to several more states as particularly important to test the premium discount plan in states with varying crop insurance performance.

Once the approved insurance provider agreed to this condition, its previously approved premium reduction plan was amended and approved to include all crops in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Texas, and Wisconsin. The approved insurance provider was recently approved to again offer a premium reduction plan for 2005 under the same terms and conditions as the 2004 premium reduction plan but expanded the number of states where it was offered.

The approved insurance provider's premium reduction plan is simple. As currently approved, the same efficiencies applied to all states the approved insurance provider does business and there is only one level of premium reduction applicable to all such states. This made verification of expense reductions associated with the efficiency straightforward because all costs associated with the sale and service of Federal crop insurance policies were considered and compared with the amount the approved insurance provider claimed was needed to deliver the program (*e.g.* 24.5 percent [2004 A&O] − 3.5 percent = 21.0 percent of the net book premium for all policies). Further, it would be easy to determine if practices were unfairly discriminatory because the approved insurance provider was required to offer the discount to all producers who wanted it. It was also easy to determine whether the reduction in premium from the efficiencies corresponded to the states from which they were derived since the same efficiencies and same

reductions applied to all states in which the approved insurance provider wrote business.

Over the last few months, RMA has received additional revised Plans of Operations for premium reduction plans for the 2005 crop year from other approved insurance providers. The revised Plans of Operations received are diverse: some offering a premium reduction for select plans of insurance, in select states; some at different premium reduction rates; some under new and complex organizational structures; and, finally, some at the discretion of the approved insurance provider or agent.

These diverse plans raised issues or problems that had not been previously considered by RMA when it developed its procedures. Requests to offer a premium reduction plan for only select plans of insurance, in select states or at differing premium reduction rates raised issues regarding the requirement in the Act that the efficiencies correspond to the amount of the premium reduction. Corresponding means that the dollar amount of savings from the efficiencies implemented in a state must correspond to the amount of premium reduction in that state. Further, it means that if the premium reduction is only available for select plans of insurance, the efficiencies must come from those plans of insurance. It also means that when the amount of premium reduction differs among states, the dollar amount of efficiency in each state must be sufficient to cover the premium reduction in that state. Savings realized from one state could not be used to finance a premium reduction in another state without violating the corresponding requirement in the Act. A review of the premium reduction plans with these options revealed that RMA could not verify that efficiencies corresponded with the premium reductions and that very complex accounting rules would be required to allocate costs on a state or insurance plan basis.

These plans also raised the possibility that there could be unfair discrimination. Unfair discrimination results when producers are denied an opportunity to participate under the premium reduction plan based on their risk of loss or farm size. The ability to offer premium reduction plans in certain states or plans of insurance could result in the approved insurance provider only offering such plans in states with good loss history or with larger than average farm sizes.

Another problem identified with these premium reduction plans is the proposal to change the operational structure to have one or more entities associated with the approved insurance provider offer a premium reduction plan and another entity not, or allow agents to decide whether or not they will offer premium reduction plans and to whom. Again, this raises the possibility that approved insurance providers could divide their book of business between the two or more entities such that one entity receives the policies with a good loss history and the others received the policies with a bad loss history. Not only would this be unfair discrimination, such division could be used to manipulate gains and losses under the SRA if it was based on loss history. Further, some of the potential organizational structures may have been in violation of the SRA, such as the use of two managing general agents.

RMA recognizes that premium reduction plans may be controversial. From the beginning, RMA has attempted to strike a balance between the interests of producers in having their premiums reduced through competition in the marketplace and the need to have a strong delivery system. RMA has attempted to address problems and issues as they have arisen to ensure a strong, stable program.

Throughout the consideration process of premium reduction plans, RMA determined that there were several principles that must be met in order to comply with the requirements of section 508(e)(3) of the Act. The first is that the approved insurance provider must provide sufficient documentation to demonstrate that not only can the approved insurance provider operate within its administrative and operating expense reimbursement, but it can also reduce its costs to a level below the amount received from RMA for administrative and operating expense reimbursement. The second is that the efficiencies claimed by the approved insurance provider must be easily verifiable by RMA through auditing and monitoring. The third is that the premium reduction plan must comply with all requirements of the Act, the regulations, procedures, and the SRA.

The last principle is that no premium reduction plan can be unfairly discriminatory against producers based on their loss history, size of operation, or the amount of premium generated within the program. There have been concerns expressed that premium reduction plans may lead to unfair discrimination against small producers, limited resource farmers, women and minority producers. As stated previously, variations in premium reductions among states or only offering premium reduction plans in certain states or with certain plans of insurance could result in unfair discrimination against such producers. Even if the premium reduction is the same for all states and plans of insurance, there is the possibility that limited resources farmers could be excluded from the marketing of premium reduction plans.

RMA has tried to address this issue in this rule by: (1) Requiring that the premium reduction plan be provided to all producers insured by the approved insurance provider; (2) requiring approved insurance providers to provide marketing plans for how they will reach these producers; (3) denying approval for premium reduction plans with inadequate marketing plans; and (4) allowing for withdrawal of approval by RMA for failure of the approved insurance provider to follow the marketing plan. RMA is expressly seeking comments on whether these provisions should be modified or additional provisions added to ensure that all producers have access to all premium reduction plans offered in their state.

RMA is also considering an alternative program structure to that contained in this proposed rule. The main feature of this alternative is that any premium reimbursement to the producer would be based on the actual cost savings realized by the approved insurance provider after the application of the efficiencies; not projected cost savings. The approved insurance provider would apply to be able to provide a reimbursement to producers based on the intent to implement specified efficiencies, but the approved insurance provider would have to validate the cost savings and receive approval of the applicable premium reimbursement from RMA after the end of the applicable reinsurance year before the provider could announce and remit the reimbursement to the producer.

As a result, approved insurance providers would project what they intend to save through efficiencies and estimate the amount of the premium reimbursement in their revised Plan of Operations, but they would not be able to advertise or otherwise represent the amount of the premium reimbursement to producers in advance of the sale because they would not know the final amount of savings or the approved reimbursement at the time they submitted their revised Plan of Operations. Approved insurance providers may only be able to refer to historical reimbursements in accordance with applicable State laws.

This alternative structure is intended to avoid the uncertainty resulting from reliance on cost projections and to

reduce the chance that an approved insurance provider will fail to achieve the represented savings, thereby causing disruption in the marketplace. Use of actual costs would preserve program integrity and the financial stability of the approved insurance providers.

Under the alternative structure, approved insurance providers would not be able to market the plan to producers based on a guaranteed amount of premium reimbursement. The alternative structure would eliminate the need for approved insurance providers to build a reserve into the plan because the premium reimbursements would be based on actual verified savings from applied efficiencies rather than projections that may not be realized.

Because of the timing of the financial accounting of the approved insurance provider, the actual costs and savings will not be known until months after the end of the crop year and premium reimbursements cannot occur until after such accounting. This means producers will be required to pay the full amount of their premium before they receive any possible reimbursement.

RMA is soliciting comments on this alternative process to determine if such a structure should replace the proposed structure when RMA finalizes the proposed rule. RMA is particularly interested in comments that address issues relating to the benefits of using actual versus projected costs, impacts on the workload of the approved insurance providers and RMA, market conduct oversight requirements that may be required, impacts on competition, the delay in the reimbursements to producers, whether such reimbursements create any income tax issues, or any other substantial adverse or positive effect of this approach in contrast to the approach included in the proposed rule.

An analysis of the existing procedures and review of the recently submitted revised Plans of Operations revealed that revisions to the procedures were necessary. Following are a summary of the current procedures and the proposed changes.

1. Fundamental Program Change

Under the existing procedures, approved insurance providers could name the states and crops for which their premium reduction plan would be applicable. RMA explored continuation of this practice but it has identified significant problems in the administration of a program that permits state or other types of variability. Problems were identified in the selection of states. Allowing approved insurance providers to select states may result in unfair discrimination because approved insurance providers could elect only to offer a premium reduction plan in states with low risks. In addition, RMA determined that state variability would require complex accounting rules because section 508(e)(3) of the Act requires the efficiencies to correspond to the location and amount of premium reduction. As stated above, this means that the dollar amount of savings from the efficiencies implemented in a state must correspond to the amount of premium reduction in that state. Further, the workload on RMA and approved insurance providers to identify cost allocations and determine whether the projected cost savings from efficiencies are reasonable and correspond to the premium reductions in the state would be enormous. This would be followed by the workload required to verify that savings in each state were realized and that premium reductions paid out did not exceed the amount of such savings.

RMA considered whether it was possible to remedy all the problems that allowing variability by state could produce and discovered it could not. Therefore, the proposed rule requires that approved insurance providers who submit revised Plans of Operations must offer the premium reduction plan to all producers, in all states where the approved insurance provider does business, and for all applicable crops, policies and plans of insurance. The amount of the premium reduction based on the percentage of the net book premium may not have any variations. For example, variations by state, coverage level, etc. are not permitted. In reaching its conclusion, RMA considered the following principles and is soliciting comments on its analysis and whether a premium reduction plan could be developed that allowed for a variation of the reduction by state consistent with these principles.

a. *The ability to offer such a reduction by state must not cause competitive harm in the marketplace.* Premium reductions plans are intended to create competition in the marketplace. However, the procedures governing such plans cannot be developed in such a manner as to create a competitive disadvantage. Therefore, RMA is striving to develop procedures that provide a level playing field to the maximum extent practicable.

The ability to vary the reduction by state could represent a substantial advantage for an approved insurance provider to be able to target reductions to meet specific market conditions in a particular state. As a result, RMA believes that such an advantage must be available to all approved insurance providers, if it is to be available to any.

One cost reduction measure that appears in nearly all proposed premium reduction plans received by RMA where the reduction varies by state is the varying of agent commission reductions by state. The focus is on agents' commissions because they are relatively easy to administer by the approved insurance provider and verify by RMA, and agent compensation constitutes about seventy percent of the expenses that are incurred in the delivery of the crop insurance program. Because the crop insurance books of business of all approved insurance providers are currently divided by state and agent commissions are reported to RMA by state, it would be straightforward to allocate the cost reductions by state. However, not all approved insurance providers in the Federal crop insurance program use independent agents who are paid on a commission basis. Some approved insurance providers use ''captive agents'' that are employees of the provider who are compensated on a salary, not a commission, basis and may be doing business in more than one state.

RMA believes that it would be very difficult, if not impossible, for these approved insurance providers to allocate their agent compensation costs in a manner that would clearly show how such agent compensation reductions matched the associated premium reduction on a state by state basis. If RMA were to allow premium reductions on a state by state basis, and such reductions were generated by reductions in agent compensation, approved insurance providers with ''captive agents'' would likely suffer from a competitive disadvantaged simply based on how they obtain, and compensate for, agent services.

b. *A premium reduction plan where the efficiencies and reductions vary by state must be easy for the approved insurance provider to administer and easy for RMA to verify.* The purpose behind section 508(e)(3) of the Act is to encourage approved insurance providers to reduce administrative and operating expenses in order to provide competitive discounts to producers. RMA believes it would be directly against the intent of this provision to authorize premium reduction plans that require the application of complex cost accounting rules to ensure that the premium reductions correspond to the efficiencies, as specifically required by the Act. Other than efficiencies tied to reductions in agent compensation,

nearly all of the efficiencies that varied by state in the premium reduction plans submitted to RMA for the 2005 reinsurance year involved cost reductions in general operating costs of the approved insurance provider, which are incurred in many states (*e.g.* information technology costs, policy servicing costs, and basic overhead costs). For example, the approved insurance provider proposes savings as a result of the implementation of a new computer system that would reduce errors by 20 percent. The computer system is applicable to all policies in the approved insurance provider's book of crop insurance business. If the premium reduction plan calls for different premium reductions in each state, the approved insurance provider would have to allocate the dollar savings associated with the new software to each state. It is also possible that such computer software is used in the approved insurance provider's other lines of business, which would require additional allocations. This type of allocation would have to be done for each type of efficiency. Therefore, to allocate these costs to each state would require the application of very complex cost accounting rules. Further, to the extent these costs represent activities conducted by salaried employees, as opposed to independent contractors, the cost accounting rules become even more difficult. Salaried employees and some contract employees, such as loss adjusters, frequently conduct work in more than one state. To allocate the costs among the states would also require additional complex accounting rules.

c. *Uniform service and preventing unintended effects on the business practices of the approved insurance providers.* One of the major principles of the crop insurance program is that approved insurance providers must provide insurance to all eligible producers and agents are required to perform certain services for each producer regardless of the producer's size or loss history. By introducing state variability in savings and premium reductions, there is a concern that it will result in variability of service to producers. For example, based on a review of the 2005 premium reduction plans submitted by approved insurance providers, it was apparent that reductions in agent compensation was the easiest way to establish efficiencies that support state variable premium reductions. RMA is concerned that variable reductions in agent compensation may result in reduced service to some producers below the standards set by RMA in the SRA. The burden on RMA and the approved insurance providers to monitor agents' conduct to ensure that no such reduction in service occurs could be considerable and could reduce a significant portion of the savings generated by the efficiencies.

Further, there are numerous approved insurance providers and each has a unique operational structure and manner of doing of business. RMA wants to avoid implementing any rule that unnecessarily dictates the business practices of the approved insurance providers. As stated above, efficiencies based on the reduction of independent contractor compensation, such as agent commissions, are easy to verify and allocate on a state-by-state basis. Therefore, state variability provides an economic incentive to approved insurance providers to achieve their efficiencies through reductions in agent commissions. This conclusion was confirmed by the independent reviewers. This incentive could result in all approved insurance providers being driven to use commission to compensate their agents in order to be competitive.

In addition, as stated above, some approved insurance providers use salaried agents instead of independent contractor agents, likely increasing the difficulty for such approved insurance providers to allocate the salaried agents' compensation among states. RMA believes that the economic incentive created by state variability and the need for easily verifiable and allocable compensation may drive these approved insurance providers to change the way they deliver the program or could result in competitive disadvantages. The intent of the premium reduction plan is not to dictate the manner in which the approved insurance provider does business. Decisions on the use of independent versus salaried agents should be based on competitive market forces and service considerations, not a government regulation intended to provide a benefit to producers.

2. Revisions of Definitions

Most of the definitions from the current procedures have been included in this proposed rule, although some have been modified to conform to the SRA. RMA has also revised the definition of ''compensation'' to clarify that compensation includes any benefits, including those from third parties, that are guaranteed, even though the amount may differ year to year, regardless of the existence of an underwriting gain for the approved insurance provider, and to clarify when profit sharing arrangements will not be included as compensation. The definition of ''efficiency'' is revised to clarify that cost savings must be attributable to operational efficiencies or a reduction in expenses but such savings cannot solely result from reductions in compensation, and that economies of scale from increased sales due to the offering of a premium reduction plan of insurance or projected reductions in loss adjustment expenses, unless authorized by RMA, are not considered an efficiency. A definition of ''procedures'' is added for clarification. A definition of ''profit sharing'' is added to clarify the difference between guaranteed benefits, which are considered compensation, and contingent benefits based on underwriting gains. A definition of ''underwriting gain'' is added to clarify that such gains include the net gain payment made to the approved insurance provider on its whole book of business under the SRA, less any costs it pays from such gains, including any costs related to the delivery of the program in excess of the amount of administrative and operating subsidy received from RMA. The definition of ''unfair discrimination'' has been modified to clarify that approved providers cannot exclude producers based on the loss history or the size of the policy.

3. Timing of the Submission of Revised Plans of Operations

The current procedures require revised Plans of Operations be filed not later than 150 days prior to the first sales closing date where the premium reduction will be applicable. In this proposed rule, for the 2006 reinsurance year, revised Plans of Operations must be received by RMA not later than 15 days after publication of the final rule to allow RMA time to consider such revised Plans of Operations before the fall sales closing dates. For subsequent reinsurance years, all revised Plans of Operations must be received by RMA not later than April 1 before the start of the reinsurance year. RMA has elected to have a single submission window each reinsurance year to ensure that all producers have access to the benefits under any premium reduction plan and that the timing of the submission of the revised Plans of Operations does not create an unfair competitive advantage. Revised Plans of Operations that are not timely submitted will be rejected. Approved insurance providers will have 15 days after the date a revised Plan of Operation is received by RMA to withdraw it. If not timely withdrawn, any approved premium reduction plan

must be implemented for the reinsurance year.

4. Confidentiality Requirements

The confidentiality requirements remain the same but have been incorporated into a different section.

5. Contents of Revised Plans of Operations

The current procedures require five copies and both a hard copy and electronic version. The provision has been revised to require an electronic copy. Both the current and proposed procedures require the approved insurance provider to provide the name of the person responsible for the administration of the premium reduction plan, the reinsurance year the plan will be in effect; a statement of the amount of the premium reduction to be offered to producers, how it is calculated, and reported to RMA; a list of any and all terms and conditions that affect its availability; and the projected total dollar amount of the premium reduction to be provided to the producers. The requirements in the existing procedures to list the proposed crops and states where the efficiency is being gained and the estimated number of producers have been removed from the proposed rule because such provisions were rendered moot by the requirement that the premium reduction plan be offered in all states for all crops where the approved insurance provider does business. The procedures have been revised to more clearly specify that existing Expense Exhibits provided with the Plan of Operations will be used in determining costs projections to ensure such reporting is standard among approved insurance providers and to ensure that such standards are tied to the information reported in the SRA. The procedures are also revised to only require the approved insurance provider to certify to the reasonableness, accuracy, and completeness of the projected costs relating to the claimed efficiencies and calculating the dollar amount of premium reduction provided since this information is not reported in the SRA. Revisions have also been made to the procedures to require the revised Plan of Operations to include a marketing plan for small, minority and limited resource farmers to address concerns that such producers will not receive the benefit of the premium reduction plans. The existing procedures are further revised to require the approved insurance provider include a proposal of how it intends to deliver the premium reduction plan for all producers in its revised Plan of Operations. This plan should include whether the approved insurance provider will use the Internet, captive agents, affiliates, etc. Further, the approved insurance provider must certify that a copy of such strategy is sent to all State Departments of Insurance where it does business for a determination of whether the premium reduction plan is in conformance with state laws with respect to the licensing and conduct of agents and provide all responses from the states to RMA. The proposed rule further clarifies the existing procedures by requiring approved insurance providers to demonstrate how the premium reduction will correspond to the efficiencies, as required by section 508(e)(3) of the Act. This means the premium reduction must be provided in the same state from which the efficiency is implemented. Further, the amount of the premium reduction in a state must be commensurate with the amount of savings obtained from the efficiencies in that state. For example, an efficiency derived in Iowa cannot be used to fund a premium reduction in Texas. Further, the approved insurance provider cannot reduce costs in some states by 5 percent and in other states by 2.5 percent and give all producers the same premium discount. Such proposals would violate the Act. Further, revisions have been made to the procedures to require approved insurance providers to provide a summary of all profit sharing arrangements so that RMA can determine whether such profits should be considered as compensation and included as an expense or is solely based on the underwriting gains of the approved insurance provider and excluded. The procedures have also been revised to require the premium reduction plan contain a financial reserve plan that would contain additional actions to be implemented in the event that actual cost savings are insufficient to cover the amount of the premium reduction, which would generate additional administrative and operating savings or provide access to additional funds equal to 25 percent of the premium reduction. For example, if the dollar amount of the proposed premium reduction is $10 million, the approved insurance provider must implement the efficiencies to attain such dollar amount of premium reduction as applicable during the reinsurance year. However, prior to submitting a revised Plan of Operation, the approved insurance provider must also determine what other actions are necessary to guarantee that it will have access to an additional $2.5 million (25 percent of $10 million) to cover the premium reductions. While the implementation of such other actions would not be necessary unless the cost savings from the original efficiencies were insufficient to cover the premium reduction, the ability to obtain the additional funding must be demonstrated in the revised Plan of Operations. Such other actions could include additional cost cutting measures, access to additional lines of credit, guaranteed loans, etc. However, these other actions, if implemented, will not be considered when determining the amount of premium reduction authorized for subsequent years. The purpose of such financial reserve plans is to ensure that any error in projections does not affect the financial solvency of the approved insurance provider or prevent the producer from receiving the premium reduction specified in the premium reduction plan.

6. New Approved Insurance Providers

The existing procedures allow certain costs associated with new approved insurance providers and with respect to expansions by existing approved insurance providers be included in the A&O costs for the purposes of determining the efficiency. RMA has elected to remove the provisions regarding existing approved insurance providers because it is impractical to track those costs associated with normal expansion and those attributable to the premium reduction plan. Further, the Act does not make any distinction between the types of costs against which to measure the efficiencies. However, it is only the new entrants into the crop insurance business that have the exceptional costs associated with such entrance. Existing approved insurance providers may incur some additional costs but not nearly to the extent that new entrants would. Further, some of these costs associated with expansion may be captured if the approved insurance provider can established a higher expected premium volume for the year. RMA has clarified that new entrants are limited to those that have not participated in the program previously or are not affiliated with a managing general agent, another approved insurance provider, or other such entity that already has the infrastructure necessary to deliver crop insurance. The existing procedures have also been revised to no longer allow the new entrant to exclude the startup costs from its expenses reported under the premium reduction plan. In the proposed rule, such startup costs must be included as expenses but the approved insurance provider will be

permitted to spread such costs equally for up to three reinsurance years.

7. RMA Review Process

The current procedures require RMA to evaluate the completeness of a revised Plan of Operations and notify the approved insurance provider within 30 days. This provision has been removed because of the administrative burden it places on RMA to review the revised Plan of Operations twice and provide two separate responses. In the proposed rule, for the 2006 reinsurance year, RMA will notify approved insurance providers not later than September 1, 2005. For all subsequent reinsurance years, RMA has retained the provision that requires it to provide a response to the revised Plan of Operations not later than 60 days prior to the first sales closing date but added a provision that this requirement applies only if the revised Plan of Operations was timely submitted and if the 60 day requirement is not waived by the approved insurance provider.

8. Standards for Approval

The current procedures require that the premium reduction plan not result in the reduction of service to producers or be harmful to the interest of producers, not place a financial or operational hardship on the approved insurance provider or undermine the integrity of the crop insurance program. Further, such procedures require the approved insurance provider have the financial and operational capacity and expertise to deliver the crop insurance program after implementation of the premium reduction plan, there be adequate internal controls, and the premium reduction plan meet all other requirements of the Act and the SRA. These requirements have been retained in this proposed rule. RMA has added a provision that clarifies that approved insurance providers must be able to demonstrate they are operating under the A&O subsidy they receive from RMA, and if such information is based on projected costs and subsidy, such amount must be reasonable, before any revised Plans of Operation can be approved. RMA has also added provisions requiring that the efficiencies come from reductions in A&O costs and not underwriting gains and that they be verifiable; that the amount and location of the premium reductions correspond to the efficiencies; that there be enough efficiencies to cover all the premium reductions; and that training and oversight not be compromised to ensure the proper administration of the premium reduction plan program. RMA added provisions that the financial reserve plan provide a guarantee of funding. RMA has also modified the procedures relating to unfair discrimination to ensure that there is no such discrimination based on the size of the farm or premium, the risk of loss, or against small, minority or limited resource farmers and that the marketing plan and delivery system for the premium reduction be reasonable and, with respect to the delivery system, in accordance with state law. RMA has also added provisions regarding the process of notification of approval and the requirement that if approved, the premium discount plan must be implemented for the next applicable sales closing date for the reinsurance year, unless otherwise determined by RMA. This requirement is to ensure that all producers receive equal access to approved premium reduction plans and that expectations created by the submission of a revised Plan of Operations for a premium reduction are realized.

9. Disapproval

RMA has revised the existing procedures, and combined them with the approval process, to provide the approved insurance provider with the right to seek reconsideration of a disapproval and specify that if a revised Plan of Operations is disapproved, the insurance provider cannot submit another revised Plan of Operations until the following reinsurance year.

10. Requirements After Approval of a Premium Reduction Plan

The current procedures specify that all procedural issues, problems, etc. will be addressed by the approved insurance provider; premium reductions must be implemented in accordance with the premium reduction plan, the approved insurance provider is liable for all mistakes, errors, etc. The current procedures also required the approved insurance provider to assist RMA in any reviews conducted to determine whether the efficiency is generated and there is compliance with the premium reduction plan and to make any changes required by RMA. These provisions have been basically retained in the proposed rule. RMA has added a requirement that the approved insurance provider immediately report in writing all operational and financial changes that could cause a material impact upon an approved premium reduction plan. RMA has revised the procedures regarding reporting to make them more detailed to ensure the information provided is adequate to review and assess the impact on program participants, including small producers, limited resource farmers, women and minority producers and on the crop insurance program. RMA has also revised the procedures to clarify that producers will automatically receive the premium reduction. RMA has added a requirement that the approved insurance provider have an independent certified accountant certify as to the reasonableness, accuracy, and completeness of all actual costs relating to the efficiencies and the total dollar in premium reduction for the reinsurance year the premium reduction plan will be offered, in a format approved by RMA, not later than April 1 after the close of the reinsurance year. RMA has also added provisions requiring that the cost of such certification be included in the projected costs used to determine whether an efficiency has been attained. RMA has also added provisions making it clear that approval of a premium reduction plan is only for one year and new revised Plan of Operations must be made for subsequent years. RMA has also added provisions clarifying that if RMA discovers that the efficiencies were insufficient to cover the premium discount, the efficiencies are not attained or the premium reduction is not corresponding to the efficiency, the amount of premium reduction that can be approved for the next applicable reinsurance year will be limited to the actual amount of savings attained, excluding any actions taken under the financial reserve plan. Further, RMA added provisions specifying that it will closely monitor the approved insurance provider's efforts to market the premium reduction plan to small producers, limited resources farmers, women and minority producers to ensure that no unfair discrimination takes place and that if it is discovered, RMA may withdraw approval of the premium reduction plan. RMA has also clarified its provisions regarding when it can modify or withdraw approval, how such modification or withdrawal will be communicated and the effect of such action for ease of use.

11. New Provisions

Unlike the procedures, RMA has added provisions that expressly state the limitations and prohibitions on the premium reduction plan program in order to simplify and clarify the program. Such limitations include a cap on the amount of premium reduction for the first two years the premium reduction plan is offered to allow RMA to evaluate the effect such plan may have on the crop insurance program and ensure that approved insurance providers are not leaving themselves

financially vulnerable by cutting their costs too much.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Crop insurance, Disaster assistance, Fraud, Penalties, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 400 by revising subpart V, effective for the 2006 and succeeding reinsurance years, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(a), 1506(p), 1508(e)(3).

Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans

2. Revise the heading for Subpart V to read as set forth above.

3. Amend § 400.700 by adding two sentences to the end of the section to read as follows:

§ 400.700 Basis, purpose, applicability.

* * * This subpart also provides procedures that are applicable to revised Plan of Operations submitted by approved insurance providers for the purpose of obtaining approval for a premium reduction plan in accordance with section 508(e)(3) of the Act. The offering of such premium reduction plans without RMA's prior written approval is prohibited.

§ 400.701 [Amended]

4. Amend § 400.701 by revising the definition of ''Administrative and operating (A&O) subsidy'' and by adding the definitions of ''Administrative and operating (A&O) costs'', ''Agent'', ''Compensation'', ''Cost accounting'', ''Efficiency'', ''Managing general agent'', ''Premium reduction'', ''Profit sharing arrangements'', ''Standard reinsurance agreement'', ''Third party administrator'', ''Underwriting gain'', and ''Unfair discrimination'' in alphabetical order to read as follows:

§ 400.701 Definitions.

* * * * *

Administrative and operating (A&O) costs. Costs of the approved insurance provider and any MGA and TPA that are related to the delivery, loss adjustment and administration of the Federal crop insurance program.

Administrative and operating (A&O) subsidy. The subsidy for the administrative and operating expenses authorized by the Act (including the catastrophic risk protection loss adjustment expense reimbursement) and paid by FCIC on behalf of the producer to the Company.

Agent. An individual licensed by the State in which an eligible crop insurance contract is sold and serviced for the reinsurance year, and who is under contract with the Company, or its designee, to sell and service such eligible crop insurance contracts.

* * * * *

Compensation. Any guaranteed salary, commission, or any other guaranteed payment or anything of value or benefit that has a quantifiable value that is not contingent on the existence of an underwriting gain of the approved insurance provider, including, but not limited to, the payment of health or life insurance, deferred compensation (including qualified and unqualified), finders fees, retainers, trip or travel expenses, dues or other membership fees, the use of vehicles, office space, equipment, staff or administrative support paid by the approved insurance provider either directly or indirectly through a third party. Profit sharing arrangements will not be considered compensation, when:

(1) The payments under such arrangements are contractually obligated;

(2) The total amount paid under the aggregate of all profit sharing arrangements exceeds the total amount of the underwriting gain for the applicable reinsurance year; or

(3) The profit sharing payment is triggered by anything other than whether the approved insurance provider receives an underwriting gain for its whole book of Federally reinsured crop insurance business for the applicable reinsurance year.

* * * * *

Efficiency. Monetary savings realized when an approved insurance provider sells and services its Federal crop insurance policies for less than the amount of the A&O subsidy paid by FCIC, which must result from changes to the administrative and operating procedures and expenses that the approved insurance provider employs in delivering Federally-reinsured policies in accordance with the Act, the SRA, and all applicable regulations, directives, bulletins and procedures. Only a portion of the approved insurance provider's monetary savings can come from a reduction in compensation, the rest must come from changes in administrative and operating procedures. Efficiency does not include any actual or projected underwriting gain earned from the SRA, reinsurance revenues, or the investment returns on the approved insurance provider's reserves. Cost savings attributed to projected increased sales due to the offering of a premium reduction plan of insurance are not considered an efficiency, nor are proposed reductions in loss adjustment expenses, unless such reductions in loss adjustment expense are a result of implementing loss adjustment procedures authorized by RMA.

* * * * *

Managing general agent (MGA). An entity that meets the definition of managing general agent under the laws of the State in which such entity is incorporated and in every other state in which it operates, or in the absence of such State law or regulation, meets the definition of a managing general agent or agency in the National Association of Insurance Commissioners Managing General Agents Act, or successor Act.

* * * * *

Premium reduction. Reduction of the insured's premium by the approved insurance provider in an amount approved by RMA in accordance with section 508(e)(3) of the Act, all applicable regulations, and these procedures.

Procedures. The applicable handbooks, manuals, memoranda, bulletins or other directives issued by RMA or the Board.

Profit sharing arrangements. An arrangement to make a payment based on whether the approved insurance provider receives an underwriting gain on the total book of crop insurance business, except payments made to commercial reinsurers, or reinsurance revenues paid to the approved insurance provider for the reinsurance year.

* * * * *

Standard reinsurance agreement (SRA). The reinsurance agreement between FCIC and the approved insurance provider, under which the approved insurance provider is authorized to sell and reinsure the policies for which the premium reduction is proposed.

* * * * *

Third party administrator (TPA). A person or entity that processes claims or performs other administrative services and holds licenses, as applicable, in states in which the approved insurance provider does business for services

related to the delivery, loss adjustment and administration of the Federal crop insurance program in accordance with a service contract or an affiliate or any other type of relationship.

Underwriting gain. For the purposes of the premium reduction plan, the amount of gains paid under section II.B.10. of the SRA less any amounts paid from such gains, such as payments to commercial reinsurers, taxes, licensing fees, payments to parent companies or subsidiaries, etc., and any costs incurred by the approved insurance provider in excess of the A&O subsidy related to the delivery, loss adjustment and administration of the Federal crop insurance program

Unfair discrimination. A premium reduction plan will be considered unfairly discriminatory to a producer if the availability of such premium reduction plan, or the amount of the premium reduction, is based on the loss history of the producer, the amount of premium earned under the policy, or precludes in any manner producers in an approved State from participating in the program.

* * * * *

5. Add § 400.714 to read as follows:

§ 400.714 Revised Plans of Operations for premium reduction plans.

(a) For the 2006 reinsurance year, revised Plans of Operations must be received by RMA not later than [date 15 days after the date of publication of the final rule].

(b) For all subsequent reinsurance years, revised Plans of Operations must be received by RMA not later than April 1 before the reinsurance year, or the date RMA otherwise determines the Plan of Operations is due.

(c) Any revised Plans of Operations that is not timely submitted will not be considered by RMA and any other revised Plans of Operations submitted by the approved insurance provider during the reinsurance year will not be considered until the next reinsurance year.

(d) A revised Plan of Operations may be withdrawn no later than 15 days after the revised Plan of Operations has been received by RMA. If a revised Plan of Operations has not been timely withdrawn, the approved insurance provider will be required to implement an approved premium reduction plan.

(e) Any confidential commercial or financial information submitted with a revised Plan of Operations will be protected from disclosure to the extent permitted by, and in accordance with, 5 U.S.C. 552(b)(4).

(f) The revised Plans of Operations under this subsection must be sent to the Director, Reinsurance Services Division (or designee) at an address to be announced by RMA.

6. Add § 400.715 to read as follows:

§ 400.715 Limitations and prohibitions.

(a) For the first two reinsurance years after [effective date of the final rule], the premium reduction plan may not offer a premium reduction based on an efficiency less than 1.0 percent nor greater than 4.0 percent of the net book premium. For subsequent reinsurance years, RMA will announce the minimum and maximum limitation on the premium reduction, if applicable. Premium reductions must be offered in .5 percent increments.

(b) If a premium reduction plan is offered it must be offered in all states where the approved insurance provider is doing business and for all crops, coverage levels, policies.

(c) The amount of the premium reduction offered based on the percentage of the net book premium may not vary between states, crops, coverage levels, policies or plans of insurance, or on any other basis (For example, if the approved insurance provider can reduce costs by 2.5 percent, such reduction must be provided to all policyholders in all states where the approved insurance provider is doing business).

7. Add § 400.716 to read as follows:

§ 400.716 Contents of the revised Plans of Operations for a premium reduction plan.

A revised Plan of Operations must be submitted electronically, in a manner determined by RMA. Each revised Plan of Operations must include the following:

(a) The name of the approved insurance provider, the person who may be contacted for further information regarding the revised Plan of Operations, and the person who will be responsible for administration of the premium reduction plan;

(b) A detailed description of any and all terms and conditions that affect its availability;

(c) A detailed statement as to the amount of the premium reduction that is proposed to be offered to each eligible producer, how it will be calculated, and how it will be reported to RMA;

(d) A detailed proposal of how the approved insurance provider intends to deliver the premium reduction plan to producers;

(e) A detailed marketing plan focused solely on how the premium reduction will be promoted to small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, women and minority producers;

(f) A detailed statement explaining how the approved insurance provider proposes to revise its procedures for the delivery, operation or administration of the Federal crop insurance program in order to achieve the specified efficiency and how the premium reduction will correspond to the efficiency;

(g) Applicable Expense Exhibits required by the SRA, or the applicable regulations if required by RMA, that are revived to reflect the implementation of the premium reduction plan and any documentation necessary to support the revisions;

(h) Based on the applicable Expense Exhibits, a statement that summarizes the A&O costs before implementation of the efficiency, the cost savings associated with the efficiency, the A&O costs after implementation of the efficiency (which includes the budgeted cost of all reports and certifications required in §§ 400.714–720), the expected A&O subsidy, and the projected total dollar amount of premium reduction to be provided to producers (This statement must demonstrate that after the implementation of the premium reduction plan, the approved insurance provider's A&O costs, including the budgeted cost of all such reports and certifications, plus the amount of any premium reductions will not be greater than the provider's A&O subsidy);

(i) A financial reserve plan that:

(1) Is triggered immediately upon discovery by the approved insurance provider or RMA that the total dollar amount of the actual efficiency is not sufficient to cover the total dollar amount of the premium reduction provided to producers;

(2) Consists of actions to be taken by the approved insurance provider that would produce cost savings or income that is at least 25 percent of the projected total dollar of premium reduction to be provided to producers immediately upon discovery under paragraph (i)(1) of this section;

(j) A detailed description of all profit sharing arrangements paid by the approved insurance provider;

(k) A certification, in a format approved by RMA, by the person designated by the approved insurance provider to execute the SRA, of the reasonableness, accuracy, and completeness of all cost projections relating to the efficiencies and the total dollar in premium reduction for the reinsurance year the premium reduction plan will be offered;

(l) A certification from the approved insurance provider, by the person designated by the approved insurance provider to execute the SRA, that it has

provided a copy of its marketing strategy under paragraph (d) of this section to the State Department of Insurance for all states where the premium reduction plan will be offered for its review to determine whether the licensing of agents and the conduct of agents in the solicitation and sale of insurance under the proposed premium reduction plan is in accordance with applicable state insurance laws (All responses from the states must be provided to RMA not later than 10 days after receipt of the response by the approved insurance provider);and

(m) Such other information as deemed necessary by RMA.

8. Add § 400.717 to read as follows:

§ 400.717 New approved insurance providers.

There may be instances where a new approved insurance provider is entering into the crop insurance program for the first time and such approved insurance provider is not affiliated with a MGA, another approved insurance provider, or any other entity that possesses the infrastructure necessary to deliver the crop insurance program, that is currently or has previously participated in the crop insurance program. In such instances, the one time start-up costs that are associated with entering the crop insurance business (*e.g.*, creation of a claims system, interface with RMA's data acceptance system, initial marketing costs, set up charges) must be included in the Expense Exhibits required by the SRA, or the applicable regulations if required by RMA, but the costs may be amortized in equal annual amounts for a period of up to three years for the purpose of determining the efficiency on the documents described in § 400.716, in a manner determined by RMA.

9. Add § 400.718 to read as follows:

§ 400.718 RMA review.

(a) For the 2006 reinsurance year, RMA will notify the approved insurance provider by September 1, 2005, of its approval or disapproval of the revised Plan of Operations for a premium reduction plan; and

(b) For all subsequent reinsurance years, RMA will notify the approved insurance provider at least 60 days before the applicable sales closing date of its approval or disapproval of the submitted premium reduction plan, unless the approved insurance provider waives this 60 day prior notification requirement in writing.

10. Add § 400.719 to read as follows:

§ 400.719 Standards for approval.

(a) RMA may approve the revised Plan of Operations if, in the sole determination of RMA, the revised Plan of Operations demonstrates that the following criteria are met:

(1) All information required in § 400.716 is included in the revised Plan of Operations, in the format required, and is reasonable and supported by documentation;

(2) The approved insurance provider can demonstrate that its A&O costs, or projected A&O costs, are less than the A&O subsidy received, or projected to be received, from RMA and if based on projections, such projections are reasonable;

(3) The approved insurance provider can reduce A&O costs by a specific amount through identified efficiencies in the delivery of the Federal crop insurance program;

(4) The identified efficiencies must be measurable in dollar terms and supported by documentary evidence;

(5) RMA is able to verify the source and amount of the identified efficiencies as provided by the approved insurance provider and all applicable costs and savings before and after implementation of the premium reduction plan;

(6) The efficiencies must be sufficient to cover the dollar amount of the premium reduction, and correspond to the location where the premium reduction is offered;

(7) The efficiency must:

(i) Be derived from activities for which the A&O subsidy is provided and not from any expected underwriting gain; and

(ii) Not be derived from any marketing or underwriting practices that are unfairly discriminatory;

(8) The financial reserve plan is reasonable and provides the necessary guarantee of funding, as required by § 400.716(i);

(9) The marketing plan must be reasonable and effectively reach small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, women and minority producers;

(10) The proposal of how the approved insurance provider intends to deliver the premium reduction plan must be reasonable and not violate applicable state laws regarding the licensing and the conduct of agents in the solicitation and sale of insurance;

(11) The premium reduction plan must not result in a reduction in the service to policyholders required by RMA approved procedures;

(12) The premium reduction plan must not result in a reduction of training and supervising of agents, loss adjusters, or underwriting and quality assurance personnel required by the procedures, law, regulation or the SRA;

(13) There must not be a reduction in the total delivery system's ability to serve all producers, including small producers, limited resource farmers as defined in the Basic Provisions, 7 CFR 457.8, women and minority producers, and producers located in areas with small volumes of crop insurance business;

(14) The premium reduction plan must not adversely impact the financial and operational capacity and expertise of the approved insurance provider to properly deliver the Federal crop insurance program;

(15) The approved insurance provider's resources, procedures, and internal controls are adequate to make the premium reduction plan available to producers in a timely manner and to protect the integrity of the Federal crop insurance program, including the prevention of fraud, waste and abuse; and

(16) The premium reduction plan meets all other relevant requirements of the Act and the SRA.

(b) If the revised Plan of Operations is approved, the approved insurance provider:

(1) Will be notified in writing by the Director of the Reinsurance Services Division, or a designee or successor; and

(2) Must implement the premium reduction plan beginning with the next applicable sales closing date for the reinsurance year, unless otherwise determined by RMA, in accordance with § 400.720.

(c) If the revised Plan of Operations is disapproved, the approved insurance provider:

(1) Will be notified in writing of the basis for disapproval by the Director of the Reinsurance Services Division, or a designee or successor.

(2) May request, in writing, reconsideration of the decision with the Deputy Administrator of Insurance Services, or a designee or successor, within 30 days of disapproval and such request must provide a detailed narrative of the basis for reconsideration.

(3) May not submit any additional revised Plans of Operations for a premium discount plan for the reinsurance year.

11. Add § 400.720 to read as follows:

§ 400.720 Terms and conditions for approved premium reduction plans.

The following terms and conditions apply to all approved insurance providers whose revised Plans of Operations are approved:

(a) Approved revised Plans of Operations for premium reduction will only be effective for one reinsurance year.

(b) The approved insurance provider must immediately report in writing all operational and financial changes that could cause a material adverse impact upon its approved premium reduction plan to the Director of the Reinsurance Services Division, or a designee or successor.

(c) All procedural issues, questions, problems or clarifications with respect to implementation of the premium reduction plan must be timely addressed by the approved insurance provider.

(d) The approved insurance provider must implement the premium reduction plan in accordance with the terms and conditions of approval.

(e) All producers insured by the approved insurance provider will automatically receive the premium reduction contained in the approved premium reduction plan.

(f) An independent certified public accountant must certify to the reasonableness, accuracy, and completeness of all actual costs relating to the efficiencies and the total dollar in premium reduction for the reinsurance year the premium reduction plan will be offered, in a format approved by RMA, not later than April 1 after the annual settlement for the reinsurance year (The costs associated with such certification will be at the approved insurance provider's expense and must be included in the approved insurance provider's projected expenses for the purposes of determining an efficiency);

(g) The approved insurance provider must provide semi-annual reports, or more frequently as determined by RMA, that permit RMA to accurately evaluate the effectiveness of the premium reduction plan, in the manner specified by RMA. At a minimum, each report must contain:

(1) The number of producers making initial application for insurance by State;

(2) The average number of acres insured under all policies by State before and after implementation of the premium reduction plan;

(3) The number of small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, women and minority producers making application as result of the implementation of the marketing plan;

(4) The average coverage level purchased by producers insured by the approved insurance provider before implementation of the premium reduction plan and after;

(5) The number of agents selling and servicing policies on behalf of the approved insurance provider by State; and

(6) The number, substance, and final or pending resolution of complaints from producers regarding the service received under the premium reduction plan.

(h) If at any time RMA discovers that the cost reduction or efficiencies contained in the premium reduction plan are not attained, are not sufficient to cover the dollar amount of premium reduction, or that the reduction in premium is not corresponding to the efficiency, RMA will require that the amount of efficiency used to determine the premium reduction for the next applicable reinsurance year be limited to the actual cost savings obtained for the reinsurance year, excluding any financial reserve plan measures that may have been used to make up for the effects of the deficiency.

(i) RMA will closely monitor the approved insurance provider's efforts to market the premium reduction plan to small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, women and minority producers to ensure that no unfair discrimination takes place and if it is discovered, RMA may withdraw approval for the premium reduction plan, in accordance with paragraph (n) of this section.

(j) The approved insurance provider is solely liable for all damages caused by any mistakes, errors, misrepresentations, or flaws in the premium reduction plan or its implementation.

(k) The approved insurance provider must fully cooperate with RMA in its periodic review of the operations of the approved insurance provider for the purpose of assuring that the efficiencies are generated, that the projected cost reductions materialize, that the premium reduction plan is administered in the manner presented in the revised Plan of Operations, that the solvency and operational capacity of the approved insurance provider remains unimpaired, and that the interests of producers and taxpayers are protected.

(l) The approved insurance provider may be required by RMA to modify its implementation of an approved premium reduction plan to ensure compliance with 7 CFR 400.714–720, the Act, regulations, the SRA, and any applicable policy provisions and approved procedures, and to protect the interests of producers and taxpayers, and the integrity of the program.

(m) At its sole discretion and upon written notice, RMA may withdraw or modify its approval of any premium reduction plan if RMA determines that:

(1) The approved premium reduction plan, or its implementation, no longer satisfies all the terms and conditions in 7 CFR 400.714–720;

(2) There have been instances of unfair discrimination;

(3) The stated efficiencies have not been realized or the approved premium reduction is not provided to all existing policyholders and producers as required by subsection (e); or

(4) The integrity of the crop insurance program is jeopardized in any way, as determined by RMA, by the premium reduction plan.

(n) If any condition in paragraph (m) of this section exists, RMA will notify the approved insurance provider in writing:

(1) That approval has been withdrawn or a modification to the premium reduction plan is required;

(2) The date such withdrawal is effective or modifications must be made;

(3) If modified, such modification must be approved by RMA before implementation;

(4) The basis for such withdrawal or modification; and

(5) If approval is withdrawn, the approved insurance provider must cease offering the associated premium reduction effective for the next sales closing date.

Signed in Washington, DC, on February 17, 2005.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 05–3435 Filed 2–23–05; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Part 300

[Notice 2005–6]

Candidate Solicitation at State, District, and Local Party Fundraising Events

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks comments on proposed changes to its rule regarding appearances by Federal officeholders and candidates at State, district, and local party fundraising events under the Federal Election Campaign Act of 1971, as amended (''FECA'' or the ''Act''). The current regulation contains an exemption permitting Federal officeholders and candidates to speak at State, district, and local party fundraising events ''without restriction or regulation.'' This regulation was challenged in *Shays* v. *FEC*. The U.S. District Court for the District of

Columbia held that this regulation implementing the Bipartisan Campaign Reform Act of 2002 was based on a permissible construction of the statute. However, the district court also held that the Commission had not provided adequate explanation of its decision to permit Federal candidates and officeholders to speak ''without restriction or regulation,'' and therefore had not satisfied the reasoned analysis requirement of the Administrative Procedure Act. The district court remanded the regulation to the Commission for further action consistent with the court's opinion. Accordingly, in order to comply with the court's decision, the Commission now revisits the exemption for candidate and Federal officeholder speech at State, district, and local party fundraising events. The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before March 28, 2005. If the Commission receives sufficient requests to testify, it may hold a hearing on this proposed rule. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Assistant General Counsel, and must be submitted in either electronic or written form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be sent to *statepartyfr@fec.gov* and may also be submitted through the Federal eRegulations Portal at *www.regulations.gov*. All electronic comments must include the full name, electronic mail address, and postal service address of the commenter. Electronic comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. If the electronic comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC. 20463. The Commission will post public comments on its Web site. If the Commission decides that a hearing is necessary, the hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463 (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (''BCRA''), Public Law 107–155, 116 Stat. 81 (2002), places limits on the amounts and types of funds that can be raised by Federal officeholders and candidates for both Federal and State elections. *See* 2 U.S.C. 441i(e). These restrictions also apply to their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, any such candidate(s) or Federal officeholder(s) (''covered persons''). Covered persons may not ''solicit, receive, direct, transfer or spend'' non-Federal funds in connection with an election for Federal, State, or local office except under limited circumstances. *See* 2 U.S.C. 441i(e); 11 CFR part 300, subpart D.

Section 441i(e)(3) states that ''notwithstanding'' the prohibition on raising non-Federal funds, including Levin funds, in connection with a Federal or non-Federal election in section 441i(b)(2)(C) and (e)(1), ''a candidate or an individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party.'' *Id.* During the rulemaking implementing this provision, the Commission initially sought comment on a rule proposing that, while such individuals could attend, speak, or be a featured guest at a party fundraising event, they could not say anything that could be construed as soliciting or otherwise seeking non-Federal funds, including Levin funds. *See* Notice of Proposed Rulemaking on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 FR 35654, 35672 (May 20, 2002). In the alternative, the NPRM sought comment on whether the fundraising event provision was a total exemption from the general solicitation ban, whereby Federal officeholders and candidates and their agents may attend and speak freely at such events without restriction or regulation. *Id.*

The Commission considered a range of comments on the scope of the fundraising provision. Ultimately, the Commission decided to construe the statutory provision broadly, permitting Federal officeholders and candidates to attend, speak, and appear as a featured guest at State, district, and local fundraising events ''without restriction or regulation.'' *See* Final Rules on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 FR 49064, 49108 (July 29, 2002); 11 CFR 300.64(b).

In *Shays* v. *FEC*, 337 F. Supp.2d 28 (D.D.C. 2004), the district court held that the Commission's explanation and justification for the fundraising provision in 11 CFR 300.64(b) did not satisfy the reasoned analysis requirement of the Administrative Procedure Act (''APA'') in two respects.[1] First, the district court held that the Commission's construction of BCRA as permitting Federal officeholders and candidates to speak at State, district, and local party fundraising events ''without restriction or regulation'' is not compelled by the language of the statute. *Id.* at 92–93. The court concluded that the BCRA provision ''is ambiguous in that it can be read in more than one way.'' *Id.* at 89. Specifically, the court concluded that the statute ''can be read to either be a carve-out for unabashed solicitation by federal candidates and officeholders at state, district or local committee fundraising events, or to simply make clear that merely attending, speaking or being the featured guest at such an event is not to be construed as constituting solicitation per se.'' *Id.* Second, the district court stated ''the FEC has not explained how examining speech at fundraising events implicates constitutional concerns that are not present when examining comments made at other venues.'' *Id.* at 93. The court remanded the regulation to the Commission for further action consistent with its opinion. *Id.* at 130.

To comply with the district court's order, the Commission is issuing this notice of proposed rulemaking to provide proposed revisions to the explanation and justification for the final rules it adopted concerning the provision allowing Federal officeholders and candidates to speak without restriction or regulation at fundraising events for State, district, and local party committees. *See* 11 CFR 300.64. As an alternative to providing a new

[1] Although the court held that the fundraising exemption regulation failed to satisfy the APA, it found the regulation did not necessarily run contrary to Congress's intent in creating the fundraising exemption and was based on a permissible construction of the statute. *Id.* at 90, 92 (finding the regulation survived *Chevron* review). Moreover, the court stated that it ''cannot find on the current record that the Commission's regulation on its face 'unduly compromises the Act's purposes' by 'creat[ing] the potential for gross abuse.' '' *Id.* at 91 (quoting *Orloski* v. *FEC*, 795 F.2d 156, 164, 165 (DC Cir. 1986)). *See also Shays*, 337 F. Supp.2d at 92 (''the court cannot find that the Commission has unduly compromised FECA's purposes'').

explanation for the current rule, this NPRM also includes a proposed rule that would replace current section 300.64 with a rule barring candidates and Federal officeholders from soliciting or directing non-Federal funds when attending or speaking at party fundraising events. Both approaches are explained below.

Proposed Revisions to the Explanation and Justification for Current 11 CFR 300.64

The Commission seeks comment on the following proposed three paragraphs to be included in a revised explanation and justification for current 11 CFR 300.64:

''In promulgating current 11 CFR 300.64(b), the Commission construed 2 U.S.C. 441i(e)(3) to exempt Federal officeholders and candidates from the general solicitation ban, so that they may attend and speak without restriction or regulation at party fundraising events. The district court recognized that section 441i(e)(3) was ambiguous and upheld the Commission's interpretation of this section as a permissible reading under *Chevron* step one. *See* 337 F. Supp.2d at 89–90. The district court also upheld the current section 300.64(b) under *Chevron* step two review because the regulation did not unduly compromise FECA. *Id.* at 92.

''Section 300.64 effectuates the balance Congress struck between the appearance of corruption engendered by soliciting sizable amounts of soft money and the legitimate and appropriate role Federal officeholders and candidates play in raising funds for their political parties. Just as Congress expressly permitted these individuals to raise non-Federal funds when they themselves run for non-Federal office (*see* 2 U.S.C. 441i(e)(2)), and to solicit limited amounts of non-Federal funds for certain 501(c) organizations (*see* 2 U.S.C. 441i(e)(4)), Congress also enacted 2 U.S.C. 441i(e)(3) to provide a mechanism whereby Federal officeholders and candidates could continue to play a role at State, district and local party committee fundraising events at which non-Federal funds are raised. The limited nature of this statutory exemption embodied in 11 CFR 300.64 is evident in that it does not permit Federal officeholders and candidates to solicit non-Federal funds for State, district or local party committees in pre-event publicity or through other mechanisms. Nor does it extend to fundraising on behalf of national party committees.

''In implementing this statutory scheme, the Commission is mindful that evaluating speech in the context of a party fundraising event raises First Amendment concerns where it is difficult to discern what specific words would be merely 'speaking' at such an event without crossing the line into soliciting or directing non-Federal funds. *See* 11 CFR 300.2(m) (definition of 'to solicit') and 300.2(n) (definition of 'to direct'). As the U.S. Supreme Court has observed, 'solicitation is characteristically entwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views.' *Schaumberg* v. *Citizens for a Better Env't,* 444 U.S. 620, 632 (1980). A regulation that permitted speaking at a party event, the central purpose of which is fundraising, but prohibited soliciting would require candidates to tease out words of general support for the political party and its causes from words of solicitation for non-Federal funds for that political party. A complete exemption in section 300.64(b) that allows Federal officeholders and candidates, in these limited circumstances, to speak and attend without restriction or regulation, including solicitation of non-Federal or Levin funds, avoids these concerns.'' [2]

The Commission seeks comments on these proposed revisions to the explanation and justification or comments that provide alternative rationales for the complete exemption in current 11 CFR 300.64(b). Additionally, the district court voiced concern that the current 300.64(b) ''creates the potential for abuse.'' *See* 337 F. Supp.2d at 91. The Commission seeks public comment as to any potential for abuse under the current rule.

The Commission also notes, as the *Shays* court observed, that under BCRA, outside the context of State, district and local party fundraisers, ''nonfederal money solicitation is almost completely barred.'' *Id.* at 92. From time to time, the Commission has been asked to permit attendance and participation by Federal officeholders and candidates at various functions other than those for State, district and local parties, where non-Federal funds will be raised. Subject to various restrictions, the Commission has allowed this. *See, e.g.,* Advisory Opinions 2003–36 and 2003–03. The Commission requests comment on whether these advisory opinions, allowing attendance at such functions, struck the proper balance. Alternatively, are these advisory opinions inconsistent with BCRA's language and intent? Does the permission granted in 2 U.S.C. 441i(e)(3) to attend, speak, or be a featured guest at State, district and local party events, by implication, prohibit Federal officeholders and candidates from doing so at other fundraising events unless such events are solely and exclusively raising Federal funds? [3]

Should the Commission specifically bar attendance by a Federal officeholder or candidate at a non-State, district or local party fundraising event when the officeholder or candidate knows or reasonably should know that solicitations otherwise prohibited when made by the candidate or officeholder will take place at the event? Alternatively, should Advisory Opinions 2003–03 and 2003–36 be incorporated into the Commission's regulations? If so, should other modifications be added?

Alternative Proposed 11 CFR 300.64

Although providing a revised explanation and justification for current 11 CFR 300.64 would comply with the district court's decision in *Shays* v. *FEC*, the Commission is also considering an alternative approach. This approach would replace current section 300.64 with a rule barring candidates and Federal officeholders from soliciting, receiving, directing, transferring or spending any non-Federal funds, including Levin funds, when speaking at party fundraising events.

The proposed rule would redesignate the introductory paragraph of 11 CFR 300.64 as paragraph (a) and amend it to state that Federal officeholders and candidates may not solicit, receive, direct, transfer, or spend non-Federal funds at any such event. Current section 300.64(a) would be redesignated as paragraph (b) without any substantive changes, and current section 300.64(b) would be deleted entirely.

Proposed 11 CFR 300.64(a)

The proposed rule would limit the scope of section 300.64 by replacing the complete exemption for speaking ''without restriction or regulation'' in current 11 CFR 300.64(b) with a narrower exception under which Federal candidates and officeholders would still be able to speak at or attend any party fundraising event (as the

[2] These concerns are more of an issue for these types of party fundraisers where Federal funds and non-Federal funds may both be raised than for national party committee fundraisers where only Federal funds may be raised.

[3] *See* 2 U.S.C. 441i(e)(1)(B) (permitting solicitations by Federal candidates for State candidates so long as such solicitations comply with the source prohibitions and amount restrictions under the Act for Federal candidates). *See also* 2 U.S.C. 441i(e)(4) (permitting certain solicitations, with restrictions, by Federal officeholders and candidates for funds to be used by certain tax-exempt organizations to be used for certain types of Federal election activity).

statute clearly authorizes), but they would not be able to *solicit, receive, direct, transfer or spend* non-Federal funds, including Levin funds, at the party fundraising event. This proposed rule would interpret section 441i(e)(3) as an exception that makes clear that the mere attendance or speaking by a candidate in this circumstance should not be equated with a solicitation prohibited by section 441i(e)(1). However, this safe harbor would not apply to a candidate or Federal officeholder who uses words that solicit or direct non-Federal funds. *See* 11 CFR 300.2(m) (definition of ''to solicit'') and 300.2(n) (definition of ''to direct'').

The district court in *Shays* v. *FEC* held that this interpretation is another permissible reading of the statute. *See* 337 F. Supp.2d at 89–90. The Commission seeks public comment on this alternative approach.

The alternative approach raises an issue about interpreting BCRA in light of *Shays* v. *FEC*. In that opinion, the district court stated: ''the plain reading of [BCRA] makes clear that Levin funds are funds 'subject to [FECA's] limitations, prohibitions, and reporting requirements.' '' *Shays* v. *FEC*, 337 F. Supp.2d at 118. Does this mean that 2 U.S.C. 441i(e)(1) does not prohibit covered persons from soliciting Levin funds? Although 2 U.S.C. 441i(b)(2)(B)(iii) and (C) nonetheless generally prohibit State parties from treating funds raised by covered persons as Levin funds, do the cross-references between subsection (e)(3) and subparagraph (b)(2)(C) create an exception permitting State party committees to treat funds solicited by covered persons at fundraising events as Levin funds? The Commission seeks comment on how it should interpret 2 U.S.C. 441i(b)(2), (e)(1), and (e)(3), in light of *Shays* v. *FEC*.

In addition, if the Commission were to adopt this alternative approach, would it be appropriate to permit written notices or oral disclaimers similar to those discussed in Advisory Opinions 2003–03 and 2003–36 for other fundraising events? The opinions addressed appearances, speeches, and solicitations by covered persons at fundraising events where non-Federal funds were being raised. Those opinions permitted covered persons to solicit funds and comply with 2 U.S.C. 441i(e)(1) by using either written notices or oral disclaimers. Alternatively, would another type of notice or disclaimer be more appropriate?

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

The Commission certifies that the attached proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the proposed rule is an exception from the requirements of a general rule applicable to Federal officeholders and candidates. In addition, the other organizations affected by this rule are State, district and local party committees of the two major political parties, which are not ''small entities'' under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. To the extent that any of these political party committees may fall within the definition of ''small entities,'' their number is not substantial.

List of Subjects in 11 CFR Part 300

Campaign funds, nonprofit organizations, political committees and parties, political candidates, reporting and recordkeeping requirements.

For reasons set out in the preamble, Subchapter C of Chapter 1 of title 11 of the *Code of Federal Regulations* would be amended to read as follows:

PART 300—NON-FEDERAL FUNDS

1. The authority citation for part 300 would continue to read as follows:

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

2. Section 300.64 would be revised to read as follows:

§ 300.64 Exception for attending, speaking, or appearing as a featured guest at fundraising events (2 U.S.C. 441i(e)(3)).

(a) Notwithstanding the provisions of 11 CFR 100.24, 300.61 and 300.62, a Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, including but not limited to a fundraising event at which Levin funds are raised, or at which non-Federal funds are raised. Such candidate or individual holding Federal office shall not solicit, receive, direct, transfer or spend non-Federal funds, including Levin funds, at any such event.

(b) State, district, or local committees of a political party may advertise, announce or otherwise publicize that a Federal candidate or individual holding Federal office will attend, speak, or be a featured guest at a fundraising event, including, but not limited to, publicizing such appearance in pre-event invitation materials and in other party committee communications.

Dated: February 17, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–3471 Filed 2–23–05; 8:45 am]

BILLING CODE 6715–01–U

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 614, 615, 618, 619, 620, 630

RIN 3052–AC19

Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Definitions; Disclosure to Shareholders; Disclosure to Investors in Systemwide and Consolidated Bank Debt Obligations of the Farm Credit System

AGENCY: Farm Credit Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Farm Credit Administration (FCA, we, us, or our) is extending the comment period for 60 days on our proposed rule affecting the governance of the Farm Credit System so all parties will have more time to respond.

DATES: Please send your comments to us on or before May 20, 2005.

ADDRESSES: Comments may be sent by electronic mail to *reg-comm@fca.gov,* through the Pending Regulations section of our Web site at *http://www.fca.gov,* or through the Government-wide *http://www.regulations.gov portal.* You may also send written comments to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or by facsimile transmission to (703) 734–5784.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove electronic-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT: Robert R. Andros, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4017, TTY (703) 883–4434; or Laura D. McFarland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: On January 19, 2005, FCA published a proposed rule in the **Federal Register** seeking public comment on amendments to its regulations affecting the governance of the Farm Credit System. The comment period expires on March 21, 2005. *See* 70 FR 2963, January 19, 2005.

The Farm Credit Council requested that we extend the comment period for an additional 60 days. In response to this request, we are extending the comment period until May 20, 2005 so all interested parties have more time to respond. The FCA supports public involvement and participation in its regulatory process and invites all interested parties to review and provide comments on the proposed rule.

Dated: February 17, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–3475 Filed 2–23–05; 8:45 am]

BILLING CODE 6705–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0020; FRL–7877–2]

Proposed Approval and Promulgation of Implementation Plans; Texas; Low-Emission Diesel Fuel Compliance Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Texas State Implementation Plan (SIP). We are proposing approval, through parallel processing, of a revision to the SIP that would change the compliance date for Texas Low-Emission Diesel (TXLED) fuel from April 1, 2005, to October 1, 2005. In addition, we are requesting comments on a refinement to the State's proposed revision. The refinement contemplated by the State is a phased schedule which would extend the compliance date from April 1, 2005 to October 1, 2005 for producers and importers, from April 1, 2005 to November 15, 2005 for bulk plant distribution facilities, and from April 1, 2005 to January 1, 2006 for retail fuel dispensing outlets, wholesale bulk purshaser/consumer facilities, and all other affected persons. The change is being made to address fuel supply uncertainty in the April 2005 time frame.

DATES: Written comments must be received on or before March 28, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R06–OAR–2005–TX–0020, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6coment.htm* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov.* Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID No. R06–OAR–2005–TX–0020. EPA's policy is that all comments received will be included in the public file without change, and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), *http://www.regulations.gov,* or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME website and the Federal *http://www.regulations.gov* are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public file 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 Regional Material in EDocket (RME) index at *http://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 the official file which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air

Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367, e-mail address: *rennie.sandra@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA. This document concerns control of Air Pollution of NO_X and VOCs from mobile sources in 110 counties of east Texas where the rule applies.

What Action Are We Taking Today?

We approved the original TXLED rule on November 14, 2001 (66 FR 57196), as part of the Houston-Galveston Attainment Demonstration SIP. On December 15, 2004, the Texas Commission on Environmental Quality (TCEQ) Commissioners proposed to revise the TXLED rule. Among other revisions, the commission proposed to extend the compliance date from April 1, 2005 to October 1, 2005. The commission proposed this extension because of concern about product availability by the current compliance date.

On February 16, 2005 the Executive Director of the TCEQ submitted a letter to EPA requesting parallel processing of the compliance date portion of the SIP revision for TXLED and requested that EPA consider a refinement to the proposal in parallel processing this proposal. Based on this request, EPA is proposing to approve the change to the compliance date for TXLED fuel from April 1, 2005, to October 1, 2005, and also is proposing approval and accepting comment on the requested refinement to the State's proposal. This refinement would change the compliance date from April 1, 2005 for all the regulated public to a phased schedule beginning on October 1, 2005 and ending on January 1, 2006. The schedule would establish October 1, 2005 as the compliance date for producers and importers, November 15, 2005 as the compliance date for bulk plant distribution facilities, and January 1, 2006 as the compliance date for retail fuel dispensing outlets, wholesale bulk purchasers/consumer facilities, and other affected persons. The change is necessary to address concerns by refiners, distributors, and retailers about the availability of compliant fuel on the date it is required in the federally approved Texas SIP.

We are proposing approval of this revision to the Texas SIP utilizing parallel processing. Parallel processing means that EPA proposes action on a portion of the state revision before the state regulation becomes final under state law. Under parallel processing, EPA takes final action on its proposal if the final, adopted state submission is substantially unchanged from the submission on which the proposed rulemaking was based. If there are significant changes in the final submission, if those significant changes are anticipated and adequately described in EPA's proposed rulemaking or result from corrections determined by the State to be necessary through review of issues described in EPA's proposed rulemaking, EPA may still take final action to approve the submittal.

EPA is proposing approval of the extension of the compliance dates for TXLED. We are seeking comment on this approach. A separate notice will be published in the **Federal Register** at a later date to address the other components of the TXLED proposed SIP revision.

What Did the State Submit?

The compliance date was proposed to be changed from April 1, 2005 to October 1, 2005 when the TXLED SIP revision was proposed for public comment on December 15, 2004. Comments received by the State have prompted them to consider a refinement of the proposal for phasing-in the compliance date for different parts of the regulated public. In a letter dated February 16, 2005, the Executive Director of the TCEQ requested parallel processing of compliance dates for TXLED. The October 1, 2005 compliance date still stands, but applies only to producers and importers of TXLED fuel. A November 15, 2005 compliance date applies to bulk plant distribution facilities. A January 1, 2006 compliance date applies to retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

Why Are We Proposing Approval of the Phased Compliance Dates?

The purpose of this revision is to change the compliance date of Texas LED from April 1, 2005, to a phased schedule beginning October 1, 2005. We can approve this delay because this change addresses problems with the supply of compliant fuels while allowing regulated entities to remain in compliance with the rule without a substantial adverse impact on air quality. A phased-in approach such as we are proposing here will help ensure full compliance with the rule and an adequate fuel supply.

In the April 2005 timeframe, the adequacy of the fuel supply is uncertain. In the intervening six months new technology is expected to be available which will further ensure compliance with the rule. Beyond compliance by regulated entities, lack of compliant diesel could lead to a supply shortage in Texas. This could have a deleterious impact on the transportation of goods throughout the State, with a resultant serious and significant adverse economic impact on consumers.

Because this SIP revision is a delay in implementation only, EPA concludes that the same amount of emission reductions would be achieved by the attainment date for nonattainment areas and therefore, no attainment plans would be affected by this change. The affected area includes 110 counties in the eastern part of the State. Nonattainment areas in the affected area of the State are Houston-Galveston, Beaumont-Port Arthur, and Dallas-Fort Worth. This state rule change does not have any impact on the implementation of Federal Ultra-Low Sulfur Diesel fuel and the compliance dates for that rule.

Proposed Action

We are proposing approval of the change in compliance date for TXLED from April 1, 2005, to a phased approach beginning October 1, 2005 and ending on January 1, 2006. More specifically, October 1, 2005 is the compliance date for producers and importers of TXLED fuel. November 15, 2005 is the compliance date for bulk plant distribution facilities, and January 1, 2006 is the compliance date for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

Statutory and Executive Order Reviews

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

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Motor vehicle pollution, Volatile organic compounds, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: February 17, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–3526 Filed 2–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7876–4]

Ocean Dumping; Proposed Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a new Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Port Royal, South Carolina, as an EPA-approved ocean dumping site for the disposal of suitable dredged material. This proposed action is necessary to provide an acceptable ocean disposal site for consideration as an option for dredged material disposal projects in the greater Port Royal, South Carolina vicinity. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATES: Comments must be received on or before April 11, 2005.

ADDRESSES: Submit your comments 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: *collins.garyw@epa.gov.*

(c) Fax: (404) 562–9343.

(d) Mail: Coastal Section, EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303. ATTN: Gary W. Collins.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Department of the Army, Charleston District Corps of Engineers, 69A Hagood Ave., Charleston, South Carolina 29403–5107.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, (404) 562–9395.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This proposed designation of a new site offshore Port Royal, South Carolina, which is within Region 4, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this part 228. This site designation is being published as proposed rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. Regulated Entities

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material into ocean waters offshore Port Royal, South Carolina, under the MPRSA and its implementing regulations. This proposed rule is expected to be primarily of relevance to (a) parties seeking permits from the U.S. Army Corps of Engineers (COE) to transport dredged material for the purpose of disposal into ocean waters and (b) to the COE itself for its own dredged material disposal projects. Potentially regulated categories and entities that may seek to use the proposed dredged material disposal site may include:

Category	Examples of potentially regulated entities
Federal Government	U.S. Army Corps of Engineers Civil Works Projects, U.S. Marine Corps, and Other Federal Agencies.
Industry and General Public	Port Authorities, Marinas and Harbors, Shipyards, and Marine Repair Facilities, Berth Owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action, should the proposed rule become a final rule. To determine whether your organization is affected by this action, you should carefully consider whether your organization is subject to the requirement to obtain an MPRSA permit in accordance with section 103 of the MPRSA and the applicable regulations at 40 CFR parts 220 and 225, and whether you wish to use the sites subject to today's proposal. EPA notes that nothing in this proposed rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this proposed rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

C. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare NEPA documents in connection with ocean disposal site designations. (*See* 63 FR 58045 [October 29, 1998], ''Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents.'')

EPA, in cooperation with the Charleston District of the U.S. Army Corps of Engineers (COE), has prepared a Final EIS (FEIS) entitled ''Final Environmental Impact Statement for the Port Royal Ocean Dredged Material Disposal Site Designation.'' On June 25, 2004, the Notice of Availability (NOA) of the FEIS for public review and comment was published in the **Federal Register** (69 FR 35597 (June 25, 2004)). Anyone desiring a copy of the EIS may obtain one from the addresses given above. The public comment period on the final EIS closed on July 26, 2004.

EPA received one comment letter on the Final EIS from the South Carolina Department of Health and Environmental Control. This letter states their findings that the proposed ODMDS would be consistent with the S.C. Coastal Zone Management Program.

Pursuant to an Office of Water policy memorandum dated October 23, 1989, EPA has evaluated the proposed site designation for consistency with the State of South Carolina's (the State) approved coastal management program. EPA has determined that the designation of the proposed site is consistent to the maximum extent practicable with the State coastal management program, and submitted this determination to the State for review in accordance with EPA policy. As stated above, the State agrees with this determination.

This rule proposes the permanent designation for continuing use of the ODMDS near Port Royal, South Carolina. The purpose of the proposed action is to provide an environmentally acceptable option for the continued ocean disposal of dredged material. The need for the permanent designation of a Port Royal ODMDS is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the greater Port Royal Sound area. However, every disposal activity by the COE is evaluated on a case-by-case basis to determine the need for ocean disposal for that particular case. The need for ocean disposal for other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for their own actions.

For the Port Royal ODMDS, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR parts 220–229) and the COE regulations (33 CFR 209.120 and 33 CFR parts 335–338). The COE then issues Marine Protection, Research, and Sanctuaries Act (MPRSA) permits after compliance with regulations is determined to private applicants for the transport of dredged material intended for ocean disposal. EPA has the right to disapprove any ocean disposal project if, in its judgment, the MPRSA environmental criteria (section 102(a)) or conditions of designation (section 102(c)) are not met.

The FEIS discusses the need for this site designation and examines ocean and non-ocean disposal site alternatives to the proposed action. Specific alternatives considered were the two interim ocean sites, sites off the continental shelf, land disposal sites, and sites that might be used for shore protection.

D. Proposed Site Designation

The proposed site is located approximately 7 nautical miles offshore Bay Point Island, South Carolina. The proposed ODMDS occupies an area of about 1.0 square nautical miles (nmi^2). Water depths within the area average 36 feet (ft.). The coordinates of the New Port Royal site proposed for final designation are as follows:

32°05.00′ N	80°36.47′ W
32°05.00′ N	80°35.30′ W
32°04.00′ N	80°35.30′ W
32°04.00′ N	80°36.47′ W

E. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR 228.5, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. In this case, locations off the Continental Shelf are not feasible and no environmental benefit would be obtained by selecting such a site instead of that proposed in this action. Historical use of the proposed site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. If, at any time, disposal

operations at a site cause unacceptable adverse impacts, further use of the site can be restricted or terminated by EPA. The proposed site conforms to the five general criteria.

In addition to these general criteria in § 228.5 and § 228.6 lists the 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. Application of these 11 criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the proposed site are reviewed below in terms of these 11 criteria (the EIS may be consulted for additional information).

1. *Geographical position, depth of water, bottom topography, and distance from coast (40 CFR 228.6(a)(1)).*

The boundary of the proposed site is given above. The northern boundary of the proposed site is located about 7 nmi offshore of Bay Point Island, South Carolina. The site is approximately 1.0 nmi^2 in area. The bottom topography is relatively flat and featureless, with water depths averaging 36 ft.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases (40 CFR 228.6(a)(2)).*

Many of the area's species spend their adult lives in the offshore region, but are estuary-dependent because their juvenile stages use a low salinity estuarine nursery region. Specific migration routes are not known to occur within the proposed site. The site is not known to include any major breeding or spawning area. Due to the motility of finfish, it is unlikely that disposal activities will have any significant impact on any of the species found in the area. In a letter dated October 23, 2003, the Habitat Conservation Division of National Marine Fisheries Service concurred with our assessment that the proposed action would not have a substantial individual or cumulative adverse impact on essential fish habitat, or fishery resources.

3. *Location in relation to beaches and other amenity areas (40 CFR 228.6(a)(3)).*

The proposed site is located approximately 7 nautical miles from the coast. Considering the previous disposal activities of the existing ODMDS, dredged material disposal at the site is not expected to have an effect on the recreational uses of these beaches.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any (40 CFR 228(a)(4)).*

The type of materials to be disposed of within this proposed site is dredged material as described in type and quantity by section 2 of the FEIS. Between the years 1992 and 2003, approximately 200,000 cubic yards (annual average) have been ocean disposed from this area. Disposal would be by hopper dredge or dump scow. All disposals shall be in accordance with the approved Site Management and Monitoring Plan developed for this site (FEIS, Appendix B).

5. *Feasibility of surveillance and monitoring (40 CFR 228.6(a)(5)).*

Due to the relative proximity of the site to shore and its depth, surveillance will not be difficult. The Site Management and Monitoring Plan (SMMP) for the Port Royal ODMDS has been developed and was included as an appendix in the FEIS. This SMMP establishes a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. The SMMP may be reviewed and revised by EPA. A copy of the SMMP may be obtained at any of the addresses given above.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area including prevailing current direction and velocity, if any (40 CFR 228.6(a)(6)).*

A detailed current study, along with fate modelling of dredged material, was not deemed necessary and therefore was not conducted within the proposed site. Transport of disposed material should not present any adverse impacts. In summary, littoral drift is reported to be predominantly southwestward, while nearshore surface currents are derived primarily from wind stress, and are subject to extreme variability.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects) (40 CFR 228.6(a)(7)).*

The proposed ODMDS, as well as past interim sites nearby, has been used to dispose of the material from the Port Royal Sound area since 1956. Subsequent monitoring of these disposals and the long-term effects show that no adverse impacts have, or are likely to occur to the area.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean (40 CFR 228.6(a)(8)).*

The location of the proposed ODMDS was selected to avoid interference with commericial shipping. It is not anticipated that the proposed site would interfere with any recreational activity. In addition, mineral extraction, fish and shellfish culture, and desalination activities do not occur in the area.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys (40 CFR 228.6(a)(9)).*

Appropriate water quality and ecological assessments have been performed at the site. The most abundant benthic invertebrates found within the proposed site were the annelid *Polygrodius* sp., the bivalve *Ervilia concentrica,* the polychaete *Prionospio cristata,* annelids in the class Oligochaeta, and the bivalve *Crassinella lunulata.* These five taxa accounted for more than 40 percent of total number of individuals collected. More detailed information concerning the water quality and ecology at the proposed ODMDS is presented in the FEIS. A copy of the FEIS may be obtained at any of the addresses given above.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site (40 CFR 228.6(a)(10)).*

The disposal of dredged materials should not attract or promote the development of nuisance species. No nuisance species have been reported to occur at previously utilized disposal sites in the vicinity.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance (40 CFR 228.6(a)(11)).*

There are no known such natural or cultural features of historical importance. As stated in the FEIS, this proposed action has fully complied with both the Archaeological and Historic Preservation Act and the National Historic Preservation Act, as amended.

F. Site Management

Site management of the Port Royal ODMDS is the responsibility of EPA in cooperation with the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region 4 assumes overall responsibility for site management.

The Site Management and Monitoring Plan (SMMP) for the proposed Port Royal ODMDS was developed as a part of the process of completing the EIS. This plan provides procedures for both site management and for the monitoring of effects of disposal activities. This SMMP is intended to be flexible and may be reviewed and revised by the EPA.

G. Proposed Action

The EIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the 11 specific and 5 general criteria used for site evaluation.

The designation of the Port Royal site as an EPA-approved ODMDS is being

published as Proposed Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region 4.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual disposal if it determines that environmental concerns under MPRSA have not been met.

The Port Royal ODMDS is not restricted to disposal use by federal projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable dredged material from the greater Port Royal, South Carolina vicinity.

H. Regulatory Assessments

1. Executive Order 12866

Under Executive Order 12866, EPA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

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

2. Paperwork Reduction Act

This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

3. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the designation will only have the effect of providing an environmentally acceptable disposal option for dredged material on a continued basis. Consequently, by publication of this Rule, the Regional Administrator certifies that this action will not have a significant impact on a substantial number of small entities and therefore does not necessitate preparation of a Regulatory Flexibility Analysis.

4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal Mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Thus, the requirements of section 202 and section 205 of the UMRA do not apply to this proposed rule. Similarly, EPA has also determined that this proposed action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this proposed rule.

5. Executive Order 13132

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As described elsewhere in this preamble, today's proposed rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13132 does not apply to this proposed rule. Although section 6 of Executive Order 13132 does not apply, EPA did consult with State officials in developing this proposed action and no concerns were raised.

6. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal

implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. As described elsewhere in this preamble, today's proposed rule would only have the effect of providing continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13175 does not apply to this proposed rule.

7. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have any reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As described elsewhere in this preamble, today's proposed rule would only have the effect of providing continual use of an ocean disposal site pursuant to section 102(c) of MPRSA.

8. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 1001)) because it is not a significant regulatory action under Executive Order 12866.

9. National Technology Transfer Advancement Act

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

10. Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

No action from this proposed rule would have a disproportionately high and adverse human health and environmental effect on any particular segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: February 7, 2005.

J. I. Palmer, Jr.,

Regional Administrator for Region 4.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (h)(23) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(23) Port Royal, SC; Ocean Dredged Material Disposal Site.

(i) Location (NAD83): 32°05.00′ N., 80°36.47′ W.; 32° 05.00′ N., 80°35.30′ W.; 32°04.00′ N., 80° 35.30′ W.; 32°04.00′ N., 80°36.47′ W.

(ii) Size: Approximately 1.0 square nautical miles.

(iii) Depth: Averages 36 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material from the greater Port Royal, South Carolina vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

* * * * *

[FR Doc. 05–3525 Filed 2–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7874–8]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion at the Peterson/Puritan, Inc. site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 1 announces its intent to delete a portion of the Peterson/Puritan, Inc. Superfund Site (the Site), owned by Macklands Realty, Inc. and Berkeley Realty, Co. (herein Macklands and Berkeley properties), from the National Priorities List (NPL). EPA requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This partial deletion at Operable Unit Two (OU 2) of the Peterson/Puritan, Inc. Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List 60 FR 55466 (November 1, 1995).

The Site is made up of two formally designated operable units. This proposal for partial deletion pertains only to a portion of OU 2 consisting of 19.8 acres of the estimated 217 acres contained in OU 2. Macklands Realty, Inc. owns Plat 14, Lot 2 which consists of approximately 10.1 acres proposed for deletion while Berkeley Realty, Co. owns Plat 15, Lot 1 which consists of

approximately 9.7 acres proposed for deletion. These properties are also known locally as the proposed Berkeley Commons and River Run developments, located along the eastern slope of the Blackstone River Valley between State Route 122 and the Blackstone River in Cumberland, Rhode Island. The western extent of the Macklands and Berkeley properties also makes up a portion of the northeastern boundary of OU 2. The remaining portions of OU 2 will stay on the NPL, and the Remedial Investigation and Feasibility Study (RI/FS) will continue as planned at OU 2. EPA bases its intent to delete this portion at OU 2 on the determination by EPA and Rhode Island Department of Environmental Management (RIDEM) that investigations have shown that the area proposed for deletion poses no significant threat to human health or the environment and, therefore, currently warrants that no further response action is required at the Macklands and Berkeley properties.

DATES: EPA will accept comments concerning its intent for partial deletion on or before March 28, 2005 and a newspaper of record.

ADDRESSES: Comments may be mailed to: Mr. David J. Newton, Remedial Project Manager, Office of Site Remediation and Restoration, U.S. EPA, Region 1, 1 Congress Street, Suite 1100, Boston, MA 02114–2023.

Information Repositories:

Comprehensive information on the Peterson/Puritan, Inc. Site as well as an administrative record specific to this proposed partial deletion is available for review at EPA's Region 1 office in Boston, MA, and at the information repositories listed below. The EPA Region 1's Superfund Records Center is located at 1 Congress Street, Boston, MA, 02114–2023. A review of the records can be conducted by appointment by calling (617) 918–1440 between 8:30 a.m. until 4:30 p.m., Monday–Friday.

Other information repositories where the deletion docket and comprehensive site records are available for public review include: Cumberland Public Library at 1464 Diamond Hill Road in Cumberland, Rhode Island, and Lincoln Public Library, Old River Road, Lincoln, Rhode Island.

FOR FURTHER INFORMATION CONTACT: David J. Newton, Remedial Project Manager at (617) 918–1243, or Sarah White, Community Involvement Coordinator, U.S. EPA, Region 1, Office of Site Remediation and Restoration, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, Telephone: (617) 918–1026.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
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I. Introduction

The United States Environmental Protection Agency (EPA) Region 1 announces its intent to delete a portion of Operable Unit Two (OU 2) at the Peterson/Puritan, Inc. Superfund Site, (the Site) located in Cumberland, Rhode Island from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this proposal. This proposal for partial deletion pertains to the properties designated on the town of Cumberland Tax Assessor's Map Plat 14, Lot 2 and Plat 15, Lot 1, known locally as the proposed Berkeley Commons and River Run developments, and owned by Macklands Realty, Inc. and Berkeley Realty, Co. respectively (herein Macklands and Berkeley properties). This partial deletion involves 19.8 acres designated within the OU 2 boundary (see Figure 1; a map showing the areas proposed for deletion; which is located in the Administrative Record (AR) under section 5.4).

A. Peterson/Puritan Site Description

The Site consists of two formally designated operable units totaling over two linear miles of mixed industrial/commercial/residential property. The Site is located along the Blackstone River and includes a portion of the Blackstone River Valley National Heritage Corridor. The Site is located in the towns of Cumberland and Lincoln, in the north-central corner of Rhode Island. Land use within and adjacent to the Site is mixed having interspersed industrial, commercial, and residential uses typical of an enduring suburban community with a past textile mill heritage in Providence County. A more residential to rural setting is found immediately west of the river in Lincoln. The Blackstone River forms a shared town boundary between Cumberland and Lincoln.

The OU 2 portion of the Site, which principally contains the J.M. Mills Landfill, is surrounded by industrial, residential and semi-rural properties. Bordering OU 2 to the north is the Hope Global company, located at 88 Martin Street in Cumberland. To the south of OU 2 is the Stop and Shop Market (and strip mall) on Mendon Road. The Pratt Dam across the Blackstone River and the southern extent of the former transfer station property (also known as the Nunes Parcel) partially forms the southern boundary of OU 2. The eastern boundary of OU 2 includes a portion of the former Mackland Sand and Gravel operations and wetlands known locally as the New River. Finally, the western boundary of OU 2 includes the Blackstone River and the Quinnville wellfield in Lincoln.

OU 2 contains many different parcels totaling an estimated 217 acres. EPA believes that the most contaminated parcel is the privately owned 38 acre J.M. Mills Landfill which accepted mixed municipal and industrial waste from 1954 through 1986. Adjacent to the J.M. Mills Landfill is a privately owned 28 acre unnamed island located in the Blackstone River. EPA recently discovered solid wastes disposed of on this island and believes that the island's soils were used to provide daily cover materials for the landfill and, perhaps, was even used as an additional disposal location during the time the landfill was operating. Down river from the unnamed island is the Pratt Dam, which provides an access point to the island. The Site also includes the 26 acre Lincoln Quinnville wellfield and the Cumberland Lenox Street municipal well. These wells were used by the towns as a municipal water supply until 1979 when they were closed by the Rhode Island Department of Health due to the presence of volatile organic contaminants found in the water. A section of the Providence and Worcester Railroad line runs through OU 2 and forms the eastern extent of the landfill slope while the river forms the landfill's western boundary. A former privately owned transfer station is located on the southern portion of the Site. Other areas of OU 2 include portions of the Blackstone River and an adjacent canal, the Blackstone River Bikeway, and wetlands.

When the northeasterly boundary of OU 2 for the RI/FS was created, it clipped a portion (19.8 acres) of residential and commercially zoned properties in Plats 14 and 15 developed by the Macklands and Berkeley properties. The remaining two thirds of these developments are not included within the OU 2 boundary as drawn. The 19.8 acres included by the OU 2 boundary are the subject of this proposed partial deletion (see Figure 1 contained in the AR).

Preliminary samples taken from suspected source areas within OU 2 (such as the J.M. Mills Landfill and other associated disposal locations and excluding the properties proposed for deletion) indicate the presence of

volatile organic contaminants (including, but not limited to, trichloroethylene, freon 11, 1,2-dichloroethene, 1,1,1-trichloroethane, and benzene), and also chromium, nickel and lead in the groundwater. Contaminants found in the soil and sediment include benzo(a)pyrene, chrysene, indeno(1,2,3+cd)pyrene, bis(2-ethylhexyl)phthalate, polychlorinated biphenyls (PCBs) and asbestos insulation/transite. In addition, preliminary sampling of the soils along the river have been found to be contaminated with PCBs, polyaromatic hydrocarbons and heavy metals.

EPA included the Site on the NPL on September 8, 1983. EPA conducted a removal action at OU 2 in 1992 to construct a fence around the former J.M. Mills Landfill and to remove drums containing contaminated materials from the base of the landfill. In November 1997, a second removal action was conducted at the J.M. Mills Landfill to address recently disposed asbestos-containing material found outside of the fenced-in area. The security fence was also extended to limit further dumping and restrict access to additional portions of the Site.

An investigation into the nature and extent of contamination at the J.M. Mills Landfill and surrounding areas is currently underway. Following the completion of this study, a final cleanup remedy will be selected, a remedial design will be completed and the remedial action will be initiated.

B. Area Proposed for Deletion

The properties owned by Macklands Realty, Inc. and Berkeley Realty, Co. were historically run as a family owned and operated sand and gravel mining operation. In 1939, a portion of the property was subdivided into residential lots; the remaining portion became a working sand and gravel mining operation from 1939 to the early 1970s. The Macklands and Berkeley properties, with the majority of the property under a single family's ownership for approximately 70 years, has no known history of industrial or manufacturing activities involving hazardous substances. Future development plans for the Macklands and Berkeley properties include: (1) Macklands Realty, Inc., a residential subdivision covering approximately 32 acres with approximately 10.1 acres proposed for deletion; and (2) Berkeley Realty, Co., a mixed use development including duplexes, townhouses, and office/retail buildings covering approximately 30 acres of which 9.7 acres is proposed for deletion from the site. Each of these proposed developments are located off of Mendon Road in Cumberland, Rhode Island.

The only known use of oil or potentially hazardous materials on portions of the development properties was the application of ''MC–2,'' an oil-based dust suppression material, along haul roads at the height of the sand and gravel mining operations in the 1950s and 1960s.

In June 2003, a Phase 1 Environmental Site Assessment of the Macklands and Berkeley properties revealed no evidence of observed environmental conditions associated with hazardous substances or petroleum products, asbestos-containing material, radon, lead-based paints, or areas of special natural resource concern at the properties. Interviews and review of past records (including old aerial photographs) also provide no evidence of the generation or disposal of hazardous substances or waste on the properties.

Based upon currently available information obtained and submitted for the Agency's review, EPA finds that no further action is necessary to protect human health and the environment in relation to the Macklands and Berkeley properties designated in the town of Cumberland's Tax Assessor's Map as Plat 14, Lot 2 and Plat 15, Lot 1 in Cumberland Rhode Island. The information supporting this finding is contained in an Administrative Record established for this purpose (see Administrative Record Index for the Macklands and Berkeley properties, Peterson/Puritan, Inc. Operable Unit 2, November 2004).

EPA proposes to delete the Macklands and Berkeley properties from the Peterson/Puritan, Inc. Site because all appropriate CERCLA response activities have been completed for these properties. Moreover, focused site investigations have determined that these properties are not currently impacted by, nor are they contributing to, the contamination responsible for Superfund response actions at OU 2. Response obligations at the rest of OU 2 are not yet complete, and the Site will remain on the NPL and is not the subject of this partial deletion. The remaining portions of OU 2 include, but are not limited to, the J.M. Mills Landfill, the unnamed island, the Nunes parcel, and a portion of the Blackstone River and the associated wetlands.

The NPL is a list of sites that EPA has determined present a significant risk to human health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning its intent for partial deletion for thirty (30) days after publication of this notice in the **Federal Register** and a newspaper of record.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect human health or the environment. In making such a determination pursuant to § 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to human health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions for the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

The following procedures were used for the proposed deletion of portions of the Macklands and Berkeley development properties that are included within the defined boundary

of the Peterson/Puritan, Inc. Site as shown on Figure 1 (contained in the AR):

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The State of Rhode Island through the Rhode Island Department of Environmental Management (RIDEM) concurs with this partial deletion.

(3) Concurrent with this Notice of Intent for Partial Deletion, a notice has been published in a newspaper of record and has been distributed to appropriate Federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and a newspaper of record.

(4) EPA has made all relevant documents available at the information repositories listed previously.

This **Federal Register** notice, and a concurrent notice in a newspaper of record, announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete the Macklands and Berkeley properties (as identified on Figure 1 contained in the AR) from the NPL. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the EPA Region 1's Superfund Record Center in Boston, Massachusetts, RIDEM, and at the established information repositories for the Site.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously. Members of the public are encouraged to contact EPA Region 1 to obtain a copy of the Responsiveness Summary.

If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a Notice of Partial Deletion in the **Federal Register**. Deletion of the Macklands and Berkeley properties does not actually occur until the Notice of Partial Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of the Macklands and Berkeley properties from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

A. Background

RIDEM classifies the Blackstone River as a Class B1 stream throughout the Site. This classification has an established use goal of ''fishable and swimmable,'' and the State of Rhode Island has an overall objective to ''restore impaired sections of the Blackstone River and its tributaries'' that do not fully support the river's designated uses. (Source: Draft Blackstone River Action Plan, Rhode Island Department of Environmental Management (RIDEM), September 2001). The B1 classification indicates that while all Class B uses must be supported by water quality, primary contact recreation may be ''impacted due to pathogens from approved wastewater discharges'' (RI WQR, Rule 8(B)(1)).

Sources of surface water impairments for the Blackstone River, including the area encompassed by the Site and not otherwise found to be in association with disposal practices identified at the Site, are understood to be point and non-point sources such as Combined Sewer Overflows, seepage from failing septic systems, runoff during storm events and other lesser sources. Under the Clean Water Act, permitted discharges under the National Pollution Discharge Elimination System and storm water abatement using Best Management Practices (BMPs) under the implementation of Storm Water Phase II are two examples of regulation geared to manage, control, and mitigate such impairments.

The current groundwater classification at the Site is GAA–NA. The GAA classification, as designated by the Rhode Island Department of Environmental Management Rules and Regulations for Ground Water Quality, is defined as ''those ground water resources which the Director has designated to be suitable for public drinking water use without treatment.'' The ''NA'' classification is defined as ''those areas that have pollutant concentrations greater than the ground water quality standards for the applicable classification.'' The groundwater at and around the Site remains a viable potential drinking water resource.

On behalf of the owner of the Macklands and Berkeley properties, a limited site investigation was conducted by EA Engineering, Science and Technology (EA). The purpose of this investigation was to evaluate groundwater, surface water quality, and the hydraulic relationship of the properties to known sources of groundwater contamination to the southwest and northwest. In June of 2003, the owner directed the installation of four (4) monitoring wells strategically placed to monitor groundwater flow (see Figure 2; a map illustrating relevant sampling locations; which is located in the AR under section 5.4). Of the four wells, three were completed in shallow bedrock due the thin, non-water bearing veneer of overburden that was found to be present at these locations. The most southern well was completed in overburden. Groundwater samples were collected from each of the wells using low-flow sampling methods and procedures in accordance with EPA protocols. Duplicate samples were also taken for quality assurance purposes. All samples were analyzed for volatile organic compounds (VOCs) and total metals. The samples were analyzed using EPA approved methods and compared to Project Action Limits (PALs) as approved for use in the Peterson/Puritan, Inc. OU 2 Quality Assurance Project Plan. (See: (1) Phase 1 Environmental Site Assessment, Plat 14 Lot 2, Plat 15 Lot 1, Macklands and Berkeley properties, and (2) Limited Investigation Report, prepared by EA Engineering, Science and Technology, June and August 2003, respectively).

In addition, one surface water sample and one sediment sample was collected from both an intermittent stream and Monastery Brook (see Figure 2 contained in the AR). A duplicate surface water sample was taken from the intermittent stream for quality assurance purposes. Both streams run westerly through the Macklands and Berkeley properties where the confluence of each enters into wetlands located east of the Blackstone River and within OU2. Each sample was analyzed for semi-volatile organic compounds (SVOCs), VOCs and total metals.

In August 2003, these results were presented to EPA and RIDEM in a document entitled, ''Limited Investigation [for] Berkeley Commons/ River Run Development.'' The owner of the properties also requested that his properties be deleted from the Site so that ongoing development plans would not be impacted. In addition, the OU 2 remedial investigation (RI) began in the fall of 2003.

B. Response Actions

As part of a preliminary screening evaluation for potential ecological

threats, surface water data were compared with the Federal Ambient Water Quality Criteria (AWQC) with appropriate adjustment for site-specific water hardness (calculated using calcium and magnesium concentrations in site water). Calculations and criteria followed EPA AWQC documentation (EPA, 1999). No chemicals exceeded the AWQC chronic values, which are designed to be broadly protective of aquatic life.

Sediment data were evaluated using the Consensus-Based Threshold Effect Concentrations (TECs) from MacDonald *et al.*, 2000 (MacDonald, D.D., C.G. Ingersoll, and T.A. Berger. 2000. Development and evaluation of Consensus-Based Sediment Quality Guidelines for Freshwater Ecosystems. Archives of Environmental Contamination and Toxicology, 39, 20–31. Springer-Verlag, New York Inc.). Chemicals below their respective TECs generally would not be expected to pose a risk to sediment-dwelling organisms, but may warrant further evaluation. Of the detected chemicals found in sediment, only lead exceeded the TEC value in one sample. Sediment taken from sample location WT–02 had a lead concentration of 43.9 mg/Kg. The TEC for lead is 35.8 mg/Kg. It should also be noted that lead at this location is well below the Probable Effect Concentration of 128 mg/Kg, which is the concentration above which adverse effects would be considered likely.

Sampling location WT–02 is located at the end of Monastery Brook. Monastery Brook is known to receive storm water from Mendon Road and the immediate surrounding community. Based on topography and other observations made to date within OU 2 of the Site, it is likely that the presence of lead at WT–02 is associated with storm run-off from Mendon Road and the local surroundings. On the basis of a single detection of lead slightly above the TEC, and no exceedence of surface water quality criteria, there does not appear to be a need for further evaluation of potential source areas on the Macklands and Berkeley properties.

A preliminary screening evaluation of the data for potential human health concerns was also conducted by EPA. For groundwater, surface water and sediment a few metals were detected at levels above EPA Project Action Limits (PALs), which were based on either the risk-based values from EPA Region 9 PRG tables or EPA National Secondary Drinking Water Standards for the OU 2 RI/FS. Among those metals detected, iron, aluminum and copper are considered essential nutrients by EPA and therefore did not warrant further risk evaluation. However, manganese, arsenic and barium were detected in some samples at levels exceeding the PALs. For chemicals with noncancer health effects, the PALs used were the EPA Region 9 PRG values (based on hazard quotient of 1) divided by 10. A hazard quotient of 1 is considered by EPA a threshold below which noncancer adverse health effects do not likely occur. Therefore, it is EPA Region 1's policy to use hazard quotient of 0.1 to account for the additive effects of multiple chemicals. For manganese and barium, the detected levels were slightly above the PALs at less than 1 order of magnitude. Therefore, the assumed noncancer hazard index from manganese and barium are acceptable and below EPA's noncancer hazard index of 1. For arsenic in sediment, detected levels were slightly above the risk-based PAL, at about 1 order of magnitude, but would result in an excess risk falling within the EPA acceptable risk range. The same conservative assumptions for exposure parameters that were used to develop the risk-based Region 9 values were used to determine this risk evaluation.

In summary, based on the information provided in the EA report, the cancer risks and noncancer hazards from a few detected metals at the Macklands and Berkeley properties would be acceptable for an EPA Superfund site and therefore, there is no need for any further risk evaluation or response action. Therefore, EA's finding that the levels of compounds found at the Macklands Realty, Inc. and Berkeley Realty, Co. properties do not pose any unacceptable risk or hazard to the human health based on EPA standards, is reasonable. EPA Region 1's preliminary screening evaluation of risk also concur with the findings presented by EA.

C. Community Involvement

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

D. Current Status

Among other documents, the Phase 1 Environmental Site Assessment of Macklands and Berkeley properties revealed no evidence of recognized environmental conditions associated with hazardous substances or petroleum products, asbestos-containing material, radon, lead-based paints, or areas of special natural resource concern at the properties. From the Limited Investigation Report of Berkeley Commons/River Run and other corroborating Site information gathered to date, the Macklands and Berkeley properties are not contributing to the VOC contamination of groundwater associated with the Site nor is it apparent that the Macklands and Berkeley properties are being affected currently by the documented release, or releases, associated with the Site. Based on limited testing, groundwater is in compliance with RIDEM's GAA standards at the Macklands and Berkeley properties. It should be noted that groundwater is not intended for direct consumption at the Macklands and Berkeley properties, as the development is scheduled to be serviced by municipal water. EPA may require access to the Macklands and Berkeley properties to monitor groundwater or sample wetlands in association with the Superfund response actions to the immediate south and west of the Macklands and Berkeley properties. Future consideration for the placement of institutional controls (in the form of deed restrictions for the future use, or hydraulic alteration of groundwater) adjacent to, or onto the Macklands and Berkeley properties, are possible once the RI/FS for OU 2 is complete and a remedy has been selected.

While EPA does not believe that any future response actions will be needed on the Macklands and Berkeley properties, if future conditions warrant such action, the proposed deletion areas of OU 2 remain eligible for future response actions. Further, this action does not preclude the State of Rhode Island from taking any response actions under State authority, nor others taking actions governed by other Federal statutes, should future conditions warrant such actions. This intent for partial deletion does not alter the status of the remainder of the Peterson/Puritan, Inc. Superfund Site, which is not proposed for deletion and remains on the NPL.

EPA, with concurrence from the State of Rhode Island, has determined that the release impacting the Site poses no significant threat to human health or the environment at the Macklands and Berkeley properties and therefore warrants no current response action at the properties. Therefore, EPA makes this proposal to delete the properties owned by Macklands Realty, Inc. and Berkeley Realty, Co., designated on the town of Cumberland tax assessor's map as Plat 14, Lot 2 and Plat 15, Lot 1 from the NPL.

Dated: February 1, 2005.

Robert W. Varney,

Regional Administrator, Region 1.

[FR Doc. 05–3452 Filed 2–23–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 021705A]

RIN 0648–AS19

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Vermilion Snapper Rebuilding Plan

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

ACTION: Notice of availability of Amendment 23 to the Fishery Management Plan (FMP) for Reef Fish Resources of the Gulf of Mexico (Amendment 23); request for comments.

SUMMARY: NMFS announces the availability of Amendment 23 prepared by the Gulf of Mexico Fishery Management Council (Council) that would establish a 10–year rebuilding plan for vermilion snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. The rebuilding plan seeks to achieve a 25.5–percent reduction in harvest based on the 2003 predicted landings. Measures to accomplish this reduction equitably for the commercial and recreational sectors of this fishery include increases in minimum size, a decreased recreational bag limit, and a closed commercial season. Amendment 23 would also establish biological reference points and stock status determination criteria for vermilion snapper (i.e., maximum sustainable yield (MSY), optimum yield (OY), maximum fishing mortality threshold (MFMT), and minimum stock size threshold (MSST), consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The intended effect of these measures is to end overfishing and rebuild the vermilion snapper resource consistent with the requirements of the Magnuson-Stevens Act.

DATES: Written comments must be received no later than 5 p.m., eastern time, April 25, 2005.

ADDRESSES: You may submit comments on Amendment 23 by any of the following methods:

- E-mail: *0648–AS19NOA@noaa.gov*. Include in the subject line the following document identifier: 0648–AS19.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.
- Fax: 727–570–5583, Attention: Peter Hood.

Copies of Amendment 23, which includes a Regulatory Impact Review, Initial Regulatory Flexibility Analyses, and a Supplemental Environmental Impact Statement, may be obtained from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; telephone: 813–228–2815; fax: 813–225–7015; e-mail: *gulfcouncil@gulfcouncil.org*. Copies of Amendment 23 can also be downloaded from the Council's website at *www.gulfcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727–570–5305; fax: 727–570–5583; e-mail: peter.hood@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the EEZ of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Background

In October 2003, NMFS declared the Gulf of Mexico stock of vermilion snapper to be overfished and undergoing overfishing. This determination was based in part on the results of a 2001 NMFS vermilion stock assessment and review by the Council's Reef Fish Stock Assessment Panel that found the stock to be undergoing overfishing. Subsequently, NMFS reexamined the assessment, as well as more recent data that ultimately supported the findings of the assessment, and declared the Gulf of Mexico vermilion snapper stock overfished. Therefore, measures to end overfishing and a rebuilding plan to restore the stock to the biomass needed to allow harvest at maximum sustainable yield (BMSY) in 10 years or less are necessary.

Amendment 23 contains measures for vermilion snapper designed to end overfishing and initiate implementation of the rebuilding plan that allocates the necessary restrictions fairly and equitably between the recreational and commercial sectors of the fishery, consistent with the requirements of the Magnuson-Stevens Act.

Rebuilding Plan

Amendment 23 would establish a 10–year vermilion snapper rebuilding plan, structured in one 4–year interval followed by two 3 year intervals, that would end overfishing and rebuild the stock to B_{MSY}. In Amendment 23, the rebuilding plan begins in 2004 and continues through 2013. However, due to the time required to complete supporting documentation, implementation of this amendment will not occur until 2005. Therefore, the rebuilding plan has been moved forward one year and will begin in 2005. The intervals are intended to provide short-term stability for the management and operation of the fishery, correlate more closely with the timing of future stock assessments, and provide a more reasonable time period for assessing the impacts of prior management actions. The appropriate parameters for each time interval, consistent with the overall objectives of the rebuilding plan, would be determined based upon the most recent stock assessment.

Initial (2005–2008) Implementation of the Rebuilding Plan

Based on the results of the 2001 vermilion snapper stock assessment and updated indices of abundance, the allowable harvest for the first 4–year interval starting in 2005 is 1.475 million lb (0.664 million kg). This equates to a 25.5–percent reduction in harvest based on the 2003 predicted landings. Measures to accomplish this reduction are:

(1) a minimum size limit for recreationally caught vermilion snapper of 11 inches (27.9 cm) total length (TL);

(2) a bag limit of 10 fish within the 20–reef fish aggregate bag limit. The increase in the size limit, from 10 inches (25.4 cm) TL to 11 inches (27.9 cm) TL, and the further restriction of the bag limit would achieve approximately a 21.5–percent reduction relative to the predicted 2003 harvest;

(3) a minimum size limit for commercially caught vermilion snapper of 11 inches (27.9 cm) TL; and

(4) a closed commercial season from April 22 through May 31 each year. This would achieve a 26.3–percent harvest reduction from the estimated 2003 landings.

The reduction in harvest achieved by these measures is slightly more than the target 25.5 percent needed by the rebuilding plan. Increasing harvest by the commercial sector is believed to

have contributed the most to the overfishing and overfished conditions that must be addressed by this amendment. Therefore, the Council decided more of the socioeconomic cost of rebuilding the fishery should be placed on the commercial sector. Because the commercial sector lands the majority of vermilion snapper (79 percent of the harvest between 1996 and 2002), the harvest reduction of 26.3 percent obtained by these measures was deemed appropriate.

In addition, Amendment 23 would establish biological reference points and stock status determination criteria for vermilion snapper (MSY, OY, MFMT, and MSST), consistent with the requirements of the Magnuson-Stevens Act.

Additional Review Procedures

A proposed rule that would implement measures outlined in the amendment has been prepared. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with Amendment 23, the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by April 25, 2005, whether specifically directed to the FMP or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 23. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 23 or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: February 18, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–3579 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041229366–4366–01; I.D. 122304D]

RIN 0648–AQ25

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Amendment 2

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

ACTION: Proposed rule; reopening of public comment period and correction.

SUMMARY: NMFS extends for 10 days the public comment period on the proposed rule to implement the management measures contained in Amendment 2 to the Monkfish Fishery Management Plan (FMP), as published on January 14, 2005. NMFS also corrects the description of the qualification years for the proposed modification to the monkfish limited access program that was incorrectly described in the preamble to the January 14, 2005, proposed rule. NMFS also clarifies the description of the proposed possession limit for the Offshore Fishery Program in the Southern Fishery Management Area (SFMA) provided in the preamble of the Amendment 2 proposed rule to be per monkfish day-at-sea (DAS).

DATES: The comment period on the proposed rule will be reopened from February 24, 2005, through March 7, 2005.

ADDRESSES: Written comments on the proposed rule may be submitted by any of the following methods:

- E-mail: E-mail comments may be submitted to mnkamnd2@noaa.gov. Include in the subject line the following ''Comments on the Proposed Rule for Monkfish Amendment 2.''
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Mail: Comments submitted by mail should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments on the Proposed Rule for Monkfish Amendment 2.''
- Facsimile (fax): Comments submitted by fax should be faxed to (978) 281–9135.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Copies of Amendment 2, its Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the Final Supplemental Environmental Impact Statement (FSEIS) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*.

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

SUPPLEMENTARY INFORMATION:

Background

On January 14, 2005 (70 FR 2586), NMFS published a proposed rule in the **Federal Register** that would implement the management measures contained in Amendment 2, if approved. The New England and Mid-Atlantic Fishery Management Councils developed Amendment 2 to address a number of issues that arose out of the implementation of the original FMP, as well as issues that were identified during public scoping. One of the issues that arose out of the implementation of the original FMP was unattainable permit qualification criteria for vessels in the southern end of the range of the fishery. To address this issue, Amendment 2 proposes a modification to the limited access permit qualification criteria. The qualification criteria referenced in the regulatory text of the January 14, 2005, proposed rule correctly stated that the qualification years under this modified limited access program would be 1995 through 1998. However, the preamble to the proposed rule incorrectly listed the qualification years as 1994 through 1998. Therefore, NMFS corrects the qualification years referenced in the preamble of the proposed rule published on January 14, 2005 (70 FR 2586), to read as follows: ''... during the qualification period March 15 through June 15, for the years 1995 through 1998. ...''

NMFS is also clarifying the proposed possession limit for vessels participating in the Offshore Fishery Program in the SFMA described on page 2587 of the preamble for the January 14, 2005,

proposed rule. The proposed possession limit of 1,600 lb (725.7 kg) of monkfish tails is intended to be per monkfish DAS, not per trip.

The public comment period on the proposed rule ended on February 14, 2005. In order to provide the public with the opportunity to comment on the corrected proposed rule for Amendment 2, NMFS is reopening the public comment for a period for 10 days, beginning on February 24, 2005, and ending on March 7, 2005.

In addition, the preamble to the proposed rule published on January 14, 2004, 70 FR 2586, which was the subject of FR Doc. 05–755, on page 2586, third column, beginning on the third line from the bottom the words ''the years 1994 through 1998. Two'' are removed and in their place the following words ''the years 1995 through 1998. Two ...'' are added.

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

Dated: February 17, 2005.

Rebecca Lent,

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

[FR Doc. 05–3583 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 36

Thursday, February 24, 2005

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

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on March 15, 2005, at the North Tahoe Conference Center, 8318 N. Lake Blvd., Kings Beach, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held March 15, 2005, beginning at 11 a.m. and ending at 12 p.m.

ADDRESSES: The meeting will be held at the North Tahoe Conference Center, 8318 N. Lake Blvd., Kings Beach, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Gloria Trahey, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2643.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: (1) Public Hearing, and (2) Review of Southern Nevada Public Land Management Act Round 6 Project Proposals. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: February 17, 2005.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 05–3537 Filed 2–23–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting, which is open to the public.

DATES: Wednesday, March 9, 2005, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: Doug Gochnour, Designated Federal Officer, at 208–392–6681 or e-mail *dgochnour@fs.fed.us.*

Dated: February 18, 2005.

Lana S. Thurston,

Administrative Officer, Boise National Forest.

[FR Doc. 05–3631 Filed 2–23–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration; Certified Trade Mission Program: Application

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the 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 April 25, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Barbara Rawdon, U.S. & Foreign Commercial Service, Global Trade programs, Room 2111, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–5281, and fax number: (202) 482–0950 (or via the Internet at *barb.rawdon@mail.doc.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Certified Trade Missions are overseas events that are planned, organized and led by both Federal and non-Federal government export promotion agencies such as industry trade associations, agencies of State and local governments, Congressional representatives, chambers of commerce, regional groups and other export-oriented groups. Certified Trade Mission Program Application form is the vehicle by which individual mission organizers apply, and if accepted agree, to participate in the Department of Commerces (DOC) trade promotion events program, recruit U.S. companies, identify the products or services they intend to sell or promote, and report on results. The collection of information is required for Commerce to properly assess the credentials of the missions and applicants.

II. Method of Collection

Form ITA 4127P is sent by request to U.S. export oriented organizations seeking DOC certification of their trade mission. Applicant firms complete the form and return it to the Department of Commerce.

III. Data

OMB Number: 0625–0215.
Form Number: ITA–4127P.
Type of Review: Regular submission.
Affected Public: Mission organizers applying to participate in trade missions facilitated but not led by Department of Commerce officials.
Estimated Number of Respondents: 60.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Burden Hours: 60 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $5,100.00 ($2,100.00 for respondents and $3,000.00 for the federal government).

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 agencys estimate of the burden (including hours and costs) 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 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: February 18, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–753 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration; Marketing Data Form; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the 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 April 25, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: John Klingelhut, U.S. & Foreign Commercial Service, Global Trade Programs, Room 2210, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–4403, and fax number: (202) 482–0872 (or via the Internet at *john.klingelhut@maio.doc.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Information about U.S. Exhibition, Trade Mission and Matchmaker Trade Delegation participants and their products is an absolute necessity in order to publicize and promote their participation in these export promotion events. The Marketing Data Form (MDF) provides information necessary to produce export promotion brochures and directories, and to arrange, on behalf of participants, appointments with key prospective buyer, agents, distributors, or government officials. Specific information is also required regarding participants objectives as to agents, distributors, joint venture or licensing partners and any special requirements for these, *e.g.* physical facilities, technical capabilities, financial strength, staff, representation of complementary lines, etc.

II. Method of Data Collection

Form ITA–466P is sent by request to U.S. firms. Applicant firms complete the form and forward it to the Department of Commerce exhibition manager several weeks prior to the event.

III. Data

OMB Number: 0625–0047.
Form Number: ITA–466P.
Type of Review: Regular Submission.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 4,000.
Estimated Time Per Response: 45 minutes.
Estimated Total Annual Burden Hours: 3,000 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $135,000.00 ($65,000.00 for respondents and $70,000.00 for the federal government).

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 costs) 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 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: February 18, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–754 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration; Survey of International Air Travelers; Proposed Collection; Comment Request

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 the 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 April 25, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & 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: Richard Champley or Ron Erdmann, ITA's Office of Travel & Tourism Industries, Room 7025, 1401 Constitution Ave, NW., Washington, DC 20230; phone: (202) 482–0140, and fax: (202) 482–2887. E-Mail: *Richard_Champley@ita.doc.gov* or to:

Ron_Erdmann@ita.doc.gov. To learn more about the this research program, visit OTTI's Web site at: *http://www.tinet.ita.doc.gov/research/programs/ifs/index.html*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The ''Survey of International Air Travelers'' program, administered by the Office of Travel & Tourism Industries (OTTI) of the International Trade Administration, provides the sole source of the data needed to estimate international travel and passenger fare exports and imports, *i.e.*, trade balance, for the United States. This Survey program supports the U.S. Department of Commerce, Bureau of Economic Analysis' (BEA) mandate to collect, analyze and report information used to calculate the Gross Domestic Product (GDP) and the Travel & Tourism Satellite Account for the United States. The Survey program contains the core data that is analyzed and communicated by OTTI with other government agencies, associations and businesses that share the same objective to increase U.S. international travel exports. To assist OTTI assesses the economic impact of international travel on state and local economies, provides visitation estimates, and identifies traveler and trip characteristics. The U.S. Department of Commerce assists travel industry businesses seeking to develop target marketing to increase international travel and passenger fare exports for the country as well as outbound travel. The Survey program provides the only estimates of nonresident visitation to the states and cities within the U.S., as well as U.S. resident travel abroad.

II. Method of Collection

The collection is on U.S. and foreign flag airlines that voluntarily agree to allow us to survey their passengers on flights departing from the U.S. Additional surveys are also collected at U.S. departure airports.

III. Data

OMB Number: 0625–0227.
Form Number: N/A.
Type of Review: Regular submission.
Affected Public: International travelers, both U.S. and non-U.S. residents, 18 years or older, departing the United States for all countries except Canada
Estimated Number of Respondents: 99,360.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 24,840 hours.
Estimated Total Annual Cost: This is a $2.1 million research program of which the government funds a $1.5 million portion. The remaining funds are obtained from sales of research reports to the public and in-kind contributions from the airlines, airports and other travel industry partners. Respondents will not need to purchase equipment or materials to respond to this collection.

IV. Requested 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: February 18, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–755 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–P

DEPARTMENT OF COMMERCE

International Trade Administration; Certification Trade Fair Program: Application; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the 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 April 25, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Don Huber, U.S. & Foreign Commercial Service, Global Trade Programs, Room 2212, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–2525, and fax number: (202) 482–0115.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Trade Fair Certification (TFC) program is a service of the U.S. Department of Commerce (DOC) that provides DOC endorsement and support for high quality international trade fairs that are organized by private-sector firms. The TFC program seeks to broaden the base of U.S. firms, particularly new-to-market companies by introducing them to key international trade fairs where they can achieve their export objectives. Those objectives include one or more of the following: Direct sales; identification of local agents or distributors; market research and exposure; and joint venture and licensing opportunities for their products and services. The objective of the application is to make a determination that the trade fair organizer is qualified to organize and manage U.S. exhibitions at a foreign trade show, and to ensure that the show is a good marketing opportunity for U.S. companies.

II. Method of Collection

Form ITA–4100P is sent by request to organizers of international trade fairs.

III. Data

OMB Number: 0625–0130.
Form Number: ITA–4100P.
Type of Review: Regular.
Affected Public: Companies applying to participate in Commerce Department Certified Trade air program events.
Estimated Number of Respondents: 90.
Estimated Time Per Response: 10 hours.
Estimated Total Annual Burden Hours: 900 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $40,500.00 ($31,500.00 for respondents and $9,000.00 for the federal government).

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 costs) 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 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: February 18, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–756 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–P

DEPARTMENT OF COMMERCE

International Trade Administration; Product Characteristics—Design Check-Off List

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the 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 April 25, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: John Klingelhut, U.S. & Foreign Commercial Service, Global Trade Programs, Room 2210, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–4403, and fax number: (202) 482–0872 (or via the Internet at *john.klingelhut@mail.doc.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration (ITA) sponsors approximately 120 overseas trade fair events each fiscal year. Trade fairs involve U.S. firms exhibiting their goods and services at American pavilions at internationally recognized events worldwide. The Product Characteristics—Design Check-Off List seeks from participating U.S. firms information on the physical nature, power (utility) and graphic requirements of the products and services to be displayed, in order to ensure the availability of utilities for active product demonstrations. This form also allows U.S. firms to identify special installation requirements that can be critical to the proper placement and hookup of their equipment and/or graphics. Without the timely and accurate submission of the Form ITA–426P, Product Characteristics—Design Check-Off Lists, ITA would be unable to provide a pavilion facility that would effectively support the sales/marketing and presentation objectives of the U.S. participants. Without such support, program productivity and utility would diminish, and declining program participation in this type of ITA activity by U.S. firms would result.

II. Method of Data Collection

Form ITA–426P is sent by request to U.S. firms. Responding firms complete the form and forward it to the Department of Commerce project officer several weeks prior to the beginning of the event.

III. Data

OMB Number: 0625–0035.

Form Number: ITA–426P.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit companies applying to participate in Commerce Department trade promotion events.

Estimated Number of Respondents: 2,000.

Estimated Total Annual Burden Hours: 1,000 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $31,480.00 ($18,900.00 for respondents and $12,580.00 for Federal government).

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 costs) 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 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: February 18, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–757 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2004), for administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following

antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than January 31, 2006.

	Period to be reviewed
Antidumping Duty Proceedings	
Mexico: Prestressed Concrete Steel Wire Strand A–201–831 ..... Cablesa S.A. de C.V.	7/17/03–12/31/04

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States*, 291 F.3d 806 (Fed. Cir. 202), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: February 17, 2005.

Holly A. Kuga,

Senior Office Director, Office 4 for Import Administration.

[FR Doc. E5–758 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China

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

EFFECTIVE DATE: February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Brian C. Smith, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3797, or (202) 482–1766, respectively.

SUMMARY: The Department of Commerce (''the Department'') is amending the weighted-average dumping margin listed in the *Preliminary Determination* for the mandatory respondent Hebei Jiheng Chemical Co., Ltd. (''Jiheng'') and for the Section A Respondents.[1] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75293 (December 16, 2004) (''*Preliminary Determination*''). The Department finds that it made ministerial errors in the calculations for Jiheng, and that the correction of all errors alleged by Jiheng fulfills the requirement of a significant ministerial error within the meaning of 19 CFR 351.224(e). Therefore, the rate assigned to the Section A respondents also changes.

Scope of the Investigation

The products covered by this investigation are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3 \bullet 2H_2O$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isocyanurates are available in powder, granular, and tableted forms. This investigation covers all chlorinated isocyanurates.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015 and 2933.69.6021 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[2] This tariff classification represent a basket category that includes chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Arch's patented chlorinated isocyanurates tablet is also included in the scope of this investigation. *See Preliminary Determination*.

Background

On December 10, 2004, the Department preliminarily determined that chlorinated isocyanurates from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(a) of the Tariff Act of 1930, as amended (''the Act''). *See Preliminary Determination*, 69 FR at 75293.

On December 20, 2004, Jiheng and Nanning Chemical Industry Co., Ltd. Corporation (''Nanning'') (collectively referred to as the ''mandatory respondents'') timely filed allegations that the Department made ministerial errors in its *Preliminary Determination*.

The petitioners, Clearon Corporation and Occidental Chemical Corporation, did not file ministerial error allegations.

On January 24, 2005, the Department, after a review of the allegations filed by Jiheng and Nanning, determined that Jiheng's alleged clerical errors, when corrected, were not significant in

[1] The Section A Respondents include the following companies: Liaocheng Huaao Chemical Industry Co., Ltd. (''Huaao''); Shanghai Tian Yuan International Trading Co., Ltd., (''Tian Yuan''); and Changzhou Clean Chemical Co., Ltd. (''Clean Chemical''); Sinochem Hebei Import & Export Corporation (''Sinochem Hebei''); and Sinochem Shanghai Import & Export Corporation (''Sinochem Shanghai'').

[2] In the scope section of the Department's initiation and in its preliminary determination notices, chlorinated isocyanurates were classified under subheading 2933.69.6050 of the HTSUS. (*See Initiation of Antidumping Duty Investigations: Chlorinated Isocyanurates From the People's Republic of China and Spain*, 69 FR 32,488 (June 10, 2004), and *Preliminary Determination*. Effective January 1, 2005, chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015 and 2933.69.6021 of the HTSUS. The new subheading 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous & dihydrate forms) and trichloroisocyanuric acid, and subheading 2933.69.6021 covers all other chlorinated isos used as pesticides (bactericides). The old subheading 2933.69.6050 covers all other chlorinated isos not used as pesticides. *See Memorandum to James Doyle, Office 9, dated February 16, 2005, from Tom Futtner, Liaison w/ Customs, Customs Unit, regarding Request for HTS Number Update(s) to AD/CVD Module Chlorinated Isos (A–570–898)*.

accordance with 19 CFR 352.224(e), and that Nanning's allegation was methodological, rather than clerical, in nature. *See Memorandum to the File, dated January 24, 2005, from the team to James C. Doyle, Office Director, Regarding Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China (''China''): Analysis of Allegations of Ministerial Errors* (''*Clerical Error Memo*'').

On January 27, 2005, Jiheng alleged that of the four clerical error allegations, which the Department stated in its *Clerical Error Memo* it intended to correct, the Department did not correct one of the clerical errors (*i.e.*, removing two by-products—ammonia gas and hydrogen gas—from its direct materials cost calculation) in the SAS program attached to the *Clerical Error Memo*. Consequently, Jiheng alleges that the Department erroneously concluded in its *Clerical Error Memo* that the combined corrections to all four errors made with respect to its margin calculation in the *Preliminary Determination* were not significant in accordance with 19 CFR 351.224(e). Jiheng further alleges that correcting the error at issue requires the Department to amend its preliminary determination because the combination of errors is significant in accordance with 19 CFR 351.224(e).

On January 31, 2005, the petitioners submitted rebuttal comments contesting the Department's treatment of the two by-products discussed in the *Clerical Error Memo*, and requested that the Department defer its decision on whether to treat these two products as by-products until the final determination. They also allege that the Department made an error in its margin program with respect to packing labor where unskilled packing labor was double-counted while skilled packing labor was uncounted.

On February 4, 2005, Jiheng submitted rebuttal comments requesting that the Department strike from the record the petitioners' January 31, 2005, comments.

Significant Ministerial Error

A ministerial error is defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' With respect to preliminary determinations, section 351.224(e) of the Department's regulations provides that the Department ''will analyze any comments received and, if appropriate, correct any *significant* ministerial error by amending the preliminary determination. * * *'' (emphasis added).

A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. *See* 19 CFR 351.224(g). As explained below, we have determined that the preliminary determination contains a ''significant'' ministerial error with respect to Jiheng that requires correction. As a result, the Department is publishing this amendment to its *Preliminary Determination* pursuant to 19 CFR 351.224(e).

Amended Preliminary Determination

After re-examining the corrections which we stated we made with respect to Jiheng in the *Clerical Error Memo*, we agree with Jiheng that we inadvertently did not make full correction to one of the four clerical errors alleged by Jiheng in its December 20, 2004, clerical error allegation submission. Specifically, the Department treated hydrogen gas and ammonia gas as by-products, but inadvertently did not remove the two by-products from Jiheng's direct materials cost calculation as stated in our *Clerical Error Memo*. This error has been corrected by removing the two by-products from Jiheng's direct material cost calculation. This correction along with the other three corrections, which we agree are clerical errors with respect to Jiheng's preliminary determination margin calculation, results in a significant error in accordance with 19 CFR 351.224(e). *See Memorandum to the File, dated February 11, 2005, from the team to James C. Doyle, Office Director, Regarding Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China (''China''): Re-Analysis of Allegations of Ministerial Errors Made By Hebei Jiheng Chemical Co., Ltd. (''Jiheng'') (''Clerical Error Re-Analysis Memo*'').

In addition, because the errors alleged by Jiheng were in fact significant, the Department has also amended the weighted-average dumping margin listed in the *Preliminary Determination* for the Section A Respondents (*see* also *Clerical Error Re-Analysis Memo*).

Pursuant to 19 CFR 351.224(c)(3), for purposes of this amended preliminary determination, we will not consider the petitioners' rebuttal comments on the Department's treatment of hydrogen gas and ammonia gas as by-products, and the SAS programing error with respect to packing labor hours. However, we will consider those comments in the final determination.

For purposes of this amended preliminary determination, we are not changing any findings in the *Preliminary Determination* with respect to Nanning's clerical error allegation because we find that Nanning's allegation is methodological, rather than clerical, in nature (*see* Clerical Error Memo for further discussion). Nanning will, however, have the opportunity to address the clerical error issue in its case brief, which will be considered by the Department at the final determination. As a result, the PRC-wide rate remains unchanged because the PRC-wide rate in the *Preliminary Determination* is based on Nanning's margin (which is the higher of the recalculated petition margin or highest margin calculated for any respondent in this investigation).

As a result of our correction of ministerial errors in the *Preliminary Determination*, the Department has determined that the following weighted-average dumping margins apply:

CHLORINATED ISOCYANURATES FROM THE PRC MANDATORY RESPONDENTS

Manufacturer/exporter	Original preliminary margin (percent)	Amended preliminary margin (percent)
Hebei Jiheng Chemical Co., Ltd.	125.97	86.79
Nanning Chemical Industry Co., Ltd.	179.48	179.48
PRC-Wide Rate	179.48	179.48

CHLORINATED ISOCYANURATES FROM THE PRC SECTION A RESPONDENTS

Manufacturer/exporter	Original preliminary margin (percent)	Amended preliminary margin (percent)
Changzhou Clean Chemical Co., Ltd.	140.27	111.03
Liaocheng Huaao Chemical Industry Co., Ltd.	140.27	111.03
Shanghai Tian Yuan International Trading Co., Ltd.	140.27	111.03
Sinochem Hebei Import & Export Corporation	140.27	111.03
Sinochem Shanghai Import & Export Corporation	140.27	111.03

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly and parties will be notified of this determination, in accordance with section 733(d) and (f) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (''ITC'') of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the *Preliminary Determination* or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: February 17, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–3688 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People's Republic of China

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

Final Determination

We determine that magnesium metal from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV'') as provided in section 735 of Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination Margins'' section of this notice.

DATES: Effective Date: February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Lilit Astvatsatrian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4243 and (202) 482–6412, respectively.

Case History

The Department of Commerce (''the Department'') published its preliminary determination of sales at LTFV on October 4, 2004. *See Preliminary Determination of Sales at Less Than Fair Value: Magnesium Metal from the People's Republic of China*, 69 FR 59187, (October 4, 2004) (''*Preliminary Determination*''). The Department selected two mandatory respondents [1] and received a Section A response from a third company requesting a rate separate from the PRC-wide entity.[2] Since the *Preliminary Determination*, the Department conducted verification of RSM and Tianjin in both the PRC and the United States, where applicable. *See* the *Verification Section* below for additional information. On November 22, 2004, the parties [3] submitted surrogate-value information. On December 2, 2004, the parties submitted rebuttals to those surrogate-value submissions. On December 28, 2004, the petitioners submitted an allegation of critical circumstances in accordance with section 733(e)(1) of the Act and 19 CFR 351.206(c)(1). On January 4, 2005, the Petitioners, RSM, and Tianjin submitted case briefs, and on January 10, 2005, all three parties submitted rebuttal briefs. On January 11, 2005, the Department invited all parties to comment on the petitioners' allegation of critical circumstances and requested RSM, Tianjin, and Guangling to report the quantity and value of their shipments of subject merchandise to the United States on a monthly basis for the period January 2003 through December 2004. On January 19, 2005, RSM and Tianjin provided the requested information. Guangling did not respond to the Department's request for information. On February 3, 2005, the Department published its preliminary determination of critical circumstances in which it found that critical circumstances exist with regard to imports of magnesium metal from the PRC for Tianjin, Guangling, and the PRC-wide entity. *See Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 5606 (February 3, 2005) (''*Critical Circumstances Determination*''). On February 7, 2005, the petitioners submitted comments on the Department's preliminary determination of critical circumstances. None of the respondents provided comments or rebuttals on the Department's preliminary determination of critical circumstances.

[1] Tianjin Magnesium International Co., Ltd. (''Tianjin''), and the RSM companies. In the preliminary determination we determined that the following companies were collapsed members of the RSM group of companies for the purposes of this investigation: Nanjing Yunhai Special Metals Co., Ltd. (''Yunhai Special''), Nanjing Welbow Metals Co., Ltd. (''Welbow''), Nanjing Yunhai Magnesium Co., Ltd. (''Yunhai Magnesium''), Shanxi Wenxi Yunhai Metals Co., Ltd. (''Wenxi Yunhai''). *See* Memorandum to Laurie Parkhill, Director, Office 8, NME/China Group, from Laurel LaCivita, Senior Case Analyst, through Robert Bolling, Program Manager: *Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China: Affiliation and Collapsing of Members of the RSM Group and its Affiliated U.S. Reseller, Toyota Tsusho America, Inc.*, dated September 24, 2004. In addition, we calculated a separate rate for China National Nonferrous Metals I/E Corp. Jiangsu Branch (''Jiangsu Metals''). *See* Memorandum to Laurie Parkhill, Director, Office 8, NME/China Group, from Laurel LaCivita, Senior Case Analyst and Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager: *Separate Rates Memorandum*, dated September 24, 2004.

[2] Beijing Guangling Jinghua Science & Technology Co., Ltd. (''Guangling'').

[3] The parties include RSM, Tianjin, and the petitioners (U.S. Magnesium LLC, United Steelworkers of America, Local 8319 and Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374). Guangling did not submit case or rebuttal briefs.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding are addressed in the memorandum from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, *Issues and Decision Memorandum for the Less-Than-Fair-Value Investigation of Magnesium Metal from the People's Republic of China*, dated February 16, 2005, which is hereby adopted by this notice (''*Issues and Decision Memorandum*''). A list of the issues which parties raised and to which we respond in the *Issues and Decision Memorandum* is attached to this notice as an Appendix. The *Issues and Decision Memorandum* is a public document and is on file in the Central Records Unit (''*CRU*''), Main Commerce Building, Room B–099, and is accessible on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the memorandum are identical in content.

Scope of Investigation

The products covered by this investigation are primary and secondary alloy magnesium metal regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this investigation includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an ''ASTM Specification for Magnesium Alloy'' [4] and thus are outside the scope of the existing antidumping orders on magnesium from the PRC (generally referred to as ''alloy'' magnesium).

The scope of this investigation excludes the following merchandise: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy'' [5]; (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form, by weight, and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[6]

The merchandise subject to this investigation is currently classifiable under items 8104.19.00 and 8104.30.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the mandatory respondents for use in our final determination (*see* the Department's verification reports on the record of this investigation, located in the CRU, with respect to Jiangsu Metals, Yunhai Special, Welbow, Bada, Tianjin, and Toyota Tsusho America, Inc. (''TAI'')). For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records as well as original source documents provided by respondents.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) India is at a level of economic development comparable to that of the PRC; (2) Indian manufacturers produce comparable merchandise and are significant producers of aluminum; (3) India provides the best opportunity to use appropriate, publicly available data to value the factors of production. *See Preliminary Determination*, 69 FR at 59191. For the final determination, we made no changes to our findings with respect to the selection of a surrogate country.

Critical Circumstances

As described below in the section concerning the application of adverse facts available (''AFA''), we are applying total AFA to the group of RSM companies which includes Jiangsu Metals and TAI. As part of total AFA for the RSM companies, we determine that RSM and Jiangsu Metals are not eligible for a separate rate and, therefore, remain a part of the PRC-wide entity. Therefore, we revised our critical-circumstances analysis to include imports from RSM and Jiangsu Metals in the total quantity of imports from the PRC-wide entity during the base and comparison periods. As a result of this change, we have determined that critical circumstances do not exist with respect to the PRC-wide entity. Additionally, for this final determination we continue to find that critical circumstances exist for Tianjin and Guangling. For further details regarding the Department's critical-circumstances analysis *see* the Memorandum from Laurel LaCivita, Case Analyst, to Laurie Parkhill, Office Director, AD/CVD Enforcement, *Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China (the ''PRC'')—Affirmative Final Determination of Critical Circumstances*, dated February 16, 2005 (''*Final Critical Circumstances Memorandum*'').

Separate Rates

In the *Preliminary Determination*, the Department found that Guangling, which provided a response to Section A

[4] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

[5] This material is already covered by existing antidumping orders. *See Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation*, 60 FR 25691 (May 12, 1995), and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 57936 (November 19, 2001).

[6] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from the PRC, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China*, 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys because they are not chemically combined in liquid form and cast into the same ingot.

of the antidumping questionnaire, was eligible for a rate separate from the PRC-wide rate. The margin we established in the Preliminary Determination for Guangling was 140.09 percent. Because the rates of the selected mandatory respondents have changed since the *Preliminary Determination*, we have recalculated the rate applicable to Guangling. The final rate is 91.36 percent.

As discussed below, the Department has determined to apply AFA with respect to the RSM companies. In addition, we have determined that there is no reliable basis for granting the RSM companies a separate rate. Accordingly, the RSM companies have not overcome the presumption that they are part of the PRC-wide entity and, therefore, entries of their merchandise will be subject to the PRC-wide rate.

Adverse Facts Available

Section 776(a)(2) of the Act provides that the Department shall apply ''facts otherwise available'' if, *inter alia*, an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act provides further that the Department may use an adverse inference when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, and is not so incomplete that it cannot be used and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

In the *Preliminary Determination*, we calculated a dumping margin of 128.11 percent for RSM based on the information it reported in its questionnaire responses. *See Preliminary Determination*. We conducted verification of the RSM companies in the PRC and in the United States.

In the *Preliminary Determination*, we determined that the RSM group of companies and Jiangsu Metals were affiliated under sections 771(33)(E) and (F) of the Act. *See Preliminary Determination* at 59192. Additionally, we determined that TAI and the RSM group of companies were affiliated under sections 771(33)(E) and (F) of the Act. *See Preliminary Determination* at 59192. There has been no information placed on the record since the *Preliminary Determination* that contradicts our affiliation determinations. Therefore, for the final determination, we continue to find that RSM, Jiangsu Metals, and TAI are affiliated under the statute.

Based on record evidence gathered as a result of the verification of TAI, RSM's affiliated customer in the United States, and pursuant to the statutory requirements of the Act, the Department has determined that the RSM Group and its affiliates impeded this investigation, provided unverifiable information, and did not cooperate to the best of their ability to comply with the Department's requests for information. Therefore, we determine that the use of AFA is warranted with respect to all of TAI's sales of subject merchandise whether exported through RSM or Jiangsu Metals for the purposes of the final determination of this investigation. *See* our response to Comment 1 in the *Decision Memorandum* for a further discussion of this issue.

In the *Preliminary Determination*, the Department granted RSM and Jiangsu Metals separate rates based on the information provided in their questionnaire responses. *See* memorandum to Laurie Parkhill, Office Director, China/NME Group, through Robert Bolling, Program Manager, from Laurel LaCivita, Senior Case Analyst and Lilit Astvatsatrian, Case Analyst, *Preliminary Determination: Magnesium Metal from the People's Republic of China: Separate-Rates Memorandum (''Separate Rates Memorandum''*), dated September 24, 2004, at 13. Because we found that RSM's affiliate TAI did not cooperate to the best of its ability and are applying AFA to all of TAI's sales of subject merchandise in the United States, we have determined that RSM and Jiangsu Metals, which produced and/or exported the subject merchandise, do not qualify for separate rates. *See* our response to Comment 3 in the *Issues and Decision Memorandum* for a further discussion of this issue.

Corroboration of the Adverse-Facts-Available Rate

In the *Preliminary Determination,* in accordance with sections 776(b) of the Act, we assigned an AFA rate to the PRC-wide entity based on a calculated margin derived from information obtained in the course of the investigation and placed on the record of this proceeding. At the *Preliminary Determination,* we applied a rate of 177.62 percent. Based on comments we received from interested parties which changed our calculations of the respondents margins, we have determined to change the AFA rate we applied in the *Preliminary Determination.*

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Ibid.* The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Ibid.* As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

We find that the export-price and normal-value information in the petition is reliable and relevant and, therefore, have determined that the information has probative value. *See* Memorandum from Lilit Astvatsatrian to Laurie Parkhill, dated February 16, 2005, *Corroboration of the PRC-Wide Adverse Facts-Available Rate*. Accordingly, we find that the highest margin based on that information, 141.49 percent, is corroborated within the meaning of section 776(c) of the Act.

Furthermore, there is no information on the record that demonstrates that the rate we have selected is an inappropriate total AFA rate for the companies in question. Therefore, we consider the selected rate to have probative value with respect to the firms in question and to reflect the appropriate adverse inference.

The PRC-Wide Rate

Because we begin with the presumption that all companies within a non-market-economy (''NME'') country are subject to government control and because only the companies listed under the ''Final Determination Margins'' below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents listed in the ''Final Determination Margins'' section below (except as noted).

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made changes in our margin calculations for Tianjin. We did not calculate a margin using the information RSM provided because we determined the margin for RSM based on total AFA. For discussion of the company-specific changes we made since the preliminary determination to our calculations of Tianjin's final margin, *see* Memorandum to the File from Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager, *Analysis Memorandum for the Final Determination of the Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China: Tianjin Magnesium Co., Ltd. (''Tianjin'') (''Final Analysis Memorandum''),* dated February 16, 2005. We made the following changes to the margin calculations:

- We determined the profit ratios for the Indian surrogate companies as a percentage of the cost of manufacturing, selling, general and administrative expenses, and interest.
- We calculated the surrogate value for the subject merchandise produced by Yinguang Metal based on its purchases of pure magnesium from affiliated and unaffiliated suppliers rather than by using surrogate values for inputs used to produce the raw magnesium produced and supplied to Yinguang by Yangyu Magnesium, an affiliated supplier.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the Period of Investigation:

MAGNESIUM METAL FROM THE PRC

Manufacturer/Exporter	Weighted-Average Margin
Tianjin	91.31
Guangling	91.31
PRC-Wide Rate*	141.49

*Not a separate rate; also applies to the RSM companies and Jiangsu Metals.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after October 4, 2004 for the RSM group of companies.

With respect to Tianjin and Guangling, we will direct the U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of magnesium metal from the PRC that are entered, or withdrawn from warehouse, on or after 90 days before the date of publication of the *Preliminary Determination*. CBP shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(I)(1) of the Act.

Dated: February 16, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

Issues in the Issues and Decision Memorandum

Issues With Respect to RSM

Comment 1: TAI Verification Failure
- Date of Sale
- TAI's Lack of Preparation
- Location of the Accounting Documents and Site Selection for Verification
- Sales—Trace Documentation
- Brokerage Expenses Incurred in the United States
- Warehousing and Freight Expenses Incurred in the United States
- Indirect Selling Expenses

Comment 2: Application of Adverse Facts Available

Comment 3: Separate Rate for Jiangsu Metals

Comment 4: Labor-Rate Factor at Bada Magnesium

General Issues

Comment 5: Critical Circumstances
Comment 6: Exporter-Producer Combination Rates

Surrogate Values

Comment 7: Time Period for the Valuation of Pure Magnesium
Comment 8: Valuation of Pure Magnesium
Comment 9: Surrogate Value for Dolomite
Comment 10: Ferrosilicon, No. 2 Flux, Fluorite Powder, Magnesium and Barium Chlorides, Bituminous Coal
Comment 11: Electricity and Chemicals/Gases
Comment 12: Use of Zinc Financial Statements Instead of Aluminum for Determination of the Overhead Ratios
Comment 13: Particle-board Pallets, Profit, and Marine Insurance

Issues with Respect to Tianjin

Comment 14: Valuation of Pure Magnesium for Yinguang
Comment 15: Yinguang's Consumption Rate for Dolomite
Comment 16: Supplier Distance for Yangyu
Comment 17: Valuation of Pure Magnesium for Guoli

[FR Doc. E5–760 Filed 2–23–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value

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

Final Determination

We determine that magnesium metal (''magnesium'') from the Russian Federation (''Russia'') is being, or is likely to be, sold in the United States at less-than-fair value (''LTFV''), as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination Margins'' section of this notice.

EFFECTIVE DATE: February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley at (202) 482–3148 or Kimberley Hunt at (202) 482–1272 (Avisma); and Josh Reitze at (202) 482–0666 (SMW); AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Case History

On October 4, 2004, the Department of Commerce (''the Department'') published its preliminary determination of sales at LTFV of magnesium metal from Russia. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Magnesium Metal From the Russian Federation,* 69 FR 59197 (October 4, 2004) (*Preliminary Determination*). Since the *Preliminary Determination,* the following events have occurred. On October 8, 2004, Solikamsk Magnesium Works (''SMW'') requested a public hearing. On October 18, 2004, SMW provided a revised version of its U.S. sales database that included all sales invoiced during the period of investigation. The Department conducted verification of JSC AVISMA Titanium-Magnesium Works' (''Avisma'') and SMW's sales and cost questionnaire responses from October 25, 2004, to November 5, 2004.[1] Petitioners[2] requested a hearing on October 28, 2004, and on November 3, 2004, Avisma requested one as well. On November 8 and November 9, 2004, respectively, Petitioners and the USEC Inc. and United States Enrichment Corporation (collectively, ''USEC''), submitted comments regarding Russian energy prices. On November 10, 2004, Avisma requested that the Department reject this submission as USEC is not a party to the proceeding. On November 12, 2004, USEC rebutted Avisma's November 10 submission; on November 18, 2004, Avisma filed a rebuttal to Petitioners' November 8, 2004, submission.

The Department conducted verification of SMW's U.S. affiliate, Solimin Magnesium Corporation (''Solimin''), on December 6 and 7, 2004.[3] The Department conducted verification of Avisma's U.S. affiliate, VSMPO-Tirus, U.S., Inc. (''Tirus''), on December 13 and 14, 2004,[4] and of SMW's other U.S. affiliate, CMC Cometals (''Cometals''), on December 16 and 17, 2004.[5]

On January 4, 2005, Petitioners submitted ''previously unavailable'' information on the Russian energy market. Avisma, on January 5, and SMW, on January 6, 2005, requested that Petitioners' ''untimely'' submission be removed from the record. During the weeks of January 3rd and January 10th, the Department held meetings with several parties on the energy issue and memoranda documenting these meetings have been placed on the record of this investigation. On January 7, 2005, the Department extended the time limits on the submission of factual information and accepted the Petitioners' submission. On January 14, 2005, Avisma argued that the Department should not rely on the information contained in Petitioners' January 4, 2005, submission.

On January 7, 2005, Petitioners, Avisma, SMW, and Northwest Alloys, Inc. and Alcoa, Inc. (collectively, ''Alcoa''), submitted case briefs. SMW submitted a rebuttal brief on January 12 and Petitioners and Avisma submitted rebuttal briefs on January 13, 2005.

On January 12, 2005, the Department requested comments on a methodological issue related to the cost of electricity. On January 14, 2005, Alcoa submitted comments; on January 18, 2005, Avisma and USEC also submitted comments. On January 18, 2005, Petitioners made three submissions, the first two calling for Avisma's and Alcoa's submissions to be struck from the record and the third responding to the Department's request for comment. On January 19, 2005, Avisma made another submission arguing the relevance of Petitioners' January 18, 2005, submission. On January 21, 2005, Petitioners submitted rebuttal comments to Alcoa's January 14, 2005, submission and Avisma's January 18, 2005, submission. On

[1] *See* Memorandum to the File, from Sebastian Wright, Magnesium Metal From The Russian Federation: Verification Report for JSC AVISMA Titanium-Magnesium Works, December 23, 2004 (*Avisma Verification Report*); Memorandum to Neal M. Halper from Robert Greger, *et al.*, Verification Report on the Cost of Production and Constructed Value Data Submitted by JSC AVISMA Titanium-Magnesium Works, December 30, 2004 (*Avisma Cost Verification Report*); *See* Memorandum to the File from Maria MacKay and Mark Hoadley; Magnesium Metal From The Russian Federation: Verification Report for Solikamsk Magnesium Works (*SMW Verification Report*); and Memorandum to Neal M. Halper from Ernest Gziryan, *et al;* Verification Report on the Cost of Production and Constructed Value Data Submitted by Solikamsk Magnesium Works, December 30, 2004 (*SMW Cost Verification Report*), on file in the Central Records Unit, Room B–099 of the Main Commerce building (''CRU'').

[2] Petitioners in this investigation are U.S. Magnesium Corporation, LLC; United Steelworkers of America, Local 8319; and Glass, Molders, Pottery, Plastics and Allied Workers International, Local 374.

[3] Memorandum to the File, from Joshua Reitze and Kimberley Hunt, Magnesium Metal From The Russian Federation: U.S. Sales Verification, December 29, 2004 (*Solimin Verification Report*), on file in the CRU.

[4] Memorandum to the File, from Sebastian Wright and Mark Hoadley; Magnesium Metal From The Russian Federation: Verification Report for JSC AVISMA Titanium-Magnesium Works, December 30, 2004 (*Tirus Verification Report*), on file in the CRU.

[5] Memorandum to the File, from Joshua Reitze and Kimberley Hunt, Magnesium Metal From The Russian Federation: U.S. Sales Verification (Cometals), December 30, 2004 (*Cometals Verification Report*), on file in the CRU.

January 21, 2005, Avisma and SMW both filed rebuttals to Petitioners' January 18, 2005, comments.

A public hearing was held on January 21, 2005. On January 26, 2005, Alcoa made a submission, requested at the hearing by the Department, stating that, in its view, the information presented at the hearing had already been placed on the record of the proceeding.

Period of Investigation

The period of investigation (''POI'') is January 1, 2003, through December 31, 2003. *See* 19 CFR § 351.204(b)(1).

Scope of Investigation

For the purpose of this investigation, the product covered is magnesium metal (also referred to as magnesium) from Russia. The products covered by this investigation are primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape or size. Magnesium is a metal or alloy containing, by weight, primarily the element of magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this investigation includes blends of primary and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) Products that contain at least 99.95 percent magnesium, by weight (generally referred to as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent magnesium, by weight (generally referred to as ''pure'' magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less that 99.8 percent, by weight, whether or not conforming to an ''ASTM Specification for Magnesium Alloy.''

The scope of this investigation excludes: (1) Magnesium that is in liquid or molten form; and (2) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[6]

The magnesium subject to this investigation is classifiable under item numbers 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS item numbers are provided for convenience and customs purposes only. The written description of the merchandise under investigation is dispositive.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Avisma and SMW for use in this final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the Respondents.

Energy Costs

In the original petition for the imposition of antidumping duties on U.S. imports of magnesium from Russia, Petitioners alleged that Russian energy costs are distorted by excessive Russian government involvement in the energy sector. Citing section 773(f)(1)(A) of the Act, Petitioners requested that the Department adjust Respondents' reported energy costs to account for the effects of this government involvement and to reflect better what they considered to be true, market-based energy costs. Petitioners argued that the use of the qualifying word ''normally'' demonstrates that the Department has the authority to disregard reported costs under certain circumstances.

In the *Notice of Initiation of Antidumping Duty Investigations: Magnesium Metal From the People's Republic of China and the Russian Federation,* 69 FR 15293 (March 25, 2004) (''*Initiation Notice*''), the Department recognized the complexity of valuing energy costs and stated its intention to examine this issue during the course of this investigation. On July 30, 2004, Petitioners submitted additional information to support their claim that Russian government involvement resulted in gas and electricity prices that do not reflect ''economic reality.'' Petitioners again argued that the Department has the legal authority to disregard or adjust the energy costs reported by Respondents to account for this distortion, and suggested options for correcting the effects of this distortion. On September 1 and 3, 2004, Avisma responded that the Department does not have the authority to disregard Respondents' reported costs and that there is no precedent for doing so. Furthermore, Avisma argued that there is no evidence that the prices Avisma pays for energy are distorted. In Avisma's view, all of the analyses of the Russian energy prices which had been submitted by Petitioners for the record were based on speculation about future capital costs, and were not relevant to this antidumping investigation. SMW submitted comments on September 15, 2004, which endorsed Avisma's legal analysis.

In its *Preliminary Determination,* the Department did not adjust Respondents' reported electricity costs, but indicated that it would be willing to consider new or updated factual information on the issue of whether electricity prices in Russia are distorted such that the Department should make an adjustment to the specific prices charged to Respondents for purposes of the final determination.[7] On November 8, 2004, Petitioners submitted additional information in support of their arguments for disregarding or adjusting Respondents' reported electricity costs. On November 9, 2004, USEC argued that the Department should adjust Russian electricity prices in this proceeding and should consider similar adjustments in future proceedings. On November 12, 2004, USEC further argued that the Department should proceed with caution in accepting reported input purchase prices in countries that have recently been graduated to market-economy status. On November 18, 2005, Avisma submitted a rebuttal to Petitioners' claims, arguing that the Department has no authority to make an

[6] This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel,* 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys because they are not chemically combined in liquid form and cast into the same ingot.

[7] In the *Preliminary Determination,* the Department focused on electricity costs because electricity is the energy input that is significant in the production of magnesium.

adjustment to the costs reflected in Respondents' books and records.

On January 4, 2005, Petitioners submitted information on the sale of a privately-held Russian energy firm to a state-controlled Russian energy firm. On January 6, 2005, the Department notified parties that it would allow this new information to remain on the record and permitted interested parties to rebut such information in accordance with section 351.301(c)(1) of its regulations. On January 12, 2005, the Department issued a memorandum outlining two possible adjustments that could be made to Respondents' reported electricity purchases, in the event the Department decided that an adjustment was appropriate. *See* Memorandum to the File from Lawrence Norton, Energy Pricing in the Antidumping Duty Investigation on Magnesium from the Russian Federation (January 12, 2005). The Department invited interested parties to comment on the possible adjustments. On January 14, 2005, Alcoa responded, arguing that an adjustment would neither be warranted nor consistent with the statute. On January 18, 2005, Avisma responded stating that neither the Department's proposed adjustments, nor any other adjustments would be appropriate in this antidumping investigation. Avisma argued that there is no legal basis for making such an adjustment and the Department has no authority to do so. Also on January 18, 2005, USEC responded to the proposed adjustments, reiterating again that the Department should preserve maximum flexibility for future proceedings. On the same date, Petitioners submitted an argument in favor of one of the possible adjustments, but also argued that the adjustment should be inflated to make it contemporaneous with the POI.

After carefully analyzing all of the evidence and arguments on the record of this proceeding, the Department has determined that, while such adjustments are permissible, based on the specific facts of this case, for purposes of this final determination, it will not make an adjustment to the Respondents' reported electricity costs. Our analyses and specific arguments presented by the parties with respect to this issue are set forth below.

First, we agree with Petitioners that section 773(f) of the statute gives the Department the legal authority to adjust prices recorded in a respondent's books and records under certain circumstances. The statute specifies a standard: ''normally'' the Department will use the costs as recorded in the respondent's books and records in calculating the cost of production if two criteria are met: (1) Those records are kept in accordance with the respondent's home country's Generally Accepted Accounting Principles (GAAP), and (2) those recorded costs reasonably reflect the costs associated with the production and sale of the subject merchandise. However, the statute's explicit use of the word ''normally'' indicates that there may be circumstances where the Department could reasonably determine that the use of the respondent's recorded costs is inappropriate. In such cases, the Department has the discretion to calculate the costs of production by some other reasonable means.

In its June 6, 2002, memorandum graduating Russia from non-market economy (''NME'') status, the Department specifically stated that it retained its statutory authority to evaluate the underlying usefulness of particular costs involved in normal value calculations:

> Accordingly, the Department will examine prices and costs within Russia, utilizing them for the determination of normal value when appropriate or disregarding them when they are not. In this regard, the Department retains its authority to disregard particular prices when the prices are not in the ordinary course of trade, the costs are not in accordance with generally accepted accounting principles, the costs do not reasonably reflect the costs associated with the production or sale of the merchandise, or in other situations provided for in the Act or in the Department's regulations.[8]

The Department further highlighted its concern regarding prices in the Russian energy sector in particular:

> The State no longer controls resource allocations or prices, with the notable exception of energy prices, which remain a significant distortion in the economy, as they encourage the wasteful use (misallocation) of Russia's energy resources and slow the adoption of more efficient production methods. * * * While some market distortions and resource misallocations characterize most market economies, energy is of such significance to the Russian economy that continuation of the Russian government's current energy price regulatory policies may warrant careful consideration of energy price data in future trade remedy cases.[9]

Subsequent to Russia's graduation to market-economy status, the Department renegotiated a suspension agreement concerning cut-to-length carbon steel plate from Russia. In the renegotiated suspension agreement, the Department reiterated its concern over the reliability of costs related to Russia's energy sector, stating that ''(e)xamples of possible areas in which adjustments may be necessary include, but are not limited to, costs related to energy * * *''[10]

At the time the *NME Memorandum* and the *Suspension Agreement* were issued, the most current information on the Russian energy sector was from 2002. During the course of this investigation, parties have submitted information that has allowed the Department to examine the state of the Russian energy sector, particularly the electricity sector, in 2003. After examining the data on the record of this case at the macroeconomic level, the Department finds substantial evidence of continuing distortions. While electricity prices have been increasing as of late, and while small trading exchanges have been allowed to develop, significant aspects of the electricity sector remain distorted and are not subject to market forces. The World Bank argued in 2003 that ''the government needs to develop a medium-term tariff policy * * * that is designed to bring utility tariffs up to full economic levels.''[11] Elsewhere, the World Bank defines ''full economic levels'' as long-run marginal cost. In addition, in their latest report, the Organization for Economic Cooperation and Development (''OECD'') states that the Russian electricity sector is dominated by a state-controlled monopoly, and that ''there is neither competition in the wholesale market (which in any case is not really a market) nor choice of supplier for consumers.''[12]

Information on the record shows that, at the macroeconomic level, the Russian energy sector has yet to be significantly restructured, and that state ownership is still pervasive, in some cases even increasing. Prices are still generally set by the government and overall remain at uneconomic levels that often do not cover the long-run cost of production.[13] Near-monopoly conditions still prevail in production, while production

[8] *See* Memorandum to Faryar Shirzad from Albert Hsu et al, Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law (June 6, 2002) (hereafter, the ''*NME Memorandum*'').

[9] *Id.*

[10] *See Suspension of Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation,* 68 FR 3859 (January 27, 2003) (hereafter, the ''*Suspension Agreement*'').

[11] World Bank, *Russia: Development Policy Review,* Report No. 26000–RU, June 9, 2003, p. 13.

[12] Organization for Economic Cooperation and Development, *OECD Economic Survey: Russian Federation,* 2004, p. 162–163.

[13] Organization for Economic Cooperation and Development, *OECD Economic Survey: Russian Federation,* 2004, p. 165. Here the OECD states that ''what {electricity tariffs} do not allow for is the recovery of capital cost, and estimates of the sector's capital investment needs vary widely * * *.''

quantities are still being allocated by the government.[14] Additionally, the transparency of energy sector accounts and records is still very poor. Overall, the evidence on the record indicates that the Russian electricity sector is still, as a whole, in the early stages of reform, and is a sector where prices are based neither on market principles nor on long-term cost recovery.

In addition to examining the studies and other information documenting the state of the Russian energy sector as a whole in 2003, the Department also probed the specific experiences of each Respondent in their purchases of electricity during the POI through questionnaire responses and at verification. We found that: (1) The Respondents engage in regular purchases of electricity; (2) the invoices they were issued matched the regional utility's rate schedule; and (3) they pay these invoices on time and in full. *See SMW Cost Verification Report* and *Avisma Cost Verification Report* (December 30, 2004). While these company-specific facts do not alter our conclusions about the meaningful distortions in price at the macroeconomic level, we find that the information on the record of this proceeding with respect to the macroeconomic distortions in the Russian energy sector does not allow the Department to discern and measure the effects of such distortions on Respondents' reported electricity costs. Furthermore, the record evidence does not demonstrate to what extent local and regional conditions do or do not reflect country-wide distortions in the Russian electricity sector.

In summary, because the record evidence of this investigation does not enable us to ascertain the manner and the extent to which the macroeconomic price distortions in the Russian electricity sector affect Respondents' reported electricity costs, the Department has determined not to adjust or disregard such costs for purposes of this final determination. The Department reserves its discretion to do so in future proceedings when evidence of continuing significant distortions at the macroeconomic level is accompanied by sufficient evidence or analysis with respect to the impact of such distortions on energy prices paid by respondent firms.

Application of Facts Available

During verification, the Department discovered numerous errors in Avisma's payment dates as reported in Avisma's questionnaire responses. These errors, ranging up to over a year difference between the actual payment date and the date reported to the Department, call into question the accuracy and reliability of Avisma's payment dates as reported. We therefore determine that the payment dates reported could not be verified. Pursuant to section 776(a) of the Act, the Department may resort to facts otherwise available when the ''necessary information is not available on the record,'' or an interested party provides information ''but that information cannot be verified. * * *'' Accordingly, we find it appropriate to rely on partial facts available to determine payment date.

Section 776(b) of the Act provides that the Department may apply an adverse inference in selecting from the facts otherwise available when ''an interested party has failed to cooperate by not acting to the best of its ability. * * *'' Avisma did discover one incorrect payment in the course of preparing for verification, a rather large error, which it reported as a minor correction prior to the start of verification. During verification, however, the Department found numerous other errors, some also significant in size, in reviewing the documentation that was solely in Avisma's control. We determine that Avisma had the ability to conduct a more thorough evaluation of its own records prior to verification, and could have discovered these errors on its own. Had Avisma done so, it would have been alerted to the fact that there was a problem with the method it used to collect and report payment dates. Moreover, Avisma could have reported these problems to the Department before the commencement of verification. Having failed to do so, the Department finds that Avisma failed to cooperate to the best of its ability and the application of an adverse inference is warranted.

As a result, the Department has determined to replace the payment dates reported by applying the longest verified period between payment date and shipment date for prepayment sales (regardless of whether the payment was received in one or multiple installments), and the shortest verified period between payment date and shipment date for all other sales.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding are listed in the Appendix to this notice and addressed in the Memorandum from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Antidumping Duty Investigation of Magnesium Metal from the Russian Federation (January 1, 2003–December 31, 2003),'' (''*Decision Memorandum*''), dated concurrently with this notice, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation in this public memorandum which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at: *http://ia.ita.doc.gov/frn/index.html.* The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made certain adjustments to the margin calculations used in the *Preliminary Determination.* These adjustments are discussed in detail in the *Decision Memorandum* and are listed below:

AVISMA

1. We included ''barter sales'' in the home-market database.
2. We recalculated the credit period based on verification findings.
3. We adjusted Avisma's interest rate to accurately reflect the underlying loan documents, examined at verification.
4. We recalculated U.S. repacking expenses based on verification findings.
5. We recalculated inventory carrying costs to reflect the revised interest rate and an error discovered at verification regarding the average number of days in inventory.
6. We recalculated Avisma's chlorine gas by-product offset for a restatement of disposal quantities.
7. We adjusted Avisma's reported depreciation expenses to account for the revaluation of fixed assets to reflect inflation.
8. We adjusted Avisma's general and administrative (''G&A'') expense ratio to include certain other operating and non-operating income and expenses.

SMW

1. We included ''barter sales'' in the home-market database.
2. We disregarded SMW's billing adjustments for exchange rate gains and losses on stockpile sales.
3. We adjusted SMW's ''zeroed out'' credit expenses for prepaid sales to reflect negative credit expenses.
4. We removed two observations from the SMW home-market dataset erroneously reported as sales.

[14] *Id.,* p. 163.

5. We deducted certain commissions paid on sales to one U.S. customer.

6. We adjusted domestic inventory carrying costs to include both days at sea and days in inventory at the factory.

7. We adjusted the reported home-market interest rate to reflect only loans denominated in rubles.

8. We recalculated inventory carrying costs to reflect the revised interest rates.

9. We used home-market indirect selling expenses as reported in the cost database, not those figures reported in the sales database.

10. We recalculated U.S. indirect selling expenses using the latest total U.S. sales figure.

11. We adjusted the reported value of carnallite purchased from an affiliated supplier in accordance with the major input rule of section 773(f)(3) of the Act.

12. We adjusted the reported G&A expense rate to include certain income and expense items related to the general operations of the company.

13. We removed selling expenses which were incorrectly reported in the cost of production (''COP'') file.

14. We adjusted the reported factory overhead costs to reflect the amount of factory overhead recorded in the financial statements.

15. SMW provided multiple costs for the same control number. We calculated a single weighted-average cost for that control number.

16. We adjusted the reported financial expense rate to include net foreign currency exchange gains and losses and short-term interest income recorded as non-operating items on SMW's financial statements.

17. We adjusted Solikamsk Desulphurizer Works' (''SZD'') reported G&A expense rate to include certain non-operating income and expense items related to the general operations of the company.

18. We removed selling expenses for SZD which were incorrectly reported in the COP file.

Final Determination Margins

We determine that the following weighted-average dumping margins exist for the period January 1, 2003, through December 31, 2003:

Manufacturer/exporter	Weighted-average margin (percent)
JSC AVISMA Titanium-Magnesium Works	22.28
Solikamsk Magnesium Works.	18.65
All Others	21.45

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of magnesium from Russia that are entered, or withdrawn from warehouse, for consumption on or after October 4, 2004, the date of publication of the Preliminary Determination in the **Federal Register**. We will instruct CBP to continue to require, for each entry, a cash deposit or the posting of a bond equal to the weighted-average dumping margins indicated above. These instructions suspending liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the U.S. International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are materially injuring, or threatening material injury to, an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(I)(1) of the Act.

Dated: February 16, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—List of Issues Covered in the Decision Memorandum

Part I—General Issues

Comment 1: Scope of the Order—One or Two Classes or Kinds of Merchandise.
Comment 2: Electricity Costs—Whether to Disregard or Adjust Reported Electricity Costs to Account for Distortions in the Russian Electricity Sector.
Comment 3: Barter Sales.

Part II—Avisma

Comment 4: Sales Through Bonded Warehouse.
Comment 5: Model Matching of Certain Avisma Products.
Comment 6: Constructed Export Price (''CEP'') Offset.
Comment 7: Payment Dates for Certain Home-Market Sales.
Comment 8: By-Product Credit.
Comment 9: Depreciation Expense.
Comment 10: Non-Operating Income and Expenses.
Comment 11: Interest on Affiliated Party Loan.
Comment 12: Foreign Exchange Gains and Losses.

Part III—SMW

Comment 13: Model Matching of Certain SMW Products.
Comment 14: Date of Sale.
Comment 15: Sales to the Russian Government Stockpile.
Comment 16: Certain Selling Expenses on Sales to the Stockpile.
Comment 17: Domestic Inventory Carrying Costs.
Comment 18: Selling Expenses Reported in the Cost File.
Comment 19: General and Administrative (''G&A'') Expenses.
Comment 20: Factory Overhead.
Comment 21: By-Product Offset.
Comment 22: Major Input.
Comment 23: Weighted Average Per-Unit Cost.
Comment 24: General and Administrative Expenses—Solikamsk Desulphurizer Works (''SZD'').

[FR Doc. E5–765 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan

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

EFFECTIVE DATE: February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Kristin Najdi at (202) 482–0405 or (202) 482–8221, respectively; AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2004, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping order on stainless steel butt–weld pipe fittings from Taiwan for the period June 1, 2003, through May 31, 2004. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 69 FR 30873 (June 1, 2004). On June 2, 2004, the respondent Ta Chen Stainless Steel Pipe Co., Ltd. (''Ta Chen'') requested that the Department conduct an administrative review of its sales to the United States during the period of review (''POR''). On June 22, 2004, Markovitz Enterprises, Inc. (Flowline Division), Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc. (collectively ''petitioners'') requested an antidumping duty administrative review for Ta Chen, Liang Feng Stainless Steel Fitting Co., Ltd., Tru–Flow Industrial Co., Ltd., and PFP Taiwan Co., Ltd. On July 28, 2004, the Department published the notice initiating this antidumping duty administrative review for the period June 1, 2003, through May 31, 2004. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part*, 69 FR 45010 (July 28, 2004). The preliminary results are currently due not later than March 2, 2005.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213(h)(2), the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within 245 days after the last day of the anniversary month of the date of publication of the order for which the administrative review was requested. The Department has determined it is not practicable to complete this review within the originally anticipated time limit, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), for the following reasons: (1) this review involves complex affiliation issues; and (2) this review involves complex constructed export price adjustments. Therefore, the Department is extending the time limits for the preliminary results by 120 days, to not later than June 30, 2005.

The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

Dated: February 16, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–762 Filed 2–23–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

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

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

Docket Number: 05–003. Applicant: Brigham Young University, Purchasing Department, C–144 ASB. Provo, UT 84602.

Instrument: Electron microscope, Model Tecnai F–20 Twin.

Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used for high-resolution electron microscopy, electron crystallography, parallel and convergent beam electron diffraction and electron energy-loss spectroscopy. Phenomena at the nano-scale and properties of a variety of materials of scientific and technological significance will be studied. Application accepted by Commissioner of Customs: January 31, 2005.

Docket Number: 05–004. Applicant: University of Delaware, 201 duPont Hall, Dept. of Matls. and Eng., University of Delaware, Newark, DE 19716. Instrument: Electron Microscope, Model Tecnai G^2 12 Twin. Manufacturer: Fei Company, Czech Republic. Intended Use: The instrument is intended to be used to study the microstructure of polymers, colloids and biomaterials and other materials from room temperature down to that of liquid nitrogen. It will be used to investigate morphology of phases, crystal structure and defects including vesicles and micelles, colloids as well as polypeptide and polymer mesoscale and nanoscale structure and structure-property relationships. Application accepted by Commissioner of Customs: January 31, 2005.

Docket Number: 04–005. Applicant: University of Vermont, Physics Dept., 82 University Place, (Cook Building), Bulington, VT. 05405. Instrument: Excimer Laser. Manufacturer: TUI Laser AG, Germany. Intended Use: The instrument is intended to be used to make thin film materials with scientifically interesting electrical and magnetic properties using a pulsed laser deposition process which will be subjected to a variety of measurements to determine their atomic and molecular structure as well as relevant electrical and magnetic properties in order to elucidate the fundamental properties of thin film materials.

Application accepted by Commissioner of Customs: February 7, 2005.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E5–759 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Notice of Amended Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada

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

EFFECTIVE DATE: February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Copyak (202) 482–2209, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and

Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: On December 13, 2004, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (the Department) determined that countervailable subsidies were being provided with respect to certain softwood lumber products from Canada. *See Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company–Specific Reviews: Certain Softwood Lumber Products from Canada*, 69 FR 75917 (December 20, 2004) (*Final Results*). On January 10, 2005, the Coalition for Fair Lumber Imports Executive Committee (petitioners) and the Governments of Canada, Alberta, British Columbia, Manitoba, Ontario, Saskatchewan, Quebec, Northwest Territories and the Yukon Territory, the British Columbia Lumber Trade council and its constituent associations, the Ontario Forest Industries Association, the Ontario Lumber Manufacturers Association, and the Quebec Lumber Manufacturers Association (collectively, the Canadian parties) alleged ministerial errors in the calculations of the *Final Results*. On January 14, 2005, petitioners submitted rebuttal comments regarding the allegations. As a consequence of an extension granted by the Department pursuant to 19 CFR 351.224(c)(4), these ministerial error comments were submitted timely.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under subheadings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger–jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger–jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (*see* comment 53, item D, page 116, and comment 57, item B–7, page 126), available at www.ia.ita.doc.gov/frn, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box–spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius–cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.

(3) *Radius–cut box–spring-frame components*, not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1'' or less in actual thickness, up to 8'' wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog–eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln–drying, planing to create smooth–to-size board, and sanding, and 2) if the importer establishes to the satisfaction of U.S. Customs and Border Protection (CBP) that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits*,[1] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint.

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

[1] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

E. For each entry, the following documentation must be retained by the importer and made available to CBP upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;
ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that CBP may classify as stringers, radius cut box–spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90, 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I–joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge–glued wood, properly classified under HTSUS 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

Amended Final Results

In accordance with section 751(h) of the Act, we have determined that ministerial errors were made in the calculations of the *Final Results*. For a detailed discussion of the ministerial error allegations and the Department's analysis, *see* Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary, ''Ministerial Error Allegations Filed by Petitioners and Canadian Parties; Amendment to the *Ad Valorem* Rate Calculated in the Notice of Amended Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada,'' dated February 16, 2005, which is on file in the Central Records Unit, room B–099 of the main Department building.

In accordance with section 777(A)(e)(2)(B) of the Act, we calculated a single country–wide *ad valorem* subsidy rate of 17.18 percent in the *Final Results* to be applied to all producers and exporters of the subject merchandise from Canada, other than those producers that have been excluded from the order and those producers receiving an individual rate in this review. In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* to correct ministerial errors. As a result of amending the calculations of the *Final Results*, the country–wide rate changed to 16.37 percent *ad valorem*.

We have determined that Fontaine Inc., Les Produits Forestiers Dube Inc., Scierie West Brome Inc., and Scierie Lapointe & Roy Ltee. each received zero or *de minimis* net subsidies during the period of review. We have also determined to rescind the reviews with respect to Bear Lumber Ltd., Bois Daaquam Inc., Cambie Cedar Products Ltd., Midway Lumber Mills Ltd., Nickel Lake Lumber, Twin Rivers Cedar Products Ltd., and Uphill Wood Supply Inc.

The Department has previously excluded the following companies from this order:

- Armand Duhamel et fils Inc.
- Bardeaux et Cedres
- Beaubois Coaticook Inc.
- Busque & Laflamme Inc.
- Carrier & Begin Inc.
- Clermond Hamel
- J.D. Irving, Ltd.
- Les Produits Forestiers D.G., Ltee
- Marcel Lauzon Inc.
- Mobilier Rustique
- Paul Vallee Inc.
- Rene Bernard, Inc.
- Roland Boulanger & Cite. Ltee
- Scierie Alexandre Lemay
- Scierie La Patrie, Inc.
- Scierie Tech, Inc.
- Wilfrid Paquet et fils, Ltee
- B. Luken Logging Ltd.
- Frontier Lumber
- Sault Forest Products Ltd.
- Interbois Inc.
- Les Moulures Jacomau
- Richard Lutes Cedar Inc.
- Boccam Inc.
- Indian River Lumber
- Sechoirs de Beauce Inc.

See Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products from Canada, 67 FR 36068 (May 22, 2002), as corrected (67 FR 37775, May 30, 2002), *Final Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada*, 68 FR 24436 (May 7, 2003), and *Final Results, Reinstatement, Partial Rescission of Countervailing Duty Expedited Reviews, and Company Exclusions: Certain Softwood Lumber Products From Canada*, 69 FR 10982 (March 9, 2004).

Finally, certain softwood lumber products from the Maritime Provinces are exempt from this countervailing duty order. This exemption, however, does not apply to softwood lumber products produced in the Maritime Provinces from Crown timber harvested in any other province.

In accordance with 19 CFR 356.8, we will instruct CBP, on or after the 41st day after publication of the amended final results of this review, to liquidate shipments of certain softwood lumber products from Canada entered, or withdrawn from warehouse, for consumption from May 22, 2002, through March 31, 2003, at the above indicated company–specific and aggregate *ad valorem* net subsidy rates. We will direct CBP to exempt from the application of the order only entries of softwood lumber products from Canada which are accompanied by an original Certificate of Origin issued by the Maritime Lumber Bureau (MLB), and those of the excluded companies listed above.

In addition, we will instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above of the f.o.b. price on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these amended final results of review.

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

Dated: February 16, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–763 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021605B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States and Reef Fish Fishery in the Gulf of Mexico

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Neil Allen on behalf of The Georgia Aquarium. If granted, the EFP would authorize the applicant, with certain conditions, to collect limited numbers of groupers, snappers, squirrelfish, sea basses, jacks, spadefish, bluefish, grunts, porgies, surgeonfish, and triggerfish. Specimens would be collected primarily from Federal waters off the coast of Georgia but may also be collected from Federal waters off the coasts of South Carolina, Florida, Alabama, Louisiana, Mississippi, and Texas during 2005 and 2006, and displayed at The Georgia Aquarium, located in Atlanta, Georgia.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on March 11, 2005.

ADDRESSES: Comments on the application may be sent via fax to 727–570–5583 or mailed to: Julie Weeder, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is grouper.aquarium@noaa.gov. Include in the subject line of the e-mail document the following text: Comment on Georgia Aquarium EFP Application. The application and related documents are available for review upon written request to the address above or the e-mail address below.

FOR FURTHER INFORMATION CONTACT: Julie Weeder, 727–570–5305; fax 727–570–5583; e-mail: *julie.weeder@noaa.gov*.

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

According to the applicant, The Georgia Aquarium is a public, non-profit institution currently under construction in Atlanta, Georgia. Its mission is to provide entertainment and education and support conservation through aquatic exhibits displaying animals from around the world. The aquarium is scheduled to open in late 2005.

The proposed collection for public display involves activities otherwise prohibited by regulations implementing the Fishery Management Plans (FMP) for the Snapper-Grouper Fisheries of the South Atlantic Region, Reef Fishes of the Gulf of Mexico, or Coastal Migratory Pelagics Fisheries of the South Atlantic Region and the Gulf of Mexico Region.

The applicant requires authorization to harvest and possess the following numbers of fishes: Six goliath grouper, five rock sea bass, five black sea bass, 10 gag (grouper), 10 scamp (grouper), 50 red snapper, 50 vermilion snapper, 50 squirrelfish, 100 yellow jack, 100 crevalle jack, 50 bar jack, 50 greater amberjack, 500 Atlantic spadefish, 50 bluefish, 100 sheepshead seabream, 100 tomtate grunt, 250 french grunt, 50 doctorfish, and 20 grey triggerfish. Specimens would be collected primarily from Federal waters off the coast of Georgia but may also be collected from Federal waters off the coasts of South Carolina, Florida, Alabama, Louisiana, Mississippi, and Texas during 2005 and 2006.

Fishes would be captured using barrier and hand nets in conjunction with SCUBA, hook and line, and traps. The barrier net would be set up underwater to provide a barrier to a school of fish. The fish would be herded into the barrier net and then hand netted. The net would be set for approximately one hour at a time and monitored by divers using SCUBA at all times. The net is 50 feet long and five feet deep with one inch monofilament mesh. Hook and line would be employed at depths less than 100 feet to capture bottom-dwelling fish, and in the water column for other species. Methods would be identical to that used by charter fishing boats. The fish traps are made from 1.5 inch wire mesh and are approximately three feet long, three feet wide and two feet high. The entrance to the traps is a vertical slit two inches wide and 24 inches long. Ten traps would be deployed for up to 10 fishing periods of 12 hours each.

NMFS finds that this application warrants further consideration. Based on a preliminary review, NMFS intends to issue an EFP. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to: Reduction in the number of fish to be collected; restrictions on the placement of traps; restrictions on the size of fish to be collected; prohibition of the harvest of any fish with visible external tags; and specification of locations, dates and/or seasons allowed for collection of particular fish species. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, consultations with the affected states, the Gulf of Mexico Fishery Management Council, the South Atlantic Fishery Management Council, and the U.S. Coast Guard, and a determination that it is consistent with all applicable laws. The applicant requests a 12-month effective period for the EFP.

Dated: February 17, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–743 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021705B]

Marine Mammals; File Nos. 594–1759 and 633–1763

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

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that the following institutions have applied in due form for permits to conduct scientific research on marine mammals: Georgia Department of Natural Resources, Wildlife Resources Division, Nongame-Endangered Wildlife Program, Coastal Office, Brunswick, GA (File No. 594–1759) and the Center for Coastal Studies, Provincetown, MA (File No. 633–1763).

DATES: Written, telefaxed, or e-mail comments must be received on or before March 28, 2005.

ADDRESSES: The applications and related documents are available for review upon request or by appointment in the following office(s):

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

File No. 633–1763: Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

File Nos. 594–1759 and 633–1763: Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile to (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Additionally, comments may be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Please include the appropriate File No. (594–1759 or 633–1763) as a document identifier in the subject line of the e-mail comment.

FOR FURTHER INFORMATION CONTACT: Dr. Tammy Adams or Carrie Hubard at (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

File No. 594–1759: The applicant requests a 5–year permit for aerial surveys, including associated photo-identification, behavioral observation and incidental harassment of North Atlantic right whales (*Eubalaena glacialis*) in Atlantic waters off Virginia, North Carolina, South Carolina, Georgia, and Florida and Gulf of Mexico waters off Florida and Alabama. Data will be used to (1) reduce potential for ship collisions via the Early Warning System, (2) improve knowledge of right whale habitat utilization, (3) maintain photo-id catalog, (4) monitor annual reproductive success, and (5) implement programs for population monitoring

File No. 633–1763: The applicant requests a 5–year permit to conduct aerial and vessel surveys, photo-identification, behavioral observation, collection and export of sloughed skin, and incidental harassment of North Atlantic right whales in waters of the Gulf of Maine, Cape Cod Bay, Great South Channel, and Georgia Bight. Surveys will be conducted to investigate population parameters, habitat use and conflicts with human activities, and to develop a multi-dimensional foraging/ecosystem model. Data will also be provided to management agencies, including NMFS and the Massachusetts Division of Marine Fisheries. The CCS application also requests permission for biopsy sampling of right whales for genetic analyses. NMFS is deferring a decision on a permit for that biopsy sampling pending further environmental analyses under the National Environmental Policy Act (NEPA).

A draft EA has been prepared to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. The draft EA is available for review and comment simultaneous with the scientific research permit application.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 17, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–3584 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: DoD, Office of the Under Secretary of Defense for Personnel and Readiness, Per Diem Travel and Transportation Allowance Committee.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense for Personnel and Readiness, Per Diem Travel and Transportation Allowance Committee announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 25, 2005.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense for Personnel and Readiness, Per Diem Travel and Transportation Allowance Committee, ATTN: Mr. Stephen Westbrook, Hoffman I, Room 836, 2461 Eisenhower Avenue, Alexandria, VA 22331–1300. Comments may be e-mailed to Mr. Westbrook at *stephen.westbrook@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call (703) 325–1420.

Title, Associated Forum, and OMB Number: Medical Physician's Statement for Premium-Class Travel, DD Form X488; OMB Number 0704–TBD.

Needs and Uses: Certification validating the disability or other special medical need for premium-class travel accommodations is required for Department of Defense travelers. The requested information provides medical documentation of a disability or other special medical need(s) that will be evaluated, along with other information, in connection with an individual's request for an upgrade in travel to a premium-class of service (business/first-class) as a reasonable accommodation. The physician will specify the physical and environmental requirements connecting the identified disability or other special medical need(s) and the recommended travel accommodation.

Affected Public: Individuals or households.

Annual Burden Hours: 300.

Number of Respondents: 600.

Responses Per Respondent: 1.

Average Burden Per Response: 30 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Joint Federal Travel Regulations and the Joint Travel Regulation state that civilian employees and military members or their dependents must use coach-class accommodations for official travel. Exceptions to this policy for the use of other than coach-class accommodations must be approved by the appropriate approval authorities as outlined in the regulations. When the reason for a requested upgrade is medical, a physician's certification is needed to validate the condition and the need for premium class seating. The information the physician provides on this form, along with other information, will assist the approval authorities with determining whether or not to approve the use of other than coach-class accommodations for the traveler.

Dated: February 15, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 05–3472 Filed 2–23–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Air Force Scientific Advisory Board. The purpose of the meeting is to present and discuss the findings of the 2004 Science and Technology Quality Review of Air Force Research Laboratory programs. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: 8 March 2005.

ADDRESSES: 1670 Air Force Pentagon, Room 4E936, Washington DC 20330–1670.

FOR FURTHER INFORMATION CONTACT: Major Kyle Gresham, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4808.

Albert Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 05–3544 Filed 2–23–05; 8:45 am]

BILLING CODE 5001–5–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy. U.S. Patent Application Serial No. 08/152,471: METHOD AND APPARATUS FOR IDENTIFYING AND TRACKING PROJECT TRENDS //U.S. Patent No. 6,650,297: LASER DRIVEN PLASMA ANTENNA UTILIZING LASER MODIFIED MAXWELLIAN RELAXATION //U.S. Patent Application Serial No. 09/553,510: SPECIAL SOUNDS VIDEO NARROWBAND PROCESSING SOFTWARE //U.S. Patent No. 6,657,594: PLASMA ANTENNA SYSTEM AND METHOD //U.S. Patent No. 6,806,833: CONFINED PLASMA RESONANCE ANTENNA AND PLASMA RESONANCE ANTENNA ARRAY //U.S. Patent No. 6,827,791: APPARATUS AND METHOD FOR REMOVING PAINT FROM A SUBSTRATE //U.S. Patent Application Serial No. 10/037,808: SEPARATED FLOW LIQUID CATHOLYTE ALUMINUM HYDROGEN PEROXIDE SEAWATER SEMI-FUEL CELL //U.S. Patent No. 6,829,198: ELECTROACOUSTIC TRANSDUCER HAVING COMPRESSION SCREW MECHANICAL BIAS //U.S. Patent Application Serial No. 09/874,306: NON-LINEAR AXISYMMETRIC POTENTIAL FLOW BOUNDARY MODEL FOR PARTIALLY CAVITATING HIGH SPEED BODIES // U.S. Patent Application Serial No. 10/839,449: LOW FREQUENCY SONAR COUNTERMEASURE //U.S. Patent Application Serial No. 09/565,237: ADAPTABLE HIGH SPEED UNDERWATER MUNITION (AHSUM) CONTROL CIRCUITRY FOR HIGH SPEED VIDEO CAMERA OPERATION // U.S. Patent Application Serial No. 10/463,907: ANTENNA FOR DEPLOYMENT FROM UNDERWATER LOCATION //U.S. Patent Application Serial No. 10/672,963: ROTATING FEELER GAGE //U.S. Patent No. 6,822,928: ADAPTIVE SONAR SIGNAL PROCESSING METHOD AND SYSTEM //U.S. Patent Application Serial No. 10/637,074: ACOUSTIC PROCESSING FOR ESTIMATING SIZE OF SMALL TARGETS //U.S. Patent No. 6,834,608: AN ASSEMBLY OF UNDERWATER BODIES AND LAUNCHER THEREFOR //U.S. Patent No. 6,809,444: FREE ROTATING INTEGRATED MOTOR PROPULSOR //U.S. Patent Application Serial No. 10/627,103: ASYMMETRIC TOW SYSTEM FOR MULTIPLE LINEAR SEISMIC ARRAYS //U.S. Patent Application Serial No. 10/679,674: LAUNCHER ASSEMBLY WITH ELASTOMERIC EJECTION //U.S. Patent Application Serial No. 10/679,675: PLUNGING TOWED ARRAY ANTENNA //U.S. Patent No. 6,819,630: ITERATIVE DECISION FEEDBACK ADAPTIVE EQUALIZER //U.S. Patent Application Serial No. 10/679,677: SURF ZONE MINE CLEARANCE ASSAULT SYSTEM //U.S. Patent Application Serial No. 10/730,184: UNDERWATER WEAPON SYSTEM HAVING A ROTATABLE GUN //U.S. Patent Application Serial No. 10/679,687: GUN-ARMED COUNTERMEASURE //U.S. Patent Application Serial No. 10/695,497: VORTEX ASSISTED PRESSURE CONTROL AT INLET OF UNDERWATER LAUNCH SYSTEM // U.S. Patent Application Serial No. 10/663,059: GRAVITY-ACTUATED SUBMARINE ANTENNA //U.S. Patent Application Serial No. 10/644,574: LASER-BASED ACOUSTO-OPTIC UPLINK COMMUNICATIONS TECHNIQUE //U.S. Patent No. 6,813,219: DECISION FEEDBACK EQUALIZATION PRE-PROCESSOR WITH TURBOEQUALIZER //U.S. Patent Application Serial No. 10/456,140: ROTARY ELECTROMAGNETIC LAUNCH TUBE //U.S. Patent No. 6,835,108: OSCILLATING APPENDAGE FOR FIN PROPULSION //U.S. Patent Application Serial No. 10/652,078: APPARATUS AND METHOD FOR CALIBRATING VOLTAGE SPIKE WAVEFORMS FOR THREE-PHASE ELECTRICAL DEVICES AND SYSTEMS //U.S. Patent Application Serial No. 10/652,079: APPARATUS AMD METHOD FOR CALIBRATING VOLTAGE SPIKE WAVEFORMS //U.S. Patent No. 6,813,218: BUOYANT DEVICE FOR BI-DIRECTIONAL ACOUSTO-OPTIC SIGNAL TRANSFER ACROSS THE AIR-WATER INTERFACE //U.S. Patent Application Serial No. 10/672,964: A BROADBAND, TOWED LINE ARRAY WITH SPATIAL DISCRIMINATION CAPABILITIES //U.S. Patent Application Serial No. 10/679,678: TOWABLE SUBMARINE MAST SIMULATOR //U.S. Patent Application Serial No. 10/456,245: MULTI-LOBED BUOYANT LAUNCH CAPSULE //U.S. Patent No. 6,822,373: BROADBAND

TRIPLE RESONANT TRANSDUCER // U.S. Patent Application Serial No. 10/730,187: HIGH VELOCITY UNDERWATER JET WEAPON //U.S. Patent Application Serial No. 10/429,331: WATERWAY SHIELDING SYSTEM AND METHOD //U.S. Patent Application Serial No. 10/779,554: A METHOD FOR ESTIMATING THE PROPERTIES OF A SOLID MATERIAL SUBJECTED TO COMPRESSIONAL FORCES //U.S. Patent Application Serial No. 10/385,448: PUNCTURE PROOF TIRE EMPLOYING AN ELONGATED BODY TUBE HAVING SHEAR RESISTANT FILM //U.S. Patent Application Serial No. 10/679,684: CHROMATE-FREE METHOD FOR SURFACE ETCHING OF ALUMINUM AND ALUMINUM ALLOYS //U.S. Patent Application Serial No. 10/679,682: CHROMATE-FREE METHOD FOR SURFACE ETCHING OF TITANIUM //U.S. Patent Application Serial No. 10/851,748: COMBINED IN-PLANE SHEAR AND MULTI-AXIAL TENSION OR COMPRESSION TESTING APPARATUS.

FOR FURTHER INFORMATION CONTACT: Dr. Theresa A. Baus, Technology Transfer Manager, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Newport, RI 02841–1703, telephone 401–832–8728.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: February 17, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–3538 Filed 2–23–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent Application No. 10/904,062: Fabrication of High Air Fraction Photonic Band Gap Fibers, Navy Case No. 96,197, and any continuations, divisionals or re-issues thereof.

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: February 17, 2005.

I.C. Le Moyne, Jr.

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–3541 Filed 2–23–05; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government, as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,825,801: Outer Loop Test Generator for Global Positioning System.

ADDRESSES: Requests for copies of the inventions cited should be directed to: Naval Surface Warfare Center, Crane Division, Code 054, Building 1, 300 Highway 361, Crane, IN 47522–5001, and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Bailey, Naval Surface Warfare Center, Crane Division, Code 054, Building 1, 300 HWY 361, Crane, IN 47522–5001, telephone (812) 854–1865. An application for license may be downloaded from *www.crane.navy.mil/newscommunity/techtrans_CranePatents.asp*.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: February 16, 2005.

I.C. Le Moyne, Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–3542 Filed 2–23–05; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The CNO Executive Panel is to report the findings and recommendations of the Analytic Engine Working Group to the Chief of Naval Operations. The meeting will consist of discussions of the Navy's analytic capabilities.

DATES: The meeting will be held on Monday, March 14, 2005, from 10:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Chief of Naval Operations office, Room 4E540, 2000 Navy Pentagon, Washington, DC 20350.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Miller, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, (703) 681–4924.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: February 16, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–3543 Filed 2–23–05; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Cytoplex Biosciences, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Cytoplex Biosciences, Inc., a revocable, nonassignable, exclusive license, to practice in the field of real

time monitoring of molecular binding for pharmaceutical drug discovery in the United States and certain foreign countries, the Government-Owned inventions described in U.S. Patent No. 5,372,930: Sensors for Ultra-Low Concentration Molecular Recognition, Navy Case No. 73,568//U.S. Patent No. 5,807,758: Chemical and Biological Sensor Using an Ultra-Sensitive Force Transducer, Navy Case No. 76,628//U.S. Patent No. 5,981,297: Biosensor Using Magnetically-Detected Label, Navy Case No. 77,576//U.S. Patent No. 6,180,418: Force Discrimination Assay, Navy Case No. 78,183.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than March 11, 2005.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083.

Due to U.S. Postal delays, please fax (202) 404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: February 17, 2005.

I.C. Le Moyne, Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–3540 Filed 2–23–05; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Smartband Technologies, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Smartband Technologies, Inc. a revocable, nonassignable, partially exclusive license to practice in the United States, the Government-Owned inventions described in U.S. Patent No. 5,963,169, Multiple Tube Plasma Antenna, issued October 5, 1999; U.S. Patent No. 6,118,407, Horizontal Plasma Antenna Using Plasma Drift Currents, issued September 12, 2000; U.S. Patent No. 6,169,520, Plasma Antenna With Currents Generated By Opposed Photon Beams, issued January 2, 2001; U.S. Patent No. 6,087,992, Acoustically Driven Plasma Antenna, issued July 11, 2000; U.S. Patent No. 6,046,705, Standing Wave Plasma Antenna With Plasma Reflector, issued April 4, 2000; U.S. Patent No. 6,087,993, Plasma Antenna with Electro-Optical Modulator issued, July 11, 2000; U.S. Patent No. 6,674,970, Plasma Antenna With Two-Fluid Ionization Current, issued January 6, 2004; U.S. Patent No. 6,650,297, Laser Driven Plasma Antenna Utilizing Laser Modified Maxwellian Relaxation, issued November 18, 2003; U.S. Patent No. 6,657,594, Plasma Antenna System and Method issued December 2, 2003; and U.S. Patent No. 6,806,833, Confined Plasma Resonance Antenna and Plasma Resonance Antenna Array, issued October 19, 2004.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg 990/1, Code 105, Newport, RI 02841.

FOR FURTHER INFORMATION CONTACT: Dr. Theresa A. Baus, Technology Transfer Manager, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg 990/1, Code 105, Newport, RI 02841, telephone 401–832–8728.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: February 17, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–3539 Filed 2–23–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement Program (OII); Overview Information; Ready To Teach Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.286A and 84.286B

Dates: Applications Available: February 25, 2005.

Deadline for Notice of Intent to Apply: March 24, 2005.

Date of Pre-Application Meeting: March 11, 2005 (webcast).

Deadline for Transmittal of Applications: April 20, 2005.

Deadline for Intergovernmental Review: June 20, 2005.

Eligible Applicants: For General Programming Grants (84.286A)—A nonprofit telecommunications entity or partnership of telecommunications entities.

For Digital Educational Programming Grants (84.286B)—A local public telecommunications entity, as defined in section 397(12) of the Communications Act of 1934, as amended, that is able to demonstrate a capacity for the development and distribution of educational and instructional television programming of high quality. Under section 397(12) of the Communications Act of 1934, as amended, the term *public telecommunications entity* means any enterprise which—

(A) Is a public broadcast station or a noncommercial telecommunications entity; and

(B) Disseminates public telecommunications services to the public.

Estimated Available Funds: $14,290,752.

Estimated Range of Awards: $1,500,000–$5,000,000.

Estimated Average Size of Awards: $2,500,000.

Estimated Number of Awards: 3–6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months for 84.286A and up to 36 months for 84.286B.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Ready to Teach program awards two types of competitive grants: (a) Grants to carry out a national telecommunications-based program to improve teaching in core curriculum areas (General Programming Grants); and (b) digital educational programming grants to develop, produce, and distribute innovative educational and instructional video programming (Digital Educational Programming Grants). The Ready to Teach program is designed to assist elementary school and secondary school teachers in preparing all students to achieve challenging State academic content and student academic achievement standards in core curriculum areas.

Statutory Requirements: As set forth in the program statute, to be eligible to receive a General Programming Grant (84.286A), an applicant must—

(1) Demonstrate, in its application, that it will use the public broadcasting

infrastructure, the Internet, and school digital networks, where available, to deliver video and data in an integrated service to train teachers in the use of materials and learning technologies for achieving challenging State academic content and student academic achievement standards;

(2) Make an assurance in its application that its project will be conducted in cooperation with appropriate State educational agencies, local educational agencies, and State or local nonprofit public telecommunications entities; and

(3) Make an assurance in its application that a significant portion of the benefits available for elementary schools and secondary schools from its project will be available to schools of local educational agencies that have a high percentage of children eligible under title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB).

In addition, as required by the program statute, in order to be eligible to receive a Digital Educational Programming Grant (84.286B), an applicant must propose activities to facilitate the development of educational programming that shall—

(1) Include student assessment tools to provide feedback on student academic achievement;

(2) Include built-in teacher utilization and support components to ensure that teachers understand and can easily use the content of the programming with group instruction or for individual student use;

(3) Be created for, or adaptable to, challenging State academic content standards and student academic achievement standards; and

(4) Be capable of distribution through digital broadcasting and school digital networks.

Priority: This priority is from the notice of final priority for Scientifically Based Evaluation Methods, published in the **Federal Register** on January 25, 2005 (70 FR 3586).

Competitive Preference Priority: For FY 2005 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 25 points to an application, depending on the extent to which the application meets this priority.

Note: In awarding additional points to applications that address this competitive preference priority, we will consider only those applications that have top-ranked scores on the basis of the Selection Criteria in section V. of this notice.

The priority is: The Secretary establishes a priority for projects proposing an evaluation plan that is based on rigorous scientifically based research methods to assess the effectiveness of a particular intervention. The Secretary intends that this priority will allow program participants and the Department to determine whether the project produces meaningful effects on student achievement or teacher performance.

Evaluation methods using an experimental design are best for determining project effectiveness. Thus, when feasible, the project must use an experimental design under which participants—*e.g.*, students, teachers, classrooms, or schools—are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants—*e.g.*, students, teachers, classrooms, or schools—with non-participants having similar pre-program characteristics.

In cases where random assignment is not possible and participation in the intervention is determined by a specified cutting point on a quantified continuum of scores, regression discontinuity designs may be employed.

For projects that are focused on special populations in which sufficient numbers of participants are not available to support random assignment or matched comparison group designs, single-subject designs such as multiple baseline or treatment-reversal or interrupted time series that are capable of demonstrating causal relationships can be employed.

Proposed evaluation strategies that use neither experimental designs with random assignment nor quasi-experimental designs using a matched comparison group nor regression discontinuity designs will not be considered responsive to the priority when sufficient numbers of participants are available to support these designs. Evaluation strategies that involve too small a number of participants to support group designs must be capable of demonstrating the causal effects of an intervention or program on those participants.

The proposed evaluation plan must describe how the project evaluator will collect—before the project intervention commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

If the priority is used as a competitive preference priority, points awarded under this priority will be determined by the quality of the proposed evaluation method. In determining the quality of the evaluation method, we will consider the extent to which the applicant presents a feasible, credible plan that includes the following:

(1) The type of design to be used (that is, random assignment or matched comparison). If matched comparison, include in the plan a discussion of why random assignment is not feasible.

(2) Outcomes to be measured.

(3) A discussion of how the applicant plans to assign students, teachers, classrooms, or schools to the project and control group or match them for comparison with other students, teachers, classrooms, or schools.

(4) A proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation. An independent evaluator does not have any authority over the project and is not involved in its implementation.

In general, depending on the implemented program or project, under a competitive preference priority, random assignment evaluation methods will receive more points than matched comparison evaluation methods.

Definitions

As used in this notice—

Scientifically based research (section 9101(37) of the ESEA as amended by NCLB, 20 U.S.C. 7801(37)):

(A) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) Includes research that—

(i) Employs systematic, empirical methods that draw on observation or experiment;

(ii) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) Is evaluated using experimental or quasi-experimental designs in which individuals entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference

for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Random assignment or experimental design means random assignment of students, teachers, classrooms, or schools to participate in a project being evaluated (treatment group) or not participate in the project (control group). The effect of the project is the difference in outcomes between the treatment and control groups.

Quasi experimental designs include several designs that attempt to approximate a random assignment design.

Carefully matched comparison groups design means a quasi-experimental design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome.

Regression discontinuity design means a quasi-experimental design that closely approximates an experimental design. In a regression discontinuity design, participants are assigned to a treatment or control group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Eligible students, teachers, classrooms, or schools above a certain score (''cut score'') are assigned to the treatment group and those below the score are assigned to the control group. In the case of the scores of applicants' proposals for funding, the ''cut score'' is established at the point where the program funds available are exhausted.

Single subject design means a design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population.

Treatment reversal design means a single subject design in which a pre-treatment or baseline outcome measurement is compared with a post-treatment measure. Treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. For example, this design might be used to evaluate a behavior modification program for disabled students with behavior disorders.

Multiple baseline design means a single subject design to address concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

Interrupted time series design means a quasi-experimental design in which the outcome of interest is measured multiple times before and after the treatment for program participants only.

Program Authority: 20 U.S.C. 7257—7257d.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priority for Scientifically Based Evaluation Methods, published in the **Federal Register** on January 25, 2005 (70 FR 3586).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $14,290,752.

Estimated Range of Awards: $1,500,000–$5,000,000.

Estimated Average Size of Awards: $2,500,000.

Estimated Number of Awards: 3–6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months for 84.286A and up to 36 months for 84.286B.

III. Eligibility Information

1. *Eligible Applicants:*

For General Programming Grants (84.286A)—A nonprofit telecommunications entity or partnership of nonprofit telecommunications entities.

For Digital Educational Programming Grants (84.286B)—A local public telecommunications entity, as defined in section 397(12) of the Communications Act of 1934, as amended, that is able to demonstrate a capacity for the development and distribution of educational and instructional television programming of high quality. Under section 397(12) of the Communications Act of 1934, as amended, the term *public telecommunications entity* means any enterprise which—

(A) Is a public broadcast station or a noncommercial telecommunications entity; and

(B) Disseminates public telecommunications services to the public.

2. *Cost Sharing or Matching:* An applicant submitting an application under the competition for General Programming Grants (84.286A) is not required to provide matching funds. However, to be eligible to receive a Digital Educational Programming Grant (84.286B), an applicant must contribute non-Federal matching funds in an amount equal to not less than 100 percent of the amount of the grant. Such matching funds may include funds provided for the transition to digital broadcasting, as well as in-kind contributions.

An entity that receives a General Programming Grant or a Digital Educational Programming Grant, may not use more than 5 percent of the amount received under the grant for administrative purposes.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/pubs/edpubs.html.* To obtain a copy from ED Pubs, write or call the following: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.286A or 84.286B, as appropriate.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contacts).

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: Applicants that plan to apply for funding under this program are encouraged to indicate an intent to apply via e-mail notification sent to *readytoteachintent@ed.gov* no later than March 24, 2005. Applicants that fail to supply this e-mail notification may still apply for funding under this program. Page Limit for Program Narrative: The program narrative is where you, the applicant, address the selection criteria using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the program narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

Although no page limit is required, applicants are encouraged to confine the program narrative to no more than 50 pages.

3. *Submission Dates and Times:*

Applications Available: February 25, 2005.

Deadline for Notice of Intent to Apply: March 24, 2005.

Date of Pre-Application Meeting: March 11, 2005, at 3 p.m., Washington, DC time. The Department intends to hold a live webcast to permit potential applicants to pose questions about this grant competition and other technology grant competitions being held by OII. Following the live presentation, the webcast will be archived and remain online until the application deadline date. Interested applicants should link to the following site to participate in or access the Web cast: *http://www.kidzonline.org/tepwebcast*. You may submit your intent to participate in the Web cast to *tepwebcast@ed.gov*.

Deadline for Transmittal of Applications: April 20, 2005.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 20, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Ready To Teach program-CFDA Numbers 84.286A and 84.286B must be submitted electronically using the Grants.gov Apply site. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for Ready To Teach at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted with a date/time received by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. We will not consider your application if it was received by the Grants.gov system later than 4:30 p.m. on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was submitted after 4:30 p.m. on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that your application is submitted timely to the Grants.gov system.
- To use Grants.gov, you, as the applicant, must have a D–U–N–S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five business days to complete the CCR registration.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified

identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sharon Harris Morgan, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W250, Washington, DC 20202–5980. FAX: (202) 205–5720.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier), your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Numbers 84.286A or 84.286B), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Numbers 84.286A or 84.286B), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Numbers 84.286A or 84.286B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m.and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion. The maximum number of points an application may earn based on the competitive preference priorities and the selection criteria is 125 points. The criteria are as follows:

(a) *Need for project* (15 Points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

1. The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals.

2. The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Quality of the project design* (20 Points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

1. The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

2. The extent to which goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

3. The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(c) *Quality of project services* (20 Points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color,

national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

1. The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

2. The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(d) *Quality of project personnel* (5 Points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

1. The qualifications, including relevant training and experience, of key project personnel.

2. The qualifications, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of resources* (5 Points). The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

1. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

2. The potential for continued support of the project after Federal funding ends, including as appropriate, the demonstrated commitment of appropriate entities to such support.

(f) *Quality of the management plan* (15 Points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

1. The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

2. The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(g) *Quality of the project evaluation* (20 Points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factor:

1. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual and/or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and effective strategies for replication in other settings. Applicants are encouraged to devote 25–30% of the grant funds to project evaluations under each competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants approved for funding under this competition may be required to attend a two- or three-day Grants Administration meeting in Washington, DC during the first year of the grant. In addition, applicants should budget for one Project Directors meeting to be held in Washington, DC in each subsequent year of the grant. The cost of attending these meetings may be paid from Ready To Teach program grant funds or other resources.

4. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that meets the reporting requirements in section 5483 of the ESEA, as amended by the NCLB (if you receive a General Programming Grant) and provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. For specific requirements on grantee reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Department is currently developing measures that will be designed to yield information on the effectiveness of grant-supported activities. If funded, applicants will be expected to participate in collecting and reporting data for these measures. We will notify grantees of the performance measures once they are developed.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Sharon Harris Morgan or Carmelita Coleman, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5980. Telephone: (202) 205–5880 (Sharon Harris Morgan) or (202) 205–5450 (Carmelita Coleman), or by e-mail: *Sharon.Morgan@ed.gov or Carmelita.Coleman@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 17, 2005.

Michael J. Petrilli,

Acting Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E5–764 Filed 2–23–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of subsequent arrangement.

SUMMARY: This notice has been issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Canada and Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns the retransfer of 59,172 kg of U.S.-origin natural uranium hexafluoride, 40,000 kg of which is uranium, from Cameco Corp., Port Hope, Ontario, Canada to Urenco Capenhurst, United Kingdom. The material, which is now located at Cameco Corp., Port Hope, Ontario, will be transferred to Urenco Capenhurst for toll enrichment. Upon completion of the enrichment, Urenco Capenhurst will transfer the material for final use by the Florida Power & Light Company. Cameco Corp. originally obtained the uranium hexafluoride under NRC Export License XSOU8798.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement is not inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Michele R. Smith,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 05–3649 Filed 2–23–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Notice of Renewal of the High Energy Physics Advisory Panel

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, App.2, and section 102–3.65, title 41, Code of Federal Regulations and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel has been renewed for a six-month period, beginning in February 2005.

The Panel will provide advice to the Associate Director for High Energy Physics, Office of Science (DOE), and the Assistant Director, Mathematical & Physical Sciences Directorate (NSF), on long-range planning and priorities in the national high-energy physics program. The Secretary of Energy had determined that renewal of the Panel is essential to conduct business of the Department of Energy and the National Science Foundation and is in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Panel will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC on February 11, 2005.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 05–3510 Filed 2–23–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Idaho National Engineering and Environmental Laboratory. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, March 15, 2005, 8 a.m.–6 p.m.; Wednesday, March 16, 2005, 8 a.m.–5 p.m.

Opportunities for public participation will be held Tuesday, March 15, from 12:15 to 12:30 p.m. and 5:45 to 6 p.m.; and on Wednesday, March 16, from 11:45 a.m. to 12 noon and 4 to 4:15 p.m. Additional time may be made available for public comment during the presentations.

These times are subject to change as the meeting progresses, depending on the extent of comment offered. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Willard Arts Center, 498 ''A'' Street, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Hinman, INEEL Board Administrator, North Wind, Inc., PO Box 51174, Idaho Falls, ID 83405, Phone (208) 557–7885, or visit the Board's Internet Home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: (Agenda topics may change up to the day of the meeting; please contact Peggy Hinman for the most current agenda or visit the Board's Internet site at *http://www.ida.net/users/cab/*):

- Cleanup and closure of the Idaho Nuclear Technology and Engineering Center (including the high-level waste program, the spent nuclear fuel program, the Foster-Wheeler facility, and the Idaho Comprehensive Environmental Response, Compensation, and Liability Act Disposal Facility)
- Engineering Evaluation and Cost Analysis for the Accelerated Retrieval Project
- Independent Risk Assessment prepared by the Consortium for Risk Evaluation with Stakeholder Participation in support of DOE's end state vision for the Idaho National Laboratory

Public Participation: The meeting is open to the public. Written statements

may be filed with the Board administrator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Richard Provencher, Assistant Manager for Environmental Management, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Ms. Peggy Hinman, INEEL Board Administrator, at the address and phone number listed above.

Issued at Washington, DC on February 16, 2005.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–3509 Filed 2–23–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, March 3, 2005 9 a.m.–5 p.m.; Friday, March 4, 2005, 8:30 a.m.–4 p.m.

ADDRESSES: Clover Island Inn, 435 Clover Island Drive, Kennewick, WA 99336, Phone Number: (509) 586–0541, Fax Number: (509) 586–6956.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA, 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Topics for Board Meeting

1. Budget Discussion for 2006/2007
2. Central Plateau Values Development, Next Phase
3. Hanford Advisory Board Self-Evaluation Results and Next Steps
4. Groundwater National Picture and the Hanford Advisory Board's Involvement (ITRC)
5. Tank Waste Fact Sheet from the Public Involvement Committee
6. Discussion of Outreach for Yakima HAB Meeting in April
7. End States Vision Update

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Erik Olds, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC on February 18, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–3585 Filed 2–23–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, March 9, 2005, 6 p.m.–8 p.m.

ADDRESSES: Grant Sawyer State Office Building, 555 East Washington Avenue, Room 4412, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Kay Planamento, Navarro Research and Engineering, Inc., 2721 Losee Road, North Las Vegas, Nevada 89130, phone: (702) 657–9088, fax: (702) 295–5300, e-mail: *NTSCAB@aol.com*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Briefing describing the Board's budget prioritization recommendations for the Department of Energy's Nevada Site Office Environmental Management FY 2007 budget submittal.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kelly Kozeliski, at the telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being

published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kay Planamento at the address listed above.

Issued at Washington, DC on February 18, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–3586 Filed 2–23–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES: March 17, 2005, 8:30 a.m.

ADDRESSES: Radisson Hotel Old Town Alexandria, 901 North Fairfax Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Don Richardson, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7766.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased industrial products.

Tentative Agenda: Agenda will include discussions on the following:

- The Biomass R&D Technical Advisory Committee will receive an update on the 2002 USDA/DOE Joint Solicitation projects.
- The Biomass R&D Technical Advisory Committee will receive an update on current USDA and DOE projects.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Don Richardson at 202–586–7766 or the Biomass Initiative at *laura.neal@ee.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

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 February 17, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–3508 Filed 2–23–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–182–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 17, 2005.

Take notice that on February 14, 2005, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective March 17, 2005:

Twenty-Third Revised Sheet No. 1
Third Revised Sheet No. 2

El Paso states that it is submitting four firm transportation service agreements (TSAs) for the Commission's information and material deviation review and has listed the TSAs on the tendered tariff sheets as potential non-conforming agreements.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–748 Filed 2–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–221–003]

High Island Offshore System; Notice of Compliance Filing

February 17, 2005.

Take notice that on February 14, 2005, High Island Offshore System (HIOS), tendered for filing tendered as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets identified below:

Effective July 1, 2003

Second Revised Sheet No. 10

Effective on the 1st Day of the Month after Commission Acceptance of the Compliance

Pro Forma Sheet Nos. 2, 10, 11, 64, 65, 67, 69, 173A and 173B

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–747 Filed 2–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–185–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Change to FERC Gas Tariff

February 17, 2005.

Take notice that on February 15, 2005, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following revised sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on March 17, 2005:

Second Revised Sheet No. 113
Second Revised Sheet No. 114

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–749 Filed 2–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–186–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 17, 2005.

Take notice that on February 15, 2005, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective March 17, 2005:

Seventh Revised Sheet No. 201
Original Sheet No. 276
Sheet Nos. 277–399
Second Revised Sheet No. 510

Midwestern states that the purpose of this filing is to add an Operational Balancing Agreement (OBA) Policy to section 36 of the General Terms and Conditions of Midwestern's tariff to coincide with the four existing forms of OBA's in its tariff. Midwestern explains that minor housekeeping changes also are proposed to the form of Master Electronic Transaction Agreement contained in Midwestern's tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–745 Filed 2–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–63–000]

DTE Energy Trading, Inc., Complainant v. Midwest Independent Transmission System Operator, Inc., Respondent; Notice of Complaint

February 17, 2005.

Take notice that on February 16, 2005, DTE Energy Trading, Inc. (DTET) filed a formal complaint against the Midwest Independent Transmission System Operator, Inc. (MISO). DTET requests that the Commission find that MISO is unlawfully charging firm Point-to-Point customers excessive and unauthorized charges for transmission service redirected to such customers on a non-firm basis, in violation of section 22 of MISO's currently effective Open Access Transmission Tariff (OATT) and the FPA. DTET also requests that the Commission order MISO to refund to DTET, with interest, all amounts assessed in excess of the charges currently authorized for redirected service under MISO's OATT.

DTET certifies that a copy of this complaint was served to the counsel for the MISO.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: March 9, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–750 Filed 2–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–38–000, et al.]

Breezy Bucks—I LLC, et al.; Electric Rate and Corporate Filings

February 14, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Breezy Bucks—I LLC

[Docket No. EG05–38–000]

Take notice that on February 10, 2005, Breezy Bucks—I LLC (LLC), 1631 290th Avenue, Tyler, MN 56178 (Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states that it will own and operate a 1.65 megawatt wind powered electric generation facility (the Facility) in Drammen Township, Lincoln County, Minnesota. The Applicant further states that it will sell the electric output of the Facility exclusively at wholesale to Xcel Energy (Xcel) pursuant to a Wind Generation Purchase Agreement with Xcel. The Applicant explains that the Facility will be located in proximity to the transmission facilities of Xcel in Minnesota, and the Facility will include only those interconnecting transmission facilities necessary to effect sales of electric energy at wholesale.

Comment Date: 5 p.m. Eastern Time on March 3, 2005.

2. Breezy Bucks—II LLC

[Docket No. EG05–39–000]

Take notice that on February 10, 2005, Breezy Bucks—II LLC (LLC), 1631—290th Avenue, Tyler, MN 56178 (Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states it will own and operate a 1.65 megawatt wind powered electric generation facility (the Facility) in Drammen Township, Lincoln County, Minnesota. The Applicant states that it will sell the electric output of the Facility exclusively at wholesale to Xcel Energy (Xcel) pursuant to a Wind Generation Purchase Agreement with Xcel. The Applicant further states that the Facility will be located in proximity to the transmission facilities of Xcel in Minnesota, and the Facility will include only those interconnecting transmission facilities necessary to effect sales of electric energy at wholesale.

Comment Date: 5 p.m. Eastern Time on March 3, 2005.

3. Salty Dog—I LLC

[Docket No. EG05–40–000]

Take notice that on February 10, 2005, Salty Dog—I LLC (LLC), 1756 County Highway 7, Tyler, MN 56178 (Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states that it will own and operate a 1.65 megawatt wind powered electric generation facility (the Facility) in Drammen Township, Lincoln County, Minnesota. The Applicant states that it will sell the electric output of the Facility

exclusively at wholesale to Xcel Energy (Xcel) pursuant to a Wind Generation Purchase Agreement with Xcel. The Applicant explains that the Facility will be located in proximity to the transmission facilities of Xcel in Minnesota, and the Facility will include only those interconnecting transmission facilities necessary to effect sales of electric energy at wholesale.

Comment Date: 5 p.m. Eastern Time on March 3, 2005.

4. Salty Dog—II LLC

[Docket No. EG05–41–000]

Take notice that on February 10, 2005, Salty Dog—II LLC (LLC), 1756 County Highway 7, Tyler, MN 56178 (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states that it will own and operate a 1.65 megawatt wind powered electric generation facility (the Facility) in Drammen Township, Lincoln County, Minnesota. The Applicant further states that it will sell the electric output of the Facility exclusively at wholesale to Xcel Energy (Xcel) pursuant to a Wind Generation Purchase Agreement with Xcel. The Applicant explains that the Facility will be located in proximity to the transmission facilities of Xcel in Minnesota, and the Facility will include only those interconnecting transmission facilities necessary to effect sales of electric energy at wholesale.

Comment Date: 5 p.m. Eastern Time on March 3, 2005.

5. Roadrunner—I LLC

[Docket No. EG05–42–000]

Take notice that on February 10, 2005, Roadrunner—I LLC (LLC), 23504 631st Avenue, Gibbon, MN 55335 (Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states that it will own and operate a 1.65 megawatt wind powered electric generation facility (the Facility) in Drammen Township, Lincoln County, Minnesota. The Applicant further states that it will sell the electric output of the Facility exclusively at wholesale to Xcel Energy (Xcel) pursuant to a Wind Generation Purchase Agreement with Xcel. The Applicant explains that the Facility will be located in proximity to the transmission facilities of Xcel in Minnesota, and the Facility will include only those interconnecting transmission facilities necessary to effect sales of electric energy at wholesale.

Comment Date: 5 p.m. Eastern Time on March 3, 2005.

6. Windy Dog—I LLC

[Docket No. EG05–43–000]

Take notice that on February 10, 2005, Windy Dog—I LLC, 59293 226th Street, Gibbon, MN 55335 (Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states it will own and operate a 1.65 megawatt wind powered electric generation facility (the Facility) in Drammen Township, Lincoln County, Minnesota. The Applicant further states it will sell the electric output of the Facility exclusively at wholesale to Xcel Energy pursuant to a Wind Generation Purchase Agreement with Xcel. The Applicant explains that the Facility will be located in proximity to the transmission facilities of Xcel in Minnesota, and the Facility will include only those interconnecting transmission facilities necessary to effect sales of electric energy at wholesale.

Comment Date: 5 p.m. Eastern Time on March 3, 2005.

7. Wally's Wind Farm LLC

[Docket No. EG05–44–000]

Take notice that on February 10, 2005, Wally's Wind Farm, 242 E. 12th Street, P.O. Box 317, Gibbon, MN 55335, (Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states that it will own and operate a 1.65 megawatt wind powered electric generation facility (the Facility) in Drammen Township, Lincoln County, Minnesota. The Applicant further states that it will sell the electric output of the Facility exclusively at wholesale to Xcel Energy pursuant to a Wind Generation Purchase Agreement with Xcel. The Applicant explains that the Facility will be located in proximity to the transmission facilities of Xcel in Minnesota, and the Facility will include only those interconnecting transmission facilities necessary to effect sales of electric energy at wholesale.

Comment Date: 5 p.m. Eastern Time on March 3, 2005.

8. Ramco Generating One, Inc.

[Docket No. EG05–45–000]

On February 10, 2005, Ramco Generating One, Inc. (the ''Applicant''), a California corporation with its principal place of business at 6362 Ferris Square, Suite C, San Diego, California, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states that it is constructing, and will own and operate, a natural gas-fired, simple cycle power plant to be located in San Diego, California. The Applicant further states that the power plant will ultimately have a nominally rated generating capacity of approximately 46 MW and is expected to commence operation on or about April 15, 2005. Applicant states that all electric energy from the power plant will be sold exclusively at wholesale.

The Applicant states that it has served a copy of the filing on the U.S. Securities and Exchange Commission and the California Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on March 3, 2005.

9. Northern Indiana Public Service Company, Energy USA—TPC Corp., Whiting Clean Energy, Inc.

[Docket Nos. ER00–2173–003, ER00–3219–003, ER01–1300–004]

Take notice that on February 8, 2005, Northern Indiana Public Service Company, EnergyUSA—TPC Corp., (NISPCO) and Whiting Clean Energy, Inc. (the NiSource Companies) tendered for filing their updated market power analysis in support of their application to continue to be permitted to sell power at market-based rates.

Comment Date: 5 p.m. Eastern Time on March 1, 2005.

10. Xcel Energy Services Inc., Northern States Power Company and Northern States Power Company (Wisconsin), Public Service Company of Colorado, Southwestern Public Service Company

[Docket Nos. ER01–205–007, ER98–4590–003, ER98–2640–005, ER99–1610–010]

Take notice that on February 8, 2005, Xcel Energy Services Inc. (XES), on behalf of itself and the Xcel Energy Operating Companies, Northern States Power Company and Northern States Power Company (Wisconsin), Public Service Company of Colorado, and Southwestern Public Service Company, filed with the Commission a market update for authorization to sell at market-based rates and various tariff

amendments, pursuant to section 205 of the Federal Power Act.

Comment Date: 5 p.m. Eastern Time on March 1, 2005.

11. Backbone Mountain Windpower LLC

[Docket No. ER02–2559–003]

Take notice that on February 8, 2005, Backbone Mountain Windpower LLC submitted tariff sheets to include the market behavior rules pursuant to the Commission's order in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,277 (2003). Backbone Mountain Windpower 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 March 1, 2005.

12. FPL Energy Green Power Wind, LLC

[Docket No. ER04–127–001]

Take notice that, on February 8, 2005, FPL Energy Green Power Wind, LLC submitted tariff sheets incorporating the market behavior rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,277 (2003).

FPL Energy Green Power Wind, LLC states that copies of the filing were served on parties on the official service list in the Docket No. ER04–127–000.

Comment Date: 5 p.m. Eastern Time on March 1, 2005.

13. New York Independent System Operator, Inc.

[Docket No. ER04–230–008]

Take notice that on February 8, 2005, New York Independent System Operator, Inc. (NYISO) submitted an amendment to its compliance filing submitted January 28, 2005 in Docket No. ER04–230–007.

Comment Date: 5 p.m. Eastern Time on March 1, 2005.

14. Southwest Power Pool, Inc.

[Docket No. ER05–156–002]

Take notice that on February 8, 2005, Southwest Power Pool, Inc. (SPP) submitted for filing a supplement to its proposed Attachment AD of its regional Open Access Transmission Tariff filed with the Commission on November 1, 2004 (November 1 Filing). In addition, SPP provided a response to the deficiency letter issued December 28, 2004, regarding the November 1 filing. SPP requests an effective date of January 1, 2005.

SPP states that it has served a copy of this filing on all parties to this proceeding, as well as upon each of its Members and Customers. SPP further states that a complete copy of this filing will be posted on the SPP Web site *http://www.spp.org,* and is also being served on all affected state commissions.

Comment Date: 5 p.m. Eastern Time on March 1, 2005.

15. Brownsville Power I, L.L.C.; Caledonia Power I, L.L.C.; Cinergy Capital & Trading, Inc.

[Docket Nos. ER05–263–001, ER05–264–001, ER05–265–001]

Take notice that on February 8, 2005, Brownsville Power I, L.L.C., Caledonia Power I, L.L.C., and Cinergy Capital & Trading, Inc. (together, Applicants) submitted an amendment to their November 24, 2004 filing in Docket Nos. ER05–263–000, ER05–264–000 and ER05–265–000 pursuant to the deficiency letter issued January 14, 2005.

The Applicants state that copies of the filing were served on parties on the official service list.

Comment Date: 5 p.m. Eastern Time on March 1, 2005.

16. Sempra Generation

[Docket No. ER05–440–001]

Take notice that on February 8, 2005, Sempra Generation submitted a supplement to its notice of succession filed on January 12, 2005 in Docket No. ER05–440–000 to reflect a corporate name change from Sempra Energy Resources to Sempra Generation, effective January 1, 2005.

Comment Date: 5 p.m. Eastern Time on March 1, 2005.

17. MidAmerican Energy Company

[Docket No. ER05–482–001]

Take notice that on February 8, 2005, MidAmerican Energy Company (MidAmerican), filed an amendment to its January 24, 2005 filing in Docket No. ER05–482–000 of an electric transmission interconnection agreement between MidAmerican and Corn Belt Power Cooperative.

MidAmerican states that it has served a copy of the filing on Corn Belt Power Cooperative, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on March 1, 2005.

18. Otter Tail Corporation

[Docket No. ER05–555–000]

Take notice that on February 4, 2005, Otter Tail Corporation (Otter Tail) submitted a notice of succession regarding the change of its corporate name from Otter Tail Power Company to Otter Tail Corporation.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

19. Southern Company Services, Inc.

[Docket No. ER05–561–000]

Take notice that on February 8, 2005, Southern Company Services, Inc., acting on behalf of Georgia Power Company (GPC), filed with the Commission a notice of cancellation of the interconnection agreement between Augusta Energy, LLC and GPC (Service Agreement No. 376 under Southern Companies' open access transmission tariff, Fourth Revised Volume No. 5). GPC requests an effective date of December 28, 2004.

GPC states that a copy of this filing has been sent to Augusta Energy.

Comment Date: 5 p.m. Eastern Time on March 1, 2005.

20. Southwest Power Pool, Inc.

[Docket No. ER05–562–000]

Take notice that on February 8, 2005, the Southwest Power Pool Inc. (SPP) submitted for filing Schedule 12 of its open access transmission tariff, FERC Electric Tariff, Fourth Revised Volume No. 1, in order to recover SPP's payments to the Commission of its FERC annual charges. SPP requests an effective date of March 1, 2005.

SPP states that it has served a copy of this filing, with attachments, upon all SPP members, customers, as well as all state commissions within the region. In addition, SPP states that the filing has been posted electronically on SPP's Web site at *http://www.spp.org* and that SPP will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. Eastern Time on March 1, 2005.

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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–741 Filed 2–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–30–000, et al.]

Aquila, Inc., et al.; Electric Rate and Corporate Filings

February 15, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Aquila, Inc.; Aquila Long Term, Inc.

[Docket No. EC05–30–000]

Take notice that on February 7, 2005, Aquila, Inc. and Aquila Long Term, Inc. (collectively, Applicants) submitted a Notice of Withdrawal of their Application to Transfer Jurisdictional Facilities filed December 28, 2004 in Docket No. EC05–30–000.

Comment Date: 5 p.m. Eastern Time on February 28, 2005.

2. Elkem Metals Company—Alloy, L.P.

[Docket No. EC05–47–000]

Take notice that on February 10, 2005, Elkem Metals Company—Alloy, L.P. (Elkem Alloy) filed with the Commission an application for authorization under section 203 of the Federal Power Act to transfer ultimate upstream control of certain jurisdictional facilities to Orkla ASA, a Norwegian company. Elkem Alloy states hat Orkla ASA has contracted to acquire from third party shareholders a majority interest in the voting shares of Elkem-Alloy's parent, Eklem ASA.

Comment Date: 5 p.m. Eastern Time on March 3, 2005.

3. Kansas City Power & Light Company

[Docket No. EC05–48–000]

Take notice that on February 10, 2005, Kansas City Power & Light Company (KCPL) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby KCPL seeks authorization to sell a portion of KCPL's 161 kV transmission facilities commonly known as Lake Road-Nashua Line to Aquila, Inc. in a cash sale.

Comment Date: 5 p.m. Eastern Time on March 7, 2005.

4. Decker Energy International, Inc.; Craven Renewable LLC

[Docket No. EC05–49–000]

Take notice that on February 14, 2005, Decker Energy International, Inc. and Craven Renewable LLC (jointly, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Decker Energy International, Inc., will divest, and Craven Renewable LLC will acquire, membership interests in Decker Energy Craven LP, LLC, which in turn owns partnership interest in Craven County Wood Energy Limited Partnership. The Applicants have requested privileged treatment for transaction documents submitted to the Commission under 18 CFR 33.9 and 18 CFR 388.12.

Comment Date: 5 p.m. Eastern Time on March 7, 2005.

5. ESI Vansycle Partners, L.P.

[Docket No. ER98–2494–007]

Take notice that on February 8, 2005, ESI Vansycle Partners, L.P. submitted tariff sheets incorporating the market behavior rules in compliance with the Commission's order in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,277 (2003).

ESI Vansycle Partners, L.P. 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 March 1, 2005.

6. Oregon Electric Utility Company, Portland General Electric Company, Portland General Term Power, Procurement Company

[Docket No. ER04–1206–002]

Take notice that, on February 11, 2005, Portland General Electric Company (PGE) submitted a supplement to their January 21, 2005 filing in this proceeding regarding the response filed January 18, 2005 to the Commission's request for additional information issued December 17, 2004.

Comment Date: 5 p.m. Eastern Time on February 22, 2005.

7. Transmission Owners of the Midwest Independent Transmission System Operator Inc.

[Docket No. ER05–447–002]

Take notice that on February 11, 2005, the Transmission Owners of the Midwest Independent Transmission System Operator (Midwest ISO Transmission Owners) submitted an amendment to the proposed Schedule 23 to the Midwest Independent Transmission System Operator, Inc.'s tariff, filed on January 13, 2005 in Docket No. ER05–447–000, as amended on January 26, 2005 in Docket No. ER05–447–001.

The Midwest ISO Transmission Owners state that they are serving this filing on all Midwest ISO's affected customers as well as on all applicable state commissions. The Midwest ISO also states that it will post a copy on its home page.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

8. Duke Energy Hanging Rock, LLC

[Docket No. ER05–567–000]

Take notice that on February 8, 2005, Duke Energy Hanging Rock, LLC (Duke Hanging Rock) tendered for filing its proposed tariff and supporting cost data for its Monthly Revenue Requirement for Reactive Supply and Voltage Control from Generation Sources Service provided to PJM Interconnection, L.L.C. (PJM). Duke Hanging Rock requests an effective date of March 1, 2005.

Duke Hanging Rock states it has served a copy of the filing on PJM.

Comment Date: 5 p.m. Eastern Time on March 2, 2005.

9. Fitchburg Gas and Electric Light Company

[Docket No. ER05–575–000]

Take notice that on February 4, 2005, Fitchburg Gas and Electric Light Company (Fitchburg) submitted an amendment to the informational filing submitted on July 30, 2004 in Docket No. ER03–1401–001 to reflect changes in the calculation of its annual revenue requirement for Network Integration Transmission Service and charges for Firm and Non-firm Point to Point Transmission Service for the period February 1, 2005 through May 31, 2005.

Fitchburg states that copies of the filing were served on parties on the

official service list in Docket No. ER03–1410, on its transmission customers, and on the Massachusetts Department of Telecommunications and Energy.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

10. East Kentucky Power Cooperative, Inc.

[Docket No. TX05–1–001]

Take notice that on February 7, 2005, Tennessee Valley Authority (TVA) submitted for filing its response to the Commission's order issued January 6, 2005 requesting the submission of additional information regarding the application filed October 1, 2004 by East Kentucky Power Cooperative, Inc. in Docket No. TX05–1–000.

Comment Date: 5 p.m. Eastern Time on February 28, 2005.

11. East Kentucky Power Cooperative

[Docket No. TX05–01–002]

Take notice that on February 7, 2005, East Kentucky Power Cooperative (EKPC) submitted for filing its response to the Commission's order issued January 6, 2005 requesting the submission of additional information regarding the application filed October 1, 2004 by EKPC in Docket No. TX05–1–000.

Comment Date: 5 p.m. Eastern Time on February 28, 2005.

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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–742 Filed 2–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–50–000, et al.]

Granite Ridge Energy, LLC, et al.; Electric Rate and Corporate Filings

February 16, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Granite Ridge Energy, LLC and Cargill Financial Services International, Inc.

[Docket No. EC05–50–000]

Take notice that on February 14, 2005, Granite Ridge Energy, LLC (Granite Ridge), and Cargill Financial Services International, Inc. (Cargill Financial), filed an application pursuant to section 203 of the Federal Power Act requesting the Federal Energy Regulatory Commission to authorize the transfer of additional indirect equity interests in Granite Ridge to Cargill Financial, which owns approximately 13 percent indirect interest in Granite Ridge.

Comment Date: March 7, 2005.

2. Kumeyaay Wind LLC

[Docket No. EG05–46–000]

Take notice that on February 14, 2005, Kumeyaay Wind LLC (Kumeyaay Wind), filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Kumeyaay Wind states that it will construct, own and operate a wind-powered generating facility located in the County of San Diego, California.

Kumeyaay Wind further states that a copy of the application has been served on the U.S. Securities and Exchange Commission and the California Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on March 7, 2005.

3. City of Riverside, California

[Docket No. EL05–45–001]

Take notice that on February 11, 2005, the City of Riverside, California (Riverside) submitted for filing corrections to its transmission revenue balancing account adjustment and to Appendix I of its transmission owner tariff filed in Docket No. EL05–45–000 on December 16, 2004. Riverside requests a January 1, 2005 effective date for its filing as corrected.

Comment Date: 5 p.m. Eastern Time on March 4, 2005.

4. Duke Energy Corporation

[Docket No. ER05–433–001]

Take notice that on February 11, 2005 Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) submitted an errata to the network integration service agreement with North Carolina Municipal Power Agency Number 1 (NCMPA) which is designated as Third Revised Service Agreement No. 212 under Duke Electric Transmission FERC Electric Tariff Third Revised Volume No. 4.

Duke states that copies of the filing were served upon the service list.

Comment Date: 5 p.m. Eastern Time on February 22, 2005.

5. South Carolina Electric and Gas Company

[Docket No. ER96–1085–007]

Take notice that on February 7, 2005, South Carolina Electric Gas Company submitted for filing an updated market power analysis.

Comment Date: 5 p.m. Eastern Time on February 28, 2005.

6. Dynegy Power Marketing, Inc. [Docket No. ER99–4160–007]; Bluegrass Generation Company, L.L.C.

[Docket No. ER02–506–004]; Cabrillo Power I LLC [Docket No. ER99–1115–006]; Cabrillo Power II, LLC [Docket No. ER99–1116–006]; Calcasieu Power, LLC [Docket No. ER00–1049–004]; Dynegy Danskammer, LLC [Docket No. ER01–140–003]; Dynegy Midwest Generation, Inc. [Docket No. ER00–1895–004]; Dynegy Roseton, LLC [Docket No. ER01–141–003]; El Segundo Power, LLC [Docket No. ER98–1127–006]; Heard County Power, LLC [Docket No. ER01–943–003]; Long Beach Generation, LLC [Docket No. ER98–1796–005]; Renaissance Power, LLC [Docket No. ER01–3109–004]; Riverside Generating Company, LLC [Docket No. ER01–1044–004]; Rockingham Power, LLC [Docket No. ER99–1567–003]; Rocky Road Power, LLC [Docket No. ER99–2157–003]; and Rolling Hills Generating, LLC [Docket No. ER02–553–003]

Take notice that, on February 7, 2005, the subsidiaries of Dynegy Inc. with market-based rate authority (collectively, Dynegy), submitted an updated triennial market power analysis in compliance with the orders authorizing Dynegy to sell energy, capacity and ancillary services at market-based rates. Dynegy states that the updated market power analysis was prepared in accordance with the Commission's new market power screens, adopted in *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 (2004). Dynegy notes that the filing also includes tariff amendments in compliance with the Commission's Order Amending Market-Based Rate Tariffs and Authorizations issued on November 17, 2003 in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (2003).

Dynegy states that copies of the filing were served on parties on the official service lists in each of the above-captioned proceedings.

Comment Date: 5 p.m. Eastern Time on February 28, 2005.

7. Wabash Valley Power Association, Inc.

[Docket No. ER05–438–001]

Take notice that on February 10, 2005, Wabash Valley Power Association, Inc. (Wabash Valley) submitted for filing additional information relating to two separate supplemental agreements to wholesale power supply contracts between Wabash Valley and two of its members, Midwest Energy Cooperative, Inc. and Paulding-Putnam Electric Cooperative, Inc. The two separate supplemental agreements were filed by Wabash Valley on January 12, 2005.

Wabash Valley states that copies of the filing were served upon each of Wabash Valley's members and the public utility commissions in Illinois, Indiana, Michigan and Ohio.

Comment Date: 5 p.m. Eastern Time on March 3, 2005.

8. Westar Energy, Inc.

[Docket No. ER05–563–000]

Take notice that on February 10, 2005, Westar Energy, Inc. (Westar) submitted for filing a notice of cancellation for rate schedule FERC No. 225, an electric power supply agreement between Westar and the City of Altamont, Kansas.

Westar states that copies of the filing were served upon the Kansas Corporation Commission and the City of Altamont, Kansas.

Comment Date: 5 p.m. Eastern Time on March 3, 2005.

9. Ramco Generating One, Inc.

[Docket No. ER05–564–000]

Take notice that on February 10, 2005, Ramco Generating One, Inc. (Ramco) submitted for filing, pursuant to section 205 of the Federal Power Act (FPA), and Part 35 of the Commission's regulations, an application for authorization to make sales of electric capacity, energy, replacement reserve and certain ancillary services at market-based rates; for authorization to reassign transmission capacity and resell firm transmission rights; for waiver of certain of the Commission's regulations promulgated under the FPA; and for certain blanket approvals under other such regulations. Ramco states that it included in its filing FERC Electric Tariff, Original Volume No. 1, market behavior rules, and a form of service agreement.

Ramco states that copies of the filing were served upon Ramco Generating One, Inc.'s jurisdictional customers and the California Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on March 3, 2005.

10. American Transmission Systems, Incorporated

[Docket No. ER05–566–000]

Take notice that on February 10, 2005, American Transmission Systems Incorporated (ATS), submitted for filing service agreement No. 350 under its open access transmission tariff. Specifically, the filing is a construction agreement with the Omega JV4, American Municipal Power—Ohio, Inc., Holiday City and the Village of Pioneer dated January 31, 2005. ATS states that the purpose of the construction agreement is to establish the terms and conditions for a temporary 69 KV delivery point for Holiday City and the Village of Pioneer distribution systems. ATS requests an effective date of February 1, 2005.

ATS states that copies of this filing were served on the representatives of the Parties and the Public Utilities Commission of Ohio.

Comment Date: 5 p.m. Eastern Time on March 3, 2005.

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 online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–744 Filed 2–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 17, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–289–013.

c. *Date filed:* October 7, 2003.

d. *Applicant:* Louisville Gas and Electric Company (LG&E).

e. *Name of Project:* Ohio Falls Hydroelectric Project.

f. *Location:* On the Ohio River, in Jefferson County, Kentucky. This project is located at the U.S. Army Corp of Engineer's McAlpine Locks and Dam Project.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Elizabeth L. Cocanougher, Senior Corporate Attorney, Louisville Gas and Electric Company, 220 West Main Street, Louisville, Kentucky 40202, (502) 627–2557.

i. *FERC Contact:* John Costello, *john.costello@ferc.gov*, (202) 502–6119.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(iii) and instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. *Project Description:* The Ohio Falls Hydroelectric Project consists of the following existing facilities: (a) A concrete powerhouse containing eight-10,040 kW generating units, located at the U.S. Army Corp of Engineer's McAlpine Locks and Dam Project; (b) a concrete headworks section, 632 feet long and 2 feet wide, built integrally with the powerhouse; (c) an office and electric gallery building; (d) a 69 kV transmission line designated as line 6608 to the Canal substation; (e) an access road, (f) one half mile of railroad tracks; and (g) appurtenant facilities. The project facilities are owned by LG&E.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link—select ''Docket #'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accomplished by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

n. *Procedural schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Action	Date
Notice Availability of EA	June 2005.
Ready for Commission Decision on Application.	September 2005.

You may also register online at *http://www.ferc.gov/docs-filing/esubcription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–746 Filed 2–23–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7876–5]

State Innovation Grant Program, Notice of Availability of Solicitation for Proposals for 2005/2006 Awards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency, National Center for Environmental Innovation (NCEI) is giving notice of the availability of its solicitation for proposals for the 2005/2006 grant program to support innovation by state environmental regulatory agencies—the ''State Innovation Grant Program.'' The full text of the solicitation includes the following:

- Background information on the State Innovation Grant Program, including prior awards;
- A description of the 2005–2006 program;
- The process for preparing and submitting proposals;
- The State Innovation Grant Program selection criteria;
- A description of the selection and award process;
- A pre-proposal checklist to help States prepare effective proposals;
- A list of definitions for purposes of this solicitation.

The solicitation is available at the Agency's State Innovation Grant Web site: *http://www.epa.gov/innovation/stategrants/solicitation2005.pdf*, or may be requested from the Agency by e-mail, telephone, or by mail. Only the principal environmental regulatory

agency within each State (generally, where delegated authorities for Federal environmental regulations exist) is eligible to receive these grants.

DATES: State environmental regulatory agencies will have 60 days until April 25, 2005, to respond with a pre-proposal, budget, and project summary. The environmental regulatory agencies from the fifty (50) States; Washington, DC, and four (4) territories were notified of the solicitation's availability by fax and e-mail transmittals on February 24, 2005.

ADDRESSES: Copies of the Solicitation can be downloaded from the Agency's Web site at: *http://www.epa.gov/innovation/stategrants* or may be requested by telephone ((202) 566–2186), or by e-mail (*Innovation_State_Grants@epa.gov*). Proposals submitted in response to this solicitation, or questions concerning the solicitation should be sent to: State Innovation Grant Program, Office of Policy, Economics and Innovation, U.S. Environmental Protection Agency (1807T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Proposal responses or questions may also be sent by fax to ((202) 566–2220), addressed to the ''State Innovation Grant Program,'' or by e-mail to: *Innovation_State_Grants@epa.gov*. We encourage e-mail responses. If you have questions about responding to this notice, please contact EPA at this e-mail address or fax number, or you may call Sherri Walker at (202) 566–2186. EPA will acknowledge all responses it receives to this notice.

SUPPLEMENTARY INFORMATION:

Background: In April 2002, EPA issued its plan for future innovation efforts, published as *Innovating for Better Environmental Results: A Strategy to Guide the Next Generation of Innovation at EPA* (EPA 100–R–02–002; *http://www.epa.gov/opei/strategy*). In Fall of 2002, EPA initiated the State Innovation Grants Program with a competition that asked for State project proposals that would create innovation in environmental permitting programs related to one of the Strategy's four priority environmental issues: reducing greenhouse gases, reducing smog, improving water quality, and ensuring the long-term integrity of the nations's water infrastructure. This assistance agreement program strengthens EPA's partnership with the States by assisting State innovation that supports the *Strategy.* EPA would like to help States build on previous experience and undertake strategic innovation projects that promote larger-scale models for ''next generation'' environmental protection and promise better environmental results. EPA is interested in funding projects that go beyond a single facility experiment to promote change that is ''systems-oriented'' and provides better results from a program, process, or sector-wide innovation. EPA is particularly interested in innovation that promotes integrated (cross-media) environmental management with high potential for transfer to other States. Following the pilot round of State Innovation Grants in 2002, EPA consulted with the States through the Environmental Council of the States (ECOS) and through a comment period announced in the **Federal Register** (FRL 7510–7, June 11, 2003) (*see http://www.epa.gov/innovation/stategrants*). EPA received support in comments from a large number of the responding States for maintaining innovation in permitting as a subject of the next solicitation in order to build and sustain a stable resource base for testing new ideas that can improve this critical core function. Within this topic there was considerable support for EPA assistance to help States explore the relationship between Environmental Management Systems (EMS) and permitting (*see: http://www.epa.gov/ems/*) and to support adoption of the Environmental Results Program (ERP) model (*see: http://www.epa.gov/ooaujeag/permits/masserp.htm*). Additionally, in October 2004 EPA through a subsequent **Federal Register** notice (FRL 7827–4, October 13, 2004) asked states to provide additional input on topic areas for this solicitation. EPA received continued support for maintaining innovation in permitting as a subject of the next solicitation. During the months of October and November 2004, EPA held a series of six informational calls for the states. The purpose of the conference calls was to offer a streamlined proposal development workshop to all States prior to publication of our solicitation, and to answer any questions that the States may have prior to the competition, in keeping with Federal requirements that we afford assistance fairly in a competition process. Through this effort, our primary focus was to encourage individual States (and/or State-led teams) to submit well-developed pre-proposals that effectively describe how their project would achieve measurable environmental results. Questions and answers from these six calls are posted at the program Web site at *http://www.epa.gov/innovation/stategrants.*

Sixteen projects that received awards in prior competitions included: seven Environmental Results Program (ERP) models, six Environmental Management Systems (EMS) projects, two Watershed-Based Permitting projects, and one Enhanced Permitting Through Application of Innovative Information Technology (IT) Systems. For more information on the prior solicitations and awards, please see the EPA State Innovation Grants Web site at: *http://www.epa.gov/innovation/stategrants.*

Dated: February 17, 2005.

Elizabeth Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. 05–3529 Filed 2–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7876–6]

Clean Water Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended transfer of confidential business information to contractors and subcontractors.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer confidential business information (CBI) collected from the pulp, paper, and paperboard manufacturing; iron and steel manufacturing; and other industries listed below to Eastern Research Group, Inc. (ERG), and its subcontractors. Transfer of the information will allow the contractor and subcontractors to support EPA in the planning, development, and review of effluent limitations guidelines and standards under the Clean Water Act (CWA), and the development of discharge standards under Title XIV: Certain Alaskan Cruise Ship Operations (33 U.S.C. 1902 note). The information being transferred was or will be collected under the authority of section 308 of the CWA. Some information being transferred from the pulp, paper, and paperboard industry was collected under the additional authorities of section 114 of the Clean Air Act (CAA) and section 3007 of the Resource Conservation and Recovery Act (RCRA). Interested persons may submit comments on this intended transfer of information to the address noted below.

DATES: Comments on the transfer of data are due March 3, 2005.

ADDRESSES: Comments may be sent to Mr. M. Ahmar Siddiqui, Document Control Officer, Engineering and Analysis Division (4303T), Room 6231S

EPA West, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. M. Ahmar Siddiqui, Document Control Officer, at (202) 566–1044, or via e-mail at *siddiqui.ahmar@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has previously transferred to its contractor, ERG (located in Chantilly, Virginia and Lexington, Massachusetts), information, including CBI, that was collected under the authority of section 308 of the CWA. Notice of the transfer was provided to the affected industries (see, for example, 59 FR 58840, November 15, 1994). EPA determined that this transfer was necessary to enable the contractors and subcontractors to perform their work in supporting EPA in planning, developing, and reviewing effluent guidelines and standards for certain industries.

Today, EPA is giving notice that it has entered into additional contracts, numbers 68–C–02–095 and 68–C–01–073, with ERG. The reason for these contracts is to secure additional contractor support in engineering analysis, survey and database development, economic analyses, and ecological analyses. To obtain assistance in responding to these contracts, ERG has entered into contracts with their subcontractors. In particular, ERG has obtained the services of the following subcontractors: Abt Associates (located in Cambridge, Massachusetts); AH Environmental Consultants, Inc. (located in Newport News and Springfield, Virginia); AmDyne Corporation (located in Glen Burnie, Maryland); Amendola Engineering, Inc. (located in Westlake, Ohio); Analytica Alaska, Inc. (located in Juneau, Alaska); Applied Geographics, Inc. (located in Boston, Massachusetts); Avanti Corporation (located in Annandale, Virginia); CK Environmental (located in Atlanta, Georgia); DRPA, Inc. (located in Rosslyn, Virginia); GeoLogics Corporation (located in Alexandria, Virginia); Hydraulic and Water Resources Engineers, Inc. (located in Waltham, Massachusetts); N. McCubbin Consultants, Inc. (located in Foster, Quebec, Canada); Stratus Consulting, Inc. (located in Boulder, Colorado); Tetra Tech, Inc. (located in Fairfax, Virginia); Versar, Inc. (located in Springfield, Virginia); and independent consultant Danforth Bodien.

All EPA contractor, subcontractor, and consultant personnel are bound by the requirements and sanctions contained in their contracts with EPA and in EPA's confidentiality regulations found at 40 CFR Part 2, Subpart B. ERG and its subcontractors adhere to EPA-approved security plans which describe procedures to protect CBI. The procedures in these plans are applied to CBI previously gathered by EPA for the industries identified below and to CBI that may be gathered in the future for these industries. The security plans specify that contractor and subcontractor personnel are required to sign non-disclosure agreements and are briefed on appropriate security procedures before they are permitted access to CBI. No person is automatically granted access to CBI; a need to know must exist.

The information that will be transferred to ERG and its subcontractors consists primarily of information previously collected by EPA to support the development and review of effluent limitations guidelines and standards under the CWA and the development of discharge standards under Title XIV. In particular, information, including CBI, collected for the planning, development, and review of effluent limitations guidelines and standards for the following industries may be transferred: Airport deicing; aquaculture; concentrated animal feeding operations; centralized waste treatment; coal mining; drinking water; industrial laundries; waste combustors; iron and steel manufacturing; landfills; meat and poultry products; metal finishing; metal products and manufacturing; nonferrous metals manufacturing; oil and gas extraction (including coalbed methane); ore mining and dressing; organic chemicals, plastics, and synthetic fibers; pesticide chemicals; pharmaceutical manufacturing; petroleum refining; pulp, paper, and paperboard manufacturing; steam electric power generation; textile mills; timber products processing; tobacco; and transportation equipment cleaning. In addition, for the development of standards under Title XIV, EPA may transfer information, including CBI, about large cruise ships that operate in the waters around Alaska.

EPA also intends to transfer to ERG and its subcontractors all information listed in this notice, of the type described above (including CBI) that may be collected in the future under the authority of section 308 of the CWA or voluntarily submitted (*e.g.*, in comments in response to a **Federal Register** notice), as is necessary to enable ERG and its subcontractors to carry out the work required by their contracts to support EPA's effluent guidelines planning process; development of effluent limitations guidelines and standards; and discharge standards from cruise ships.

Dated: February 15, 2005.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 05–3528 Filed 2–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0028; FRL–7876–9]

RIN 2060–AD86

Drinking Water Contaminant Candidate List 2; Final Notice

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Safe Drinking Water Act (SDWA), as amended in 1996, requires the Environmental Protection Agency (EPA) to publish a list of contaminants that, at the time of publication, are not subject to any proposed or promulgated national primary drinking water regulations, that are known or anticipated to occur in public water systems, and that may require regulations under SDWA (section 1412 (b)(1)). SDWA, as amended, specifies that EPA must publish the first list of drinking water contaminants no later than 18 months after the date of enactment, i.e., by February 1998, and every five years thereafter.

The EPA published the first Candidate Contaminant List (CCL) in March of 1998 (63 FR 10273). The second draft CCL (CCL 2) was published on April 2, 2004 (69 FR 17406) and announced EPA's preliminary decision to carry forward the remaining 51 contaminants on the 1998 CCL as the draft CCL 2, provided information on EPA's efforts to expand and strengthen the underlying CCL listing process to be used for future CCL listings, and sought comment on the draft list as well as EPA's efforts to improve the contaminant selection process for future CCLs. Today's final CCL 2 carries forward the remaining 51 contaminants proposed on April 2, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OW–2003–0028. 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 publically 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 publically available only in hard copy form. Publically available docket materials are

available either electronically in EDOCKET or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For access to docket material, please call (202) 566–2426 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For questions about this notice contact Dan Olson, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC–4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–5239; fax number: 202–564–3752; e-mail address: *olson.daniel@epa.gov.* For general information contact the EPA Safe Drinking Water Hotline at (800) 426–4791 or e-mail: *hotline-sdwa@epa.gov.* The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 9 a.m. to 5 p.m.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Impose Any Requirements on My Public Water System?

Today's action does not impose any requirements on anyone. Instead, it notifies interested parties of EPA's final CCL 2 as well as EPA's efforts to improve the contaminant selection process for future CCLs. Contaminants on the list will be considered under the regulatory determination provision of SDWA (see section 1412(b)(1)(B)(ii)), which directs EPA to select at least five contaminants from the CCL every five years to determine if regulating the contaminants through National Primary Drinking Water Regulations would present a meaningful opportunity to reduce health risk.

II. Background and Summary of Today's Action

A. What Is the Purpose of Today's Action?

The CCL is the primary source of priority contaminants for evaluation by EPA's drinking water program. Contaminants on the CCL are currently not subject to any proposed or promulgated national primary drinking water regulation, but are known or anticipated to occur in public water systems, and may require regulation under SDWA. The EPA conducts research on health effects, analytical methods, contaminant occurrence, treatment technologies, and treatment effectiveness for priority drinking water contaminants on the CCL. The Agency also develops drinking water guidance and health advisories, and makes regulatory determinations for priority contaminants on the CCL.

Today's action informs interested parties of EPA's final CCL 2 as well as EPA's efforts to improve the contaminant selection process for future CCLs.

B. The Background of the CCL

The SDWA is the core statute protecting drinking water at the Federal level. Under SDWA, EPA sets public health goals and enforceable standards for drinking water quality. In 1996, Congress amended SDWA to emphasize sound science and risk-based priority-setting. Congress also changed the way drinking water regulatory priorities are set by establishing the CCL requirements. The 1996 SDWA amendments require EPA to (1) publish every five years a list of currently unregulated contaminants in drinking water that may pose risks (the CCL), and (2) make determinations on whether or not to regulate at least five of these contaminants on a five year cycle, or three and a half years after each CCL is published (SDWA section (b)(1)).

Today's action is being published pursuant to the requirements in section 1412(b)(1). The contaminants included are not subject to any proposed or promulgated national primary drinking water regulation, are known or anticipated to occur in public water systems, and may require regulation under the SDWA. A draft CCL 2 was published in the April 2, 2004 edition of the **Federal Register** (69 FR 17406) to announce EPA's preliminary decision to carry forward the remaining 51 contaminants on the 1998 CCL as the CCL 2, to provide information on EPA's efforts to expand and strengthen the underlying CCL listing process to be used for future CCL listings, and to seek comment on the draft list as well as EPA's efforts to improve the contaminant selection process for future CCLs.

Today's action establishes the final CCL 2 which includes 42 chemicals or chemical groups and nine microbiological contaminants. This list continues to be an important tool under the SDWA to help prioritize research and serves as the central focus of the regulatory determination process noted previously. It is important to note, however, that under the SDWA, the EPA may also make regulatory determinations for any unregulated contaminant not on today's CCL (see SDWA section 1412(b)(1)(B)(ii)(III)). Thus, the Agency has the authority to act as necessary to protect public health as new information becomes available.

III. Drinking Water Contaminant Candidate List 2

Table III–1 lists the contaminants on the final CCL 2. These contaminants are identified by name and, where available, the Chemical Abstracts Service Registry Number (CASRN). The final CCL 2 consists of nine microbiological contaminants and 42 chemical contaminants or contaminant groups.

TABLE III–1.—FINAL DRINKING WATER CONTAMINANT CANDIDATE LIST 2

Microbiological contaminant candidates
Adenoviruses Aeromonas hydrophila
Caliciviruses
Coxsackieviruses
Cyanobacteria (blue-green algae), other freshwater algae, and their toxins
Echoviruses
Helicobacter pylori
Microsporidia (Enterocytozoon and Septata)
Mycobacterium avium intracellulare (MAC)

Chemical contaminant candidates	
	CASRN
1,1,2,2-tetrachloroethane.	79–34–5
1,2,4-trimethylbenzene.	95–63–6
1,1-dichloroethane	75–34–3
1,1-dichloropropene	563–58–6
1,2-diphenylhydrazine	122–66–7
1,3-dichloropropane	142–28–9
1,3-dichloropropene	542–75–6
2,4,6-trichlorophenol	88–06–2
2,2-dichloropropane	594–20–7
2,4-dichlorophenol	120–83–2
2,4-dinitrophenol	51–28–5
2,4-dinitrotoluene	121–14–2
2,6-dinitrotoluene	606–20–2
2-methyl-Phenol (o-cresol).	95–48–7
Acetochlor	34256–82–1
Alachlor ESA & other acetanilide pesticide degradation products.	N/A
Aluminum	7429–90–5
Boron	7440–42–8
Bromobenzene	108–86–1
DCPA mono-acid degradate.	887–54–7
DCPA di-acid degradate.	2136–79–0
DDE	72–55–9
Diazinon	333–41–5
Disulfoton	298–04–4
Diuron	330–54–1
EPTC (s-ethyl-dipropylthiocarbamate).	759–94–4

Fonofos	944–22–9
p-Isopropyltoluene (p-cymene).	99–87–6
Linuron	330–55–2
Methyl bromide	74–83–9
Methyl-t-butyl ether (MTBE).	1634–04–4
Metolachlor	51218–45–2
Molinate	2212–67–1
Nitrobenzene	98–95–3
Organotins	N/A
Perchlorate	14797–73–0
Prometon	1610–18–0
RDX	121–82–4
Terbacil	5902–51–2
Terbufos	13071–79–9
Triazines and degradation products of triazines.	including, but not limited to Cyanazine 21725–46–2 and atrazine-desethyl 6190–65–4
Vanadium	7440–62–2

IV. Summary of Comments

The comment period on the April 2, 2004, **Federal Register** notice, ''Drinking Water Contaminant Candidate List 2; Notice'' (69 FR 17406) ended on June 1, 2004. EPA received a total of seven comments that focused on EPA's draft CCL 2 and EPA's efforts to improve the contaminant selection process for future CCLs. EPA received two comments from associations representing water utilities, one comment from a State-related association, one comment from a water utility, one comment from a State agency, one comment from an individual, and one anonymous comment. A summary of these comments and EPA's response to these comments follow. A complete copy of the public comments and the Agency's responses are included in the Docket for today's action and can be obtained at *http://www.epa.gov/edocket/*.

The majority of comments were supportive of the CCL process. The comments on development of the draft CCL 2 focused on two key topic areas: (1) Reassembling the CCL taking new available information into account; suggestions on information that should be considered, and contaminants that should be included or deleted from the CCL; and (2) requests for information on the status of CCL-related research. Comments on the development of future CCLs focused on four key topic areas: (1) Expert judgement and transparency, (2) the role of data quality, (3) a simplified approach with adaptive management for future CCLs, and (4) the role of virulence factor activity relationships (VFARs). The remainder of this section discusses these key areas in turn.

A. Developing the draft CCL 2

1. Suggestions on new information and contaminants that should be included or deleted from the CCL.

Comment Summary: Two commenters believe that EPA should create a new CCL taking new available information into account. One commenter recommended that EPA not carry forward five chemicals (1,1,2,2-tetrachloroethane, 1,1-dichloropropene, 1,3-dichloropropane, 1,3-dichloropropene, and 2,2, dichloropropane) currently on CCL 1 to CCL 2, two commenters recommended that N-nitrosodimethylamine (NDMA) should be added to the CCL, and one commenter recommended that enterotoxigenic *Escherichia coli* (*E. coli*) be included on the final CCL 2.

Agency Response: In response to commenters who recommended that EPA create a new CCL to take new available information into account, and the suggestion that EPA remove five chemicals (1,1,2,2-tetrachloroethane, 1,1-dichloropropene, 1,3-dichloropropane, 1,3-dichloropropene, and 2,2, dichloropropane) from the CCL, EPA does not believe that it is appropriate to create a new CCL, or remove any contaminants from the CCL, at this time. Where there is adequate information about a particular contaminant, EPA plans to make a regulatory determination which will either remove that contaminant from the CCL or start a national rule making process to set a national primary drinking water regulation. With regard to future CCLs, EPA is developing an expanded comprehensive system for evaluating a wider range of existing information, identifying new data, and applying revised screening criteria to generate the CCL 3 in response to extensive recommendations from the National Academy of Sciences National Research Council (NRC) and National Drinking Water Advisory Council (NDWAC).

With specific regard to NDMA, there is already a substantive body of health effects research that the Agency has relied upon to classify it as a ''probable human carcinogen'' (USEPA, 1993). The key information gap for this contaminant relates to occurrence in public water system distribution systems. Some initial research has been conducted in this area and the Agency plans to collect more comprehensive occurrence information as part of the upcoming national survey of key unregulated contaminants under section 1445(a)(2).

Regarding enterotoxigenic *E. coli*, EPA will be considering this microbe as part of the revised and expanded CCL 3 review process. The Agency believes that this will be a more appropriate and effective approach for evaluating this bacteria in comparison to a wide range of other microbes that will be considered under the broader analytical approach recommended by the NRC and NDWAC.

2. Provide the status of CCL-related research, data collection, and pending initiatives that have been undertaken since CCL 1.

Comment Summary: Commenters identified several CCL-related research activities that have been undertaken since CCL 1 and requested that EPA provide the status of CCL-related research, data collection, and pending initiatives that have been undertaken since CCL 1.

Two commenters also requested information about the Agency's progress to date and the intended future path for integrating the 35 deferred pesticides and 21 contaminants (suspected of having adverse effects on endocrine function) into the CCL process.

Agency Response: EPA agrees that the status of CCL-related research should be publically available. The Agency has taken a number of steps to provide this information through its Web sites and in documents it has published.

EPA Web sites addressing CCL-related research information include the following:

- EPA's Office of Ground Water and Drinking Water Drinking Water Research Information Network (DRINK), found at *http://www.epa.gov/safewater/drink/intro.html*, is a publicly accessible, Web based system that tracks over 1,000 ongoing research projects conducted by EPA and other research partners from national, regional, and international research agencies and organizations. The DRINK system stores, manages, and delivers descriptive summary data on drinking water-related projects, including abstracts, status of projects, uniform resource locators to datasets and reports, and contact information on projects.
- EPA's Office of Ground Water and Drinking Water Web site at *http://www.epa.gov/safewater/ccl/cclfs.html* has information on the NDWAC (*e.g.*, reports, meeting announcements, and meeting summaries which includes meetings of the NDWAC CCL Work Group), monitoring of unregulated contaminants from public water systems, the National Contaminant Occurrence Database, analytical methods for compliance monitoring, and treatment technologies.
- EPA's Office of Research and Development (ORD) environmental

information management system Web site at *http://www.epa.gov/eims/* maintains information on EPA research projects, including project title, abstract, start and end dates, principal investigator, funding, results and publications, and related technical documents.

• EPA's Office of Science and Technology Web site at *http://www.epa.gov/waterscience/humanhealth/* has information on EPA's drinking water standards, health and consumer advisories, criteria documents, and related technical documents.

A key document addressing CCL-related research and information is EPA's Draft Multi-Year Plan (MYP) for the drinking water research program. The Draft MYP describes the Agency's drinking water research program activities and plans for fiscal years 2003—2010 (see *http://www.epa.gov/osp/myp/dw.pdf*). As a tool for planning and communication, the MYP provides: (1) A context for annual planning decisions and a basis for describing the impacts of these decisions; (2) a framework for integrating research on common issues across the EPA's ORD laboratories and centers, as well as across the various Agency Goals established under the Government Performance and Results Act; and (3) a resource for communicating research plans and products within ORD and with EPA programs, the regions and interested parties outside of EPA. MYPs are updated on a biennial basis to provide opportunities for making the necessary adjustments to the research program.

As discussed in the draft CCL 2 notice (69 FR 17406), EPA plans to consider the deferred pesticides in the context of an improved approach for selecting contaminants for future CCLs (CCL 3). This will enable the Agency to consider these contaminants in a consistent, reproducible manner with a wide range of other contaminants. In this regard, it is important to note that EPA may conduct research, and make regulatory determinations for any unregulated contaminant not on today's CCL (see SDWA section 1412(b)(1)(B)(ii)(III)). Thus, the Agency has the authority to act as necessary to protect public health as new information becomes available.

As with pesticides, EPA believes that suspected endocrine disruptors should be considered when the next CCL is developed. This enables the Agency to use a more refined and improved approach in evaluating these contaminants. As previously stated, EPA is not restricted to the contaminants on this CCL for making regulatory determinations.

B. Developing a Process for Future CCLs

There were four key issues identified by commenters on developing a process for future CCLs. They are:

1. Expert judgement and transparency
2. The Role of Data Quality.
3. Simplified approach with adaptive management applied for future CCLs.
4. The role of virulence factor activity relationships.

Each of these issues is discussed in turn below.

1. Expert Judgement and Transparency

Comment Summary: Two commenters stated that there is a need for the CCL process to be a transparent process. The commenters stated that they view the transparency of the CCL process as being critical to its success so that both the regulated community and the public can understand it. One commenter also recommended that the Agency combine expert judgement and classification algorithms (a formula or set of steps for solving a particular problem) in developing the CCL. Classification algorithms or automated processes should serve as mechanisms for screening down the number of contaminants that the experts must then evaluate in greater depth.

Both commenters believe that the use of expert judgement can be transparent and is an essential component to any future CCL process. They urged EPA to clearly define the role of expert judgement including the specific parts of the listing process where it would be used.

One commenter also suggested that the CCL process should be an ongoing process within the Office of Water and that the Agency should actively monitor appropriate peer-reviewed literature for new contaminants, new methods, and new health effects data. In addition, the Agency should also increase its involvement in ongoing symposia, professional meetings, and workshops on topics relevant to the CCL.

Agency's Response: The Agency agrees with the commenters that transparency and use of expert judgement should be important components of the CCL process. These recommendations were included in both the NRC report (NRC, 2001) and in the NDWAC Report on the CCL Classification Process to the U.S. Environmental Protection Agency (NDWAC, 2004). The Agency received the NDWAC report in May of 2004 and is currently evaluating the recommendations.

The NRC and NDWAC reports recommend that the EPA conduct the CCL process so that interested stakeholders have an opportunity to participate at key steps in developing the CCL. Additionally the reports recommend greater use of expert judgment and critical review of the CCL classification process. While the reports did not provide specific advice on how to accomplish these recommendations they did identify key milestones, such as selecting sources of data and developing criteria to select contaminants. Structuring the process around such milestones should enhance transparency and facilitate expert review.

The Agency continues to evaluate the NDWAC recommendation on how to include expert judgment and conduct the CCL process in a transparent manner and will consider these comments as future CCLs are developed.

2. The Role of Data Quality

Comment Summary: Two commenters stressed the importance of data quality in the CCL process. Both commenters support the use of high quality data and sound science in the CCL process.

The commenters expressed some concern about the current quality of data used for the CCL process. The commenters suggested that EPA should focus on using high quality data that are appropriate to support valid characterization of a contaminant and that EPA maintains a focus on data quality at each stage of the CCL process.

One commenter expressed an interest in participating in the ongoing development and application of a viable data quality assurance system that would support the data objectives for each step in the CCL process.

Agency's Response: The NDWAC recommendations also discussed the nature and type of data and information used in the CCL process. In discussing information quality considerations, the Council noted that data and information on contaminants considered in the CCL process will consist of different types of data and that some contaminants will not be robustly characterized. The report also recommends that while the Agency should be explicit about how it selects data for the CCL process, the process must have some flexibility to adequately consider emerging contaminants. As the Agency develops the CCL process and evaluates the NDWAC recommendations, it will consider the commenters' recommendations as well as the SDWA data quality requirements.

3. Simplified Approach

Comment Summary: One commenter expressed concern over the NAS and NDWAC recommendations, characterizing them as ''a theoretical and esoteric process and not a pragmatic process.'' The commenter believes that there is a need for the Agency to develop a simpler, more streamlined approach that uses only the attributes of occurrence and health effects and that potentially eliminates some of the major complications associated with the NRC three-step, five-attribute CCL process, thereby making the process more effective in the near term. The NRC approach can serve as a useful guide for the Agency's long-term CCL development effort; however, the details and logistics of the approach require additional work.

One commenter was concerned about the resources and time needed to develop the CCL using a new approach. The commenter suggested that convening a series of workshops with external experts would be an efficient way of addressing issues related to data quality, contaminant attributes, training sets, process performance, and protocols for classification algorithms.

Agency's Response: The NDWAC report provides a series of recommendations for the Agency to consider as it develops the CCL process. The NDWAC report also noted that the NRC three-step approach using five attributes has merit, but identified practical limitations or difficulties the Agency would need to address. For example, the NDWAC report recommends that the Agency should consider classification approaches but ''should use another approach for selecting contaminants for the near term (*i.e.*, for CCL 3) if there are difficulties that cannot be overcome.'' The NDWAC report also identifies issues that the Agency should consider in the NRC's recommendation on classification approaches and emphasizes that the Agency should consider practical constraints. The NDWAC report specifically recommended that the screening step be as simple as possible, which would require fewer resources and less time while adequately identifying those contaminants of greatest significance. The report further encouraged the Agency to consider whether fewer than the five attributes used in the NRC example of a classification approach are adequate for a new CCL process. The NDWAC report recognizes that the Agency will learn more about the CCL process in each iterative step and recommended an adaptive management approach to develop the CCL process. As the Agency evaluates the NDWAC recommendations, it will consider the need for a pragmatic approach using available resources for development of the next CCL and the most efficient ways to incorporate expert involvement in the CCL process.

4. The Role of Virulence Factor Activity Relationship.

Comment Summary: A variety of comments were received on the proposed role of genomic data and the VFAR concept for the CCL process. Most of the commenters acknowledged that VFAR appears to be a powerful and useful tool that shows great promise for future CCL development, but felt that the Agency had not made clear how it proposes to use VFAR technology.

The commenters suggested that the Agency is placing too much emphasis on VFAR. One commenter stated that the Agency appears to be relying too heavily on an advanced genomic technology. The commenter expressed concerns that the technology's applications to environmental samples are unproven and recommended that it not be used in the next CCL process.

One commenter suggested that there are many unknown variables associated with the VFAR concept and it should therefore be treated with extreme caution. Two commenters are concerned that VFAR may not offer practical solutions to immediate concerns regarding waterborne disease and would require a multi-year commitment and collaboration by EPA and other participating organizations before it would be useful.

Agency Response: The NRC (NRC, 2001) recommendations provided a detailed discussion of the potential and proposed role of VFARs in the CCL process. The VFAR principle can be described as comparing the gene structure of newly identified waterborne pathogens to pathogens with known genetic structures that have been associated with human disease.

Virulence factors are defined broadly by the NRC as the ability of a pathogen to persist in the environment, gain entry into a host (*e.g.*, humans), reproduce, and cause disease or other health problems either because of its architecture or because of its biochemical compounds. A number of virulence factors are known, including the ability of a microbe to move within a host under its own power, the ability of mechanisms to protect the microbe against the body's defenses (*e.g.*, anti-phagocytosis mechanisms), the ability of a microbe to adhere or attach to the surface of a host cell, and the ability of microbes to produce toxins that injure host cells. The NDWAC was specifically charged to provide an evaluation of the VFAR approach and to identify studies that explore the feasibility of the approach. While the Agency recognizes VFAR as a potential tool for future CCLs, EPA is not planning to solely rely on the approach in the near term for CCLs. In its deliberation, the NDWAC conducted several explorations and literature reviews on the nature and type of genomic data available to characterize genes that may be associated with virulence factors and an organism's potential to cause harm. The reviews and analyses showed that the technology, although powerful, still has serious limitations for near term CCLs. The NDWAC provided a series of pragmatic recommendations for considering pathogens for near term CCLs and several recommendations for improving this process as genomic technology and reporting improve. As the Agency develops the CCL process for microbes it will take these comments under consideration.

V. Developing Future CCLs—NDWAC Recommendations and Next Steps

A. NDWAC Recommendations

In the **Federal Register** notice of April 2, 2004 (69 FR 17406), EPA discussed the activities of the NRC and the NDWAC related to the CCL. The EPA sought the advice of the NRC in response to comments received during the development of the 1998 CCL, which advocated a broader, more comprehensive approach for selecting contaminants.

The Agency asked the NRC to address three key topics related to drinking water contaminant selection and prioritization:

1. What approach should be used to develop future CCLs?
2. How best should EPA assess emerging drinking water contaminants and related databases to support future CCL efforts?
3. What approach should EPA use to set priorities for contaminants on the CCL?

The NRC's findings and recommendations on these topics were published in three reports: Setting Priorities for Drinking Water Contaminants (NRC, 1999a), Identifying Future Drinking Water Contaminants (NRC, 1999b), and Classifying Drinking Water Contaminants for Regulatory Consideration (NRC, 2001).

The NRC recommendations provided a framework for evaluating a larger number of contaminants and making decisions about contaminants for which

data are limited through the use of innovative technologies and expert advice. The EPA requested the assistance of NDWAC to evaluate and provide advice on implementing the NRC's recommended classification process.

The NDWAC formed the CCL Classification Process Work Group (the Work Group) and charged it with reviewing the NRC 2001 report. The Work Group was asked to advise the NDWAC on development and application of the classification approach suggested by the NRC, including evaluating proposed and alternative methodologies. The Work Group met 10 times from September of 2002 to March of 2004. All Work Group meetings were open to the public and announced in the **Federal Register**. In conducting its review, the Work Group considered the large and growing number of agents that might become candidates for scrutiny in the CCL process, and the rapid expansion of information on these agents. Based on this review, the Work Group provided the following recommendations:

1. There is merit in the three-step selection process proposed by NRC for classifying chemical and microbial contaminants. The NDWAC believes the three-step process should involve identification of the CCL universe, screening the universe to a preliminary CCL, and selecting the CCL from the Preliminary CCL.

2. The NDWAC recommends that the Agency should move forward with the NRC recommendation to develop and evaluate some form of prototype classification approach. (A prototype classification uses computer-based computational tools to weigh selected contaminant characteristics against the characteristics of various classes of drinking water contaminants whose occurrence and health effects are relatively well understood.)

3. The NDWAC believes that expert judgment plays an important role throughout the three-step selection process, particularly in reviewing the prototype model and the output of the new classification approach.

4. The NDWAC recommended enhancing the surveillance for emerging chemical and microbial contaminants and also soliciting information from the public via a nomination process to assure a full consideration of potential contaminants.

The NDWAC also identified a number of practical limitations or difficulties in developing and applying the recommended approach and provided advice on how these might be addressed.

The NDWAC presented the final report to the Administrator on May 19, 2004. The report, entitled National Drinking Water Advisory Council Report on the CCL Classification Process to the U.S. Environmental Protection Agency provides a detailed summary of the questions considered by the NDWAC, the analyses conducted to explore the questions, key points discussed, and the NDWAC's recommendations and rationale for the recommendations. The report is available at *http://www.epa.gov/safewater/ndwac/council.html.*

B. Next Steps

The Agency is working to evaluate the NDWAC recommendations and to meet the statutory deadline to issue the next CCL. The NDWAC recommendations encourage the Agency to consider the practical limitations identified in their report and to use an adaptive management approach to develop CCLs. This adaptive management approach will enable the Agency to identify which recommendations can be implemented for the next CCL while learning from and improving upon each successive listing process and at the same time protecting public health. In its development of a new CCL process, the Agency will focus on several areas in the near future and continue to seek input and advice from experts and interested stakeholders. Some of the key areas to be explored in developing the new CCL process are discussed below.

The NDWAC recommended that microbial and chemical contaminants be evaluated by parallel processes that meet in the formation of a single CCL. The Agency is developing parallel processes for microbial and chemical contaminants that take into account the systematic differences in how these contaminants are characterized and take the best advantage of the information available for microbial and chemical contaminants.

The Agency is also considering approaches and opportunities to seek out and incorporate input from experts and interested stakeholders as the CCL process is developed. EPA held a public meeting on September 15, 2004, to provide an update on its efforts to improve upon the CCL process. The Agency is also consulting with interested stakeholders on how to increase expert involvement in the process and on opportunities to gather information on new and emerging contaminants through professional conferences, focused workshops, and coordination with other Federal and State agencies. The Agency will provide additional opportunities for the exchange of information with the public before the next CCL is proposed in the **Federal Register**.

The Agency is evaluating data sources that characterize a contaminant's potential to occur in drinking water and produce adverse health effect. The evaluation will consider the NRC and NDWAC recommendations as well as SDWA requirements in selecting information and data to consider for the next CCL. This evaluation will identify the best available data that for use in the CCL process and result in a process to compile information for a significantly larger group of chemical and microbial contaminants than initially considered for CCL 1.

The Agency anticipates conducting analyses to identify specific criteria related to occurrence and health effects associated with contaminants that could be used to select contaminants for the CCL. The Agency is evaluating the NDWAC recommendation to develop a series of screening criteria that would identify contaminants for additional scrutiny and prioritization. The NDWAC recommendations provide insight on the occurrence and health effects data that the Agency could use to identify a smaller set of contaminants for additional evaluation but does not recommend specific levels or criteria to implement the screening process.

The NDWAC also recommended that the Agency explore the use of classification approaches to identify contaminants for consideration for the CCL. The Agency is evaluating the requirements for a classification approach for the next CCL and anticipates seeking additional advice from experts and stakeholders. EPA will need to evaluate various classification approaches, consider the range of potential performance indicators, conduct calibration and validation analyses, and engage experts in the evaluation of the selected approach(es) and associated validation results.

As a new CCL process is developed and implemented for the next list, the Agency will provide updates and information on the process. The CCL process is a critical input to shaping the future direction of the drinking water program. The Agency anticipates that improvements to the process will result in a more comprehensive approach to developing the CCL.

VI. References

Federal Register, Vol. 63, No. 40. Announcement of the Drinking Water Contaminant Candidate List; Notice. March 2, 1998. 10273. (63 FR 10273).

Federal Register, Vol. 69, No. 64. Drinking Water Contaminant Candidate List 2;

Notice. April 2, 2004. 17406. (69 FR 17406).
National Drinking Water Advisory Council (NDWAC). 2004. National Drinking Water Advisory Council Report on the CCL Classification Process to the U.S. Environmental Protection Agency. Available at *http://www.epa.gov/safewater/ndwac/council.html.*
National Research Council (NRC). 1999a. Setting Priorities for Drinking Water Contaminants. National Academy Press, Washington, DC *http://www.nap.edu/catalog/6294.html.*
National Research Council (NRC). 1999b. Identifying Future Drinking Water Contaminants. National Academy Press, Washington, DC *http://www.nap.edu/catalog/9595.html.*
NRC. 2001. Classifying Drinking Water Contaminants for Regulatory Considerations. National Academy Press, Washington, DC *http://books.nap.edu/books/0309074088/html/index.html.*
USEPA. 1993. N-nitrosodimethylamine; CASRN 62–75–9, Integrated Risk Information Service (IRIS). Carcinogenicity assessment last updated July 1, 1993.

Dated: February 17, 2005.

Benjamin H. Grumbles,

Assistant Administrator, Office of Water.

[FR Doc. 05–3527 Filed 2–23–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 15, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 28, 2005. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0823.

Title: Pay Telephone Reclassification, Memorandum Opinion and Order, CC Docket No. 96–128.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 400.

Estimated Time Per Response: 2–35 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, and on occasion, monthly, and quarterly reporting requirements.

Total Annual Burden: 44,700 hours.

Total Annual Cost: $480,000.

Privacy Act Impact Assessment: No.

Needs and Uses: The Commission is seeking extension (no change in requirements) for this information collection. The Commission is submitting this information collection to the OMB in order to obtain the full three-year clearance from them. For background, the Commission adopted and released a Memorandum Opinion and Order in March 1998, which clarified the requirements established in the Payphones Orders for the provision of payphone-specific coding digits and for tariffs that local exchange carriers (LECs) must file pursuant to the Payphone Orders. The Commission also granted a waiver of Part 69 of the Commission's rules so that LECs can establish rate elements to recover the costs of implementing FLEX–ANI (a type of switch software) to provide payphone specific coding digits for per-call compensation. The Commission is required in the Payphone Orders to implement section 276 of the Act.

OMB Control No.: 3060–0986.

Title: Competitive Carrier Line Count Report.

Form No.: FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,300 respondents; 4,753 responses.

Estimated Time Per Response: .5–6 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements and third party disclosure requirement.

Total Annual Burden: 3,707 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission has revised this information collection. The information collection has been revised as a result of: (1) Certain collections associated with the election of a disaggregation path were one-time in nature and have been eliminated and removed from this burden estimate; and (2) the Commission has created a new FCC Form 525 to collect line count data required by Competitive Eligible Telecommunications Carriers (CETCs) pursuant to this and other OMB control numbers, as well as line count data related to lines provided by CETCs using unbundled network elements (UNEs). The UNE data are necessary for Universal Service Administrative Company (USAC) to implement section 54.307 of the Commission's rules. It is anticipated that the implementation of FCC Form 525 will reduce burdens in several collections by standardizing the information submission format. As collections 3060–0972, 3060–0774 and 3060–0942 are renewed, the information provided in FCC Form 525 will be eliminated from the burden estimates for these collections. The Commission will use the information requirements to determine whether and to what extent rural telecommunications carriers providing the data are eligible to receive universal service support.

OMB Control No.: 3060–0298.

Title: Competitive Carrier Line Count Report.

Form No.: FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,300 respondents; 4,753 responses.

Estimated Time Per Response: 57 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 66,120 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is seeking extension (no change) to this information collection. The Commission is submitting this information collection to the OMB in order to obtain the full three-year clearance.

Part 61 of the Commission's rules establishes procedures for filing tariffs which contain the charges, practices, and regulations of the common carriers, supporting economic data and other related documents. The supporting data must conform to other parts of the Rules such as Parts 36 and 69. Part 61 also prescribes the framework for the initial establishment of and subsequent revisions to tariffs. Tariffs that do not conform to Part 61 may be required to post their schedules or rates and regulations. The information collected through a carrier's tariff is used by the Commission to determine whether services offered are just and reasonable as the Act requires.

The tariffs and any supporting documentation are examined in order to determine if the services are offered in a just and reasonable manner.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–3513 Filed 2–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

February 17, 2005.

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 April 25, 2005. 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 Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at 202–418–2918 or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0185.

Title: Section 73.3613, Filing of Contracts.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,300.

Estimated Time per Response: 0.25 to 0.5 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 950 hours.

Total Annual Cost: $80,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In June 2003, the Commission adopted changes to 47 CFR 73.3613 and the FCC's attribution rules. As a result, radio stations located in Arbitron radio markets must now file agreements for the sale of advertising time (*i.e.*, ''Joint Sales Agreements'' or ''JSAs'') that result in attribution under the Commission's multiple ownership rules. 47 CFR 73.3613 requires licensees of television and radio broadcast stations to file with the Commission: (a) Contracts relating to ownership or control and personnel; and (b) time brokerage agreements that result in arrangements being counted under the Commission's multiple ownership rules. Television stations also must file network affiliation agreements. This section also requires certain contracts to be retained at the station and made available for inspection by the Commission upon request.

On June 24, 2004, the Court issued an *Opinion and Judgment* (''*Remand Order*'') in which it upheld certain aspects of the new ownership rules, including the attribution of JSAs among radio stations, while requiring further explanation for certain other aspects of the new rules. The Court stated that its prior stay of the new rules would remain in effect pending the outcome of the remand proceeding. The Commission has not yet responded to the *Remand Order*, but in the meantime the Commission filed a petition for rehearing requesting that the Court lift the stay partially—*i.e.*, with respect to the radio ownership and JSA attribution rules which the Court's *Remand Order* upheld. On September 3, 2004, the Court issued an Order (''Rehearing Order'') which partially granted the Commission's petition for rehearing, thus lifting the stay of the revised radio ownership and JSA attribution rules. As a result of the *Rehearing Order*, the Commission's revised radio ownership and JSA attribution rules took effect on September 3, 2004. Implementation of the new radio ownership and JSA attribution rules, as required by the *Rehearing Order*, triggers the requirement for certain licensees to begin filing JSAs.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–3514 Filed 2–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 16, 2005.

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 that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 25, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–1080.

Title: Improving Public Safety Communications in the 800 MHz Band.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 2,500.

Estimated Time Per Response: 3–10 hours.

Frequency of Response: On occasion and quarterly reporting requirements and third party disclosure requirement.

Total Annual Burden: 27,162 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission has taken actions to immediately stem increasing instances of interference to 800 MHz public safety communications systems as well as address the underlying cause of 800 MHz interference. The PRA burden involves the exchange of information to avoid interference and to resolve interference complaints. The PRA burden also involves the exchange of information to facilitate incumbent relocation. This information exchange is necessary to effectuate band reconfiguration, *i.e.*, to spectrally separate incompatible technologies, which is the underlying cause of interference to public safety. Overall, the PRA burden is necessary to enable the Commission to determine the parties are acting in good faith in resolving the 800 MHz public safety interference problem and to keep the 800 MHz transition moving efficiently.

The Commission requested emergency processing of this information collection on January 14, 2005. OMB approval was granted on January 27, 2005. The Commission is now seeking extension (no change) of these requirements in order to obtain the full three-year clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–3515 Filed 2–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at (202) 523–5793 or via e-mail at *tradeanalysis@fmc.gov.* Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 008005–009.

Title: New York Terminal Conference Agreement.

Parties: American Stevedoring Inc.; Port Newark Container Terminal LLC; Universal Maritime Service Corp.; New York Container Terminal; and Global Terminal and Container Services.

Filing Party: George J. Lair; New York Terminal Conference; PO Box 875; Chatham, NJ 07928.

Synopsis: The amendment adds New York Container Terminal and Global Terminal and Container Services as parties to the agreement.

Agreement No.: 011764–002.

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 deletes Egypt and adds Greece to the geographic scope of the agreement, revises the number of vessels deployed under the agreement, and clarifies space allocations. The parties request expedited review.

Agreement No.: 011852–018.

Title: Maritime Security Discussion Agreement.

Parties: China Shipping Container Lines, Co., Ltd.; CMA CGM, S.A.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; Yang Ming Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.; Alabama State Port Authority; APM Terminals North America, Inc.; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Lambert's Point Docks Inc.; Maersk Pacific Ltd.; Maher Terminals, Inc.; Marine Terminals Corp.; Maryland Port Administration; Massachusetts Port Authority; Metropolitan Stevedore Co.; P&O Ports North America, Inc.; Port of Tacoma; South Carolina State Ports Authority; Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc.; TraPac Terminals; Universal Maritime Service Corp.; Virginia International Terminals; and Yusen Terminals, Inc.

Filing Parties: Carol N. Lambos; Lambos & Junge; 29 Broadway, 9th Floor; New York, NY 10006 and Charles T. Carroll, Jr.; Carroll & Froelich, PLLC; 2011 Pennsylvania Avenue, NW.; Suite 301; Washington, DC 20006.

Synopsis: The amendment deletes Global Terminal and Container Services, Inc.; Howland Hook Container Terminal; and Long Beach Container Terminal Inc. as members to the agreement.

Agreement No.: 011903.

Title: Americas Alliance Cooperative Working Agreement.

Parties: Great Western Steamship Co.; Maruba, S.A.; and U.S. Lines Limited.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes the parties to share vessel space in the trade between ports on the U.S. West Coast and ports in China.

Agreement No.: 011904.

Title: Atlantic Brazil Express Agreement.

Parties: CMA CGM, S.A.; P&O Nedlloyd Limited; and P&O Nedlloyd B.V.

Filing Party: Neal M. Mayer, Esq.; Hoppel, Mayer & Coleman LLP; 1000 Connecticut Avenue, NW.; Washington, DC 20036.

Synopsis: The agreement permits the parties to operate a service and share space between ports on the U.S. East Coast and ports in Brazil, Argentina, Uruguay, Venezuela, and Colombia.

By Order of the Federal Maritime Commission.

Dated: February 18, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–3598 Filed 2–23–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 18, 2005.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Banks, Inc., St. Louis, Missouri, and The San Francisco Company, San Francisco, California; to acquire 100 percent of the voting shares of FBA Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire voting shares of First Bank of the Americas, SSB, Chicago, Illinois.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Freedom Bancorporation, Columbia Falls, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of Freedom Bank, Columbia Falls, Montana, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 17, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–3483 Filed 2–23–05; 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 March 18, 2005.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. KNBT Bancorp, Inc., Bethlehem, Pennsylvania; to acquire Northeast Pennsylvania Trust Company., Hazleton, Pennsylvania, and thereby engage in trust company activities, pursuant to section 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, February 17, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–3482 Filed 2–23–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; 2005 Survey of Area Agencies on Aging

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by March 28, 2005.

ADDRESSES: Submit written comments on the collection of information by fax 202–395–6974 or by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St., NW., rm. 10235, Washington, DC 20503, Attn: Brenda Aguilar, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Cynthia Bauer at 202–357–0145 or *Cynthia.Bauer@aoa.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

2005 Survey of Area Agencies on Aging—NEW—The Administration on Aging is proposing to collect basic descriptive information from all Area

Agencies on Aging (AAAs). The multiple purposes of the information collection are to (1) determine the extent to which AAAs are engaged in service system integration and identify areas where attention should be focused; (2) to support the evaluation of Older Americans Act, Title III–B, Supportive Services; (3) to enhance the analysis of data from The Third National Survey of Title III Service Recipients and to assist in the development of stratified sample designs for future national surveys; (4) to develop a very basic descriptive report on health promotion/disease prevention activities to complement case studies under development; and (5) to inform future decisions on performance measurement initiatives and the simplification of program reporting requirements. AoA estimates the burden of this collection of information as follows: Respondents: Area Agencies on Aging; Estimated Number of Respondents: 657; Estimated Burden per Response: one hour; Estimated Total Respondent Burden: 657 hours.

Dated: February 18, 2005.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 05–3505 Filed 2–23–05; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request Proposed Projects

Title: Social Services Block Grant Postexpenditure Report.

OMB No.: 0970–0234.

Description:

Purpose: To improve the quality of Social Services Block Grant (SSBG) expenditure data, the postexpenditure reporting form and instructions need some minor formatting revisions to reduce confusion and reporting inconsistencies that have resulted from the current form. As a block grant, SSBG provides the States with a flexible source of funds for social service needs. Accurate accounting of how these funds are used and whom they serve is critical to ensure that necessary and sufficient funding continues to be allocated. For this reason, the following changes are being proposed to the current form:

1. The expenditures columns will be reordered so that when reading left to right, the three types of funding that sum to total expenditures—SSBG allocation, funds transferred into SSBG, and expenditures of all other Federal, State and local funds—are listed prior to total expenditures.

2. A space will be added, and referenced in item 29, where States can report more detail about other services. This added information will help to define the specific services funded under this service category.

3. A new column, ''Adults of Unknown Age'' will be added. The three age groups of adults—''Adults Age Years 59 and Younger,'' ''Adults Age 60 Years and Older,'' and ''Adults of Unknown Age''—should equal the total number of adults in the ''Total Adults'' column.

4. The recipients columns will be reordered so that when reading left to right, the four ages of recipients—children, adults age 59 years and younger, adults age 60 years and older, and adults of unknown age—are listed prior to total adults and total recipients.

The SSBG program provides funds to assist States in delivering social services directed toward the needs of children and adults in each State. Funds are allocated to the States in proportion to their populations. States, including the District of Columbia, Guam, Puerto Rico, the Virgin Islands, the Northern Mariana Islands and American Samoa, have substantial discretion in their use of funds and may determine what services will be provided, who will be eligible and how funds are distributed among the various services. State or local SSBG agencies (*i.e.*, county, city or regional offices) may province the services or may purchase them from qualified agencies, organizations or individuals. States report as recipients of SSBG-funded services any individuals who receive a service funded at least partially by SSBG.

States are required to report their annual SSBG expenditures on a standard postexpenditure report, which includes a yearly total of adults and children served and annual expenditures in each of 29 service categories. Reporting requirements for SSBG were originally described in the **Federal Register**, Volume 58, Number 218, on Monday, November 15, 1993. The report must be submitted either six months after the end of the reporting period or at the time the State submits the preexpenditure report for the reporting period beginning after that six-month period. The report must address (1) the number of individuals (as well as the number of children and the number of adults) who receive services paid for in whole or in part with Federal funds under the SSBG; (2) the amount of SSBG funds spent in providing each service; (3) the total amount of Federal, State and local funds spent in providing each service, including SSBG funds; and (4) the method(s) by which each service is provided, showing separately the services provided by public agencies and private agencies.

Information collected on the postexpenditure report is analyzed and described in an annual report on SSBG expenditures and recipients produced by the Office of Community Services. The information contained in this report is used to establish how SSBG funding is used for the provision of services in each State to needy individuals.

Respondents: This report is completed once annually by a representative of the agency that administers the SSBG at the State level in each State, the District of Columbia and the Territories.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
SSBG Postexpenditure Report	56	1	110	6,160

Estimated Total Annual Burden Hours: 6,160.

Additional Information:

Copies of the proposed collection of information may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after

publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine T. Astrich@omb.eop.gov.*

Dated: February 17, 2005.

Bob Sargis,

Reports Clearance, Officer.

[FR Doc. 05–3506 Filed 2–23–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0395]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Application for Participation in the Medical Device Fellowship Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Application for Participation in the Medical Device Fellowship Program'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 6, 2004 (69 FR 70458), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0551. The approval expires on February 29, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: February 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–3466 Filed 2–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002N–0277]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Recordkeeping and Records Access Requirements for Food Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Recordkeeping and Records Access Requirements for Food Facilities'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 9, 2004 (69 FR 71650), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0560. The approval expires on February 29, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: February 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–3467 Filed 2–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0269]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Radioactive Drug Research Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Radioactive Drug Research Committees'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 3, 2004 (69 FR 64068), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0053. The approval expires on February 29, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: February 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–3594 Filed 2–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0386]

Agency Emergency Processing Under the Office of Management and Budget Review; Draft Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing a notice that published in the **Federal Register** on January 26, 2005 (70 FR 3712).

DATES: This notice is withdrawn on February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 26, 2005, FDA published a notice informing interested parties that the proposed collection of information entitled ''Draft Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice'' had been submitted to the Office of Management and Budget (OMB) for processing in compliance with (44 U.S.C. 3507(j), of the Paperwork Reduction Act of 1995 and 5 CFR 1320.13). The notice contains a number of errors. Therefore, we are withdrawing both the notice itself and the request for OMB approval of the proposed collection of information.

Dated: February 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–3596 Filed 2–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0056]

Guidance for Industry: Recommendations for Obtaining a Labeling Claim for Communicable Disease Donor Screening Tests Using Cadaveric Blood Specimens From Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Recommendations for Obtaining a Labeling Claim for Communicable Disease Donor Screening Tests Using Cadaveric Blood Specimens from Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps),'' dated November 2004. The guidance document provides medical device manufacturers with information about performing studies to support modifying the indication for use of communicable disease tests to include testing of cadaveric blood specimens to screen donors of human cells, tissues, and cellular and tissue-based products (HCT/Ps). The guidance document recommends a suggested protocol to modify the indication for use to include testing of cadaveric blood specimens.

DATES: Submit written or electronic comments on agency guidances at any time. In accordance with 21 CFR 10.115(g)(4)(i), FDA is immediately implementing this guidance.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Kathleen E. Swisher, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Recommendations for Obtaining a Labeling Claim for Communicable Disease Donor Screening Tests Using Cadaveric Blood Specimens From Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps),'' dated November 2004. The guidance document provides information to medical device manufacturers of communicable disease tests used to screen donors of HCT/Ps for communicable diseases who plan to perform studies to validate the use of cadaveric blood specimens with their tests. The guidance supercedes the May 2, 1995, letter issued by FDA to manufacturers of communicable disease tests suggesting a minimum protocol for validation of use of cadaveric blood specimens with their donor screening tests.

The guidance recommends a minimum suggested protocol to validate an indication for use of cadaveric blood specimens with communicable disease tests used to screen donors of HCT/Ps. The guidance makes recommendations about: (1) Sensitivity and specificity studies, (2) reproducibility studies, (3) number of test kit lots to include in studies, (4) plasma dilution issues, and (5) information about specimen collection times to be included.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**) regarding this guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except

that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: February 16, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–3592 Filed 2–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0528]

Draft Guidance for Industry: Manufacturing Biological Drug Substances, Intermediates, or Products Using Spore-Forming Microorganisms; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Manufacturing Biological Drug Substances, Intermediates, or Products Using Spore-Forming Microorganisms'' dated February 2005. The draft document is intended to provide guidance to manufacturers using spore-forming microorganisms in the production of certain biological products. The draft guidance document provides recommendations to industry in response to changes made to the requirements for spore-forming microorganisms to allow greater flexibility in manufacturing.

DATES: Submit written or electronic comments on the draft guidance by May 25, 2005, to ensure their adequate consideration in preparation of the final guidance. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Manufacturing Biological Drug Substances, Intermediates, or Products Using Spore-Forming Microorganisms'' dated February 2005. The draft document is intended to provide guidance to manufacturers using spore-forming microorganisms in the production of certain biological products. The draft guidance document provides recommendations to industry in response to changes made to the requirements for spore-forming microorganisms to allow greater flexibility in manufacturing.

In the **Federal Register** of December 30, 2003, FDA published the direct final rule entitled ''Revision of the Requirements for Spore-Forming Microorganisms'' (68 FR 75116) and the accompanying proposed rule entitled ''Revision of the Requirements for Spore-Forming Microorganisms; Companion to Direct Final Rule'' (68 FR 75179) to modify the regulatory requirements for the manufacturing of biological products with spore-formers to allow greater manufacturing flexibility. The modifications were intended to provide alternatives to the then-existing requirements for separate, dedicated facilities and equipment for work with spore-forming microorganisms. In the **Federal Register** of May 14, 2004 (69 FR 26768), FDA published the ''Revision of the Requirements for Spore-Forming Microorganisms; Confirmation of Effective Date'' confirming the effective date of June 1, 2004, for the direct final rule.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit written or electronic comments to ensure adequate consideration in preparation of the final guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: February 16, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–3593 Filed 2–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Topic 197: EDRN—Bioinformatics Research Program.

Date: March 15, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6130 Executive Blvd., EPN Room C, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kirt Vener, PhD, Branch Chief, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8061, Bethesda, MD 20892, (301) 496–7174, *venerk@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(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: February 17, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3570 Filed 2–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Cancer Epidemiology and Cancer Research Small Grant Program.

Date: March 29–31, 2005.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review And Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 7142, Bethesda, MD 20892, 301/594–9582, *vollbert@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(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: February 17, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3572 Filed 2–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH OF HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Training Applications.

Date: March 21–22, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rouge, 1315, 16th Street, NW., Washington, DC 20036.

Contact Person: Judy S. Hannah, PhD, Scientific Review Administrator, Review Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892. 301/435–0287.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Academic/Teacher Awards (K07s).

Date: March 30, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Zoe Huan, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924. 301–435–0314.

(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: February 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3561 Filed 2–23–05; 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 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 Human Genome Research Institute Special Emphasis Panel, ESLI Intellectual Property RFA.

Date: March 24–25, 2005.

Time: March 24, 2005, 6 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: March 25, 2005, 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3576 Filed 2–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communications Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Protein Interactions in Auditory and Vestibular Biology.

Date: March 22, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 1400 M Street, NW., Washington, DC 20005.

Contact Person: Da-yu Wu, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Suite 400C, Bethesda, MD 20892. 301–496–8683. *wudy@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3562 Filed 2–23–05; 8:45 am]

BILLING CODE 4140–01M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Review of Research Scientist Development—Research & Training (K01), Clinical Investigator—CIA (K08), Mentored Patient—Oriented Research Career Development (K23), Mentored Quantitative Research Career Development (K25), Conference (R13).

Date: March 15, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 38, 8600 Rockville Pike, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric H. Brown, BS, AB, MS, Scientific Review Administrator, National Institute of Arthritis, Musculoskeletal, and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Room 824, MSC 4872, Bethesda, MD 20892–4874, (301) 435–0815, *browneri@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin diseases Research, National Institutes of Health, HHS)

Dated: February 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3563 Filed 2–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, SBIR CONTRACT: Topic 017 Development of Methodology for Measuring Compliance for Medications.

Date: February 28, 2005.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Fishers Building—MSC 9304, 5635 Fishers Lane, 3041, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mahadev Murthy, PhD, MBA, Scientific Review Administrator, Extramural Project Review Branch, Office of Extramural Activities, National Institute of Alcohol Abuse and Alcoholism, MSC 9304, Room 3037, Bethesda, MD 20892–9304, (301) 443–0800, *mmurthy@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 15, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3564 Filed 2–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes 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 Centers for Resilience and Stigma.

Date: March 9, 2005.

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: A. Roger Little, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6157, MSC 9608, Bethesda, MD 20892–9608, 301–402–5844, *alittle@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel Aids Centers Reviews.

Date: March 11, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Conference Room, Washington, DC 20009.

Contact Person: Fred Altman, PhD, Scientific Review Administrator, National Institute of Mental Health, Neuroscience Center, 6001 Executive Boulevard, Room 6220, MSC 9621, Bethesda, MD 20892–9621, 301–443–8962, *faltman@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: February 15, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3565 Filed 2–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Analysis of Smad8 Function in MIS Signaling

Date: March 9, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

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.*

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. 93.864, Population Research; 93865, 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: February 15, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3566 Filed 2–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Photoperiod, Metatonin, and Reproductive.

Date: March 11, 2005.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 15, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3567 Filed 2–23–05; 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 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Modeling Immunity for Biodefense.

Date: March 17–18, 2005.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kenneth E. Santora, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3265, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 451–2605. *ks216i@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: February 15, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3568 Filed 2–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Aging Special Emphasis Panel, Genetic Consortium.

Date: March 18, 2005.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes on Aging, Gateway Building, 7201 Wisconsin Ave, Room 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Health Scientist Administrator, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 402–7700, *rv23r@nih.gov*.

Name of Committee: National Institute of Aging Special Emphasis Panel, Bone Fragility Genetics.

Date: March 23, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes on Aging, Gateway Building, 7201 Wisconsin Ave, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jon Rolf, PhD, Health Scientist Administrator, Scientific Review Office, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814, (301) 402–7700, *rolfj@nia.nih.gov*.

Name of Committee: National Institute of Aging Special Emphasis Panel, Neuronal Stress and Aging.

Date: March 28, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Building, 7201 Wisconsin Ave, Room 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Louise L. Hsu, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, (301) 496–7705, *hsul@nia.nih.gov*.

Name of Committee: National Institute of Aging Special Emphasis Panel, Primate Aging Dementia.

Date: March 29–30, 2005.

Time: 5:45 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jon Rolf, PhD, Health Scientist Administrator, Scientific Review Office, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814, (301) 402–7703, *rolfj@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 17, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3569 Filed 2–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Population Sciences Subcommittee.

Date: March 17–18, 2005.

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: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@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: February 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3573 Filed 2–23–05; 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, Review of Mental Health Research Education Applications.

Date: March 11, 2005.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, 6001 Executive Blvd, MSC 9608, Rockville, MD 20852, 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: February 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3574 Filed 2–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, AAV and Genetic Abnormalities.

Date: March 14, 2005.

Time: 10:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7791. *goterrobinson@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Small Grants in Digestive Diseases and Nutrition.

Date: April 1, 2005.

Time: 7:45 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7637. *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS.)

Dated: February 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3577 Filed 2–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, February 14, 2005, 3 p.m. to February 14, 2005, 6 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on February 8, 2005, 70 FR 6720–6721.

The meeting will be held March 14, 2005, from 1 p.m. to 2 p.m. The location remains the same. The meeting is closed to the public.

Dated: February 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3556 Filed 2–23–05; 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 552(b(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; ZRG1 GTIE (02): Gene Therapy Viral Vectors.

Date: February 22, 2005.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892. (301) 435–1741, *pannierr@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; Rehab SBIR.

Date: March 2, 2005.

Time: 7 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4102, MSC 7814, Bethesda, MD 20892. (301) 435–1786. *pelhamj@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; Conflicts in Biological Chemistry and Macromolecular Biophysics.

Date: March 10, 2005.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Donald L. Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892. (301) 435–1727. *schneidd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Conflicts in Biological Chemistry.

Date: March 10, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Donald L. Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892. (301) 435–1727. *schneidd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chromate Compounds and Carcinogenesis.

Date: March 11, 2005.

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: 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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Orthopedics and Skeletal Biomechanics Special Emphasis Panel.

Date: March 11, 2005.

Time: 12 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: 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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Effects of Estrogens on Memory and Neuroplasticity.

Date: March 15, 2005.

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: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892. (301) 435–1018. *debbasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Sciences Small Business Activities.

Date: March 16–17, 2005.

Time: 8 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: Lawrence E. Boerboom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892. (301) 435–8367. *boerboom@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBMI 11: Small Business Medical Imaging: Optical and Video.

Date: March 16, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892. (301) 435–1175. *nordstrr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of Fellowships.

Date: March 16, 2005.

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: 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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Respiratory Sciences Member Conflicts.

Date: March 16, 2005.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Wyndham City Center, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Ghenima Dirami, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7818, Bethesda, MD 20892. 301–435–3009. *diramig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health Literacy Small Grant Applications.

Date: March 16, 2005.

Time: 8:15 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Elisabeth Koss, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028C, MSC 7759, Bethesda, MD 20892. (301) 435–1235. *kosse@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biophysical and Biochemical Sciences Fellowships Review Panel.

Date: March 16–17, 2005.

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, Panel to Review Member Conflict and R03 Applications.

Date: March 16, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: 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.hih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome, Fibromyalgia Syndrome, Temporomandibular Dysfunction Syndrome.

Date: March 16, 2005.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892. 301–435–1781. *hoffeldt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SBIB L 92S: Spectroscopy Imaging.

Date: March 16, 2005.

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: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892. 301–435–1171. *rosenl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Infant and Maternal Health.

Date: March 16, 2005.

Time: 2:30 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: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892. 301–435–1261. *wiggsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Innovative Virology.

Date: March 17–18, 2005.

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: Joseph D. Mosca, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892. 301–435–2344. *moscajos@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Viral and Eukaryotic Pathogens.

Date: March 17–18, 2005.

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: Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7808, Bethesda, MD 20892. 301–402–4454. *kostrikr@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, NeuroAIDS and other End-Organ Diseases Study Section.

Date: March 17–18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn Hotel, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Abraham P. Bautista, MS, 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.*

Name of Committee: AIDS and Related Research Integrated Review Group, Behavioral and Social Consequences of HIV/AIDS Study Section.

Date: March 17–18, 2005.

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: 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, SBIR/STTR—Gene, Genomes, and Genetics.

Date: March 17–18, 2005.

Time: 8 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: Michael A. Marino, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 2216, MSC 7890, Bethesda, MD 20892. 301–435–0601. *marinomi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health Literacy Research.

Date: March 17–18, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

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, Member Conflict: Tumor Immunology Special Emphasis Panel [ZRG1 IMM–J(03)M].

Date: March 17, 2005.

Time: 10 a.m. to 11 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: Patrick K. Lai, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 2215 MSC 7812, Bethesda, MD 20892. (301) 435–1052. *laip@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: SSPS.

Date: March 17, 2005.

Time: 1:15 p.m. to 3:15 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: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892. (301) 435–3554. *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Technologies for Environmental Monitoring.

Date: March 18, 2005.

Time: 8 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: Alexander Gubin, PhD, Scientific Review Administrator, 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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Physiology and Pathology of the Retina.

Date: March 18, 2005.

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: Raya Mandler, PhD, Scientific Review Administrator (Intern), Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892. (301) 402–8228. *rayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Hematology.

Date: March 18, 2005.

Time: 8 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: Joyce C. Cibson, DCS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892. (301) 435–4522. *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Adult Psychopathology.

Date: March 18, 2005.

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: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Platelet Activation Signaling via GPIb–IX and 14–3–3.

Date: March 18, 2005.

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: 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, Member Conflicts: CIHB and CLHP.

Date: March 18, 2005.

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: 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*.

(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: February 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3557 Filed 2–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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 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.

Proposed Project: Emergency Response Grants Regulations—42 CFR Part 51—(OMB No. 0930–0229)—Extension

This rule implements section 501(m) of the Public Health Service Act (42 U.S.C 290aa), which authorizes the Secretary to make noncompetitive grants, contracts or cooperative agreements to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities. The rule establishes criteria for determining that a substance abuse or mental health emergency exists, the minimum content for an application, and reporting requirements for recipients of such funding. SAMHSA will use the information in the applications to make a determination that the requisite need exists; that the mental health and/or substance abuse needs are a direct result of the precipitating event; that no other local, State, tribal or Federal funding sources available to address the need; that there is an adequate plan of services; that the applicant has appropriate organizational capability; and, that the budget provides sufficient justification and is consistent with the documentation of need and the plan of services. Eligible applicants may apply to the Secretary for either of two types of substance abuse and mental health emergency response grants: Immediate awards and Intermediate awards. The former are designed to be funded up to $50,000, or such greater amount as determined by the Secretary on a case-by-case basis, and are to be used over the initial 90-day period commencing as soon as possible after the precipitating event; the latter awards require more documentation, including a needs assessment, other data and related budgetary detail. The Intermediate awards have no predefined budget limit. Typically, Intermediate awards would be used to meet systemic mental health and/or substance abuse needs during the recovery period following the Immediate award period. Such awards may be used for up to one year, with a possible second year supplement based on submission of additional required information and data. This program is an approved user of the PHS–5161 application form, approved by OMB under control number 0920–0428. The quarterly financial status reports in 51d.10(a)(2) and (b)(2) are as permitted by 45 CFR 92.41(b); the final program report, financial status report and final voucher in 51d.10(a)(3) and in 51d.10(b)(3–4) are in accordance with 45 CFR 92.50(b). Information collection requirements of 45 CFR part 92 are approved by OMB under control number 0990–0169. The following table presents annual burden estimates for the information collection requirements of this regulation.

42 CFR citation	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Immediate award application:				
51d.4(a) and 51d.6(a)(2)	3	1	3	*9
51d.4(b) and 51d.6(a)(2) Immediate Awards	3	1	10	*30
51d.10(a)(1)-Immediate Awards—mid-program report if applicable	3	1	2	*6
Final report content for both types of awards:				
51d.10(c)	6	1	3	18
Total	6			18

*This burden is carried under OMB No. 0920–0428.

Send comments to Summer King, SAMHSA Reports Clearance Officer, OAS, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20857. Written comments should be received by April 25, 2005.

Dated: February 17, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–3546 Filed 2–23–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Permit Application and Availability of a Draft Safe Harbor Agreement for The Nature Conservancy (Aravaipa Property)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and 30-day public comment period.

SUMMARY: The Nature Conservancy (Applicant or TNC) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to Section 10(a)(1)(A) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–099809–0. The requested permit, which is for a period of 20 years, would authorize take of the endangered Gila topminnow (*Poeciliopsis occidentalis occidentalis*) and desert pupfish (*Cyprinodon macularius*) as a result of ongoing watershed improvement activities on TNC-owned property within the Aravaipa watershed identified in the application, Safe Harbor Agreement (TNC Agreement), and associated documents in Graham and Pinal counties, Arizona. Implementation of the TNC Agreement will reestablish Gila topminnow and desert pupfish in three south rim tributaries of Aravaipa Creek.

DATES: To be considered, written comments must be received on or before March 28, 2005.

ADDRESSES: Persons wishing to review the application, TNC Agreement, and ''Low Effect'' determination may obtain copies by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103, or by contacting the Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951; phone: (602) 242–0210. Documents relating to the application will be available for public inspection by written request, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, Phoenix, Arizona.

Written data or comments concerning the application and TNC Agreement should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951. Please refer to permit number TE–099809–0 (TNC) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Marty Tuegel at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 201 N. Bonita Avenue, Suite 141, Tucson, Arizona 85745; phone: (520) 670–6150 x232.

SUPPLEMENTARY INFORMATION: *Background:* The Applicant plans to reestablish populations of Gila topminnow and desert pupfish (covered species) on its properties within the approximately 537 mi^2 (14,000 km^2) Aravaipa watershed, Graham and Pinal counties, Arizona. Gila topminnow and desert pupfish are native to the Gila River basin. Based upon extensive fish sampling within the watershed, neither species is known to be present in the watershed. The Applicant, in cooperation with the Service, has prepared the TNC Agreement to provide a conservation benefit to, and allow for take of, Gila topminnow and desert pupfish.

Based upon guidance in the Service's June 17, 1999, Final Safe Harbor Policy, if an agreement and its associated permit are not expected to individually or cumulatively have a significant impact on the quality of the human environment or other natural resources, the agreement/permit may be categorically excluded from undergoing National Environmental Policy Act review. The TNC Agreement qualifies as a ''Low Effect'' agreement, thus, this action is a categorical exclusion. The ''Low Effect'' determination for the TNC Agreement is also available for public comment. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

The TNC Agreement as currently written is expected to provide a net conservation benefit to the Gila topminnow and desert pupfish. The TNC Agreement and its associated permit will also provide protection to the Applicant against further regulation under the Endangered Species Act for its ongoing private land management activities in not only areas where populations of covered species are reestablished, but also in habitat the covered species disperse into, as a result of implementation of the TNC Agreement.

Section 9 of the Act prohibits the ''taking'' of threatened or endangered species. However, the Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 50 CFR 17.32, respectively.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 05–3479 Filed 2–23–05; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to OMB for Review Under the Paperwork Reduction Act

A request extending the information collection described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore, comments on the proposal should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments by either fax (202) 395–6566 or e-mail (*oria_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Interior Department (OMB Control Number 1028–0078). Send copies of your comments to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, or e-mail (*jcordyac@usgs.gov*), telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the

bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: North American Amphibian Monitoring Program.

Current OMB Approval Number: 1028–0078.

Summary: The North American Amphibian Monitoring Program (NAAMP) is a long-term, large-scale anuran (frog and toad) monitoring program to track the status and trends of eastern and central. Volunteers conduct calling surveys three to four times per year, depending on the regional species assemblage. Volunteers listen for 5 minutes at 10 stops along the route. Data are submitted electronically via the Internet or on hard copy. These data will be used to estimate population trends at various geographic scales and assist with documenting species distribution. NAAMP Web site is *http://www.pwrc.usgs.giv/naamp/.*

Estimated Annual Number of Respondents: 400.

Estimated Annual Burden Houses: 3600 hours.

Estimated Annual (Non-Hour) Cost Burden: The estimated annual (non-hour) cost burden per response is about $5.65 for a total annual burden of about $7,000. This is based on about 15 miles per survey route, times $0.375 per mile, times 1200 survey routes.

Affected Public: Primarily U.S. residents.

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Dated: February 15, 2005.

Susan Haseltine,

Associate Director for Biology.

[FR Doc. 05–3469 Filed 2–23–05; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to OMB for Review Under the Paperwork Reduction Act

A request extending the information collection described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore, comments on the proposal should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments by either fax (202) 395–6566 or e-mail (*oira_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Desk Officer for the Interior Department (OMB Control Number 1028–0079). Send copies of your comments to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, or e-mail (*jcordyac@usgs.gov*), telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: North American Breeding Bird Survey.

Current OMB Approval Number: 1028–0079.

Summary: The North American Breeding Bird Survey (BBS) is a long-term, large-scale avian monitoring program to track the status and trends of continental bird populations. Each spring, interested volunteers conduct counts of birds along roadsides across the United States. Data can be submitted electronically via the Internet or on hard copy. These data provide an index of population abundance that can be used to estimate population trends and relative abundances at various geographic scales. Declining population trends act as an early warning system to galvanize research to determine the causes of these declines and reverse them before populations reach critically low levels. The USGS currently provides BBS population trend estimates and raw population data for more than 400 bird species via the Internet.

Estimated Annual Number of Respondents: 2500.

Estimated Annual Burden Hours: 12,500 hours.

Estimated Annual (Non-Hour) Cost Burden: The estimated annual (non-hour) cost burden per response is about $37.50 for a total annual burden of about $93,000. This is based on about 100 miles per survey route, times $0.375 per mile, times 2500 survey routes.

Affected Public: Primarily U.S. residents.

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Dated: February 15, 2005.

Susan Haseltine,

Associate Director for Biology.

[FR Doc. 05–3470 Filed 2–23–05; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–921–5421–BX–AA03; UTU–81879] [UT–921–5421–BX–AA04; UTU–81880] [UT–921–5421–BX–AA05; UTU–82193] [UT–921–5421–BX–AA06; UTU–82194]

Notice of Applications for Recordable Disclaimer of Interest in Public Highway Rights-of-Way Established Pursuant to Revised Statute 2477 (43 U.S.C. 932, Repealed October 21, 1976); Roads D28 and D30 in Daggett County, UT; Hickory Peak Road in Beaver County; and Horse Valley Road in Beaver and Iron Counties

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of applications.

SUMMARY: On September 15, 2004 the State of Utah and Daggett County

submitted two applications for recordable disclaimers of interest from the United States. These recordable disclaimer of interest applications are identified by BLM Serial Number UTU–81879 for Road D28 and UTU–81880 for Road D30, both in Daggett County, Utah.

On December 8, 2004 the State of Utah and Beaver and Iron Counties submitted two additional applications for recordable disclaimers of interest from the United States. These recordable disclaimer of interest applications are identified by BLM Serial Number UTU–82193 for Hickory Peak Road in Beaver County, Utah and UTU–82194 for Horse Valley Road in Beaver and Iron Counties, Utah.

Recordable disclaimers of interest, if issued, would confirm that the United States has no property interest in the identified public highway rights-of-way. This Notice is intended to notify the public of the pending applications and the State's and Counties' grounds for supporting them.

Specific details of the applications are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: On or before April 25, 2005, all interested parties may submit comments on the State's and Counties' applications as follows. Comments on the Road D28 application should reference BLM Case File Serial Number UTU–81879, comments on the Road D30 application should reference BLM Case File Serial Number UTU–81880, comments on the Hickory Peak Road should reference BLM Case File Serial Number UTU–82193, and comments on the Horse Valley Road should reference BLM Case File Serial Number UTU–82194. Public comment will be accepted if received by BLM or postmarked no later than 60 days following the date of publication of this Notice. BLM will review all timely comments received on the applications, and will address all relevant, substantive issues raised in the comments. A final decision on the merits of the applications will not be made until at least May 25, 2005.

ADDRESSES: Interested parties and the public are encouraged to access the RS2477 Disclaimer Process public Web site at *http://www.ut.blm.gov/rs2477* to review the application materials and provide comments on the application. For those without access to the public Web site, written comments may be provided to the Chief, Branch of Lands and Realty, BLM Utah State Office (UT–921), P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Mike DeKeyrel, Realty Specialist, BLM Utah State Office Branch of Lands and Realty (UT–921) at the above address or Phone 801–539–4105 and Fax 801–539–4260.

SUPPLEMENTARY INFORMATION: Disclaimers of interest are authorized by Section 315 of the Federal Land Policy and Management Act (FLPMA) of 1976, as amended (43 U.S.C 1745), the regulations contained in 43 CFR Subpart 1864, and the April 9, 2003 Memorandum of Understanding (MOU) Between the State of Utah and the Department of the Interior on State and County Road Acknowledgement.

The D28 and D30 Roads are located in northeastern Daggett County, approximately 40 miles north-northeast of Vernal, Utah and approximately one and one-half miles south of the Wyoming state line. Road D28 is approximately one mile in length, and Road D30 is approximately two miles in length. Both Roads D28 and D30 connect to Brown's Park Road, Daggett County's main transportation artery through the Clay Basin area. Application information submitted by the State and County indicates that initial road construction occurred in the late 1920s on Road D28 and the northern portion of Road D30, and construction of the southern portion of Road D30 occurred in the early 1960s.

The road construction was for access to oil and gas wells in the Clay Basin. The surface of both roads is native dirt, with gravel added and graded throughout their lengths. The recordable disclaimer of interest applications pertain to the entire lengths of Roads D28 and D30, as both roads pass through BLM administered public lands only. The Hickory Peak Road is located in central Beaver County, approximately three miles west of Milford, Utah, and is approximately three miles in length. Application information submitted by the State and County indicates that initial road construction occurred in the 1870s. The initial road construction was for access to mines located in Star Range Mountain area. The surface of the road is native dirt, with gravel added and graded throughout its length. The recordable disclaimer of interest applications pertain to the entire length of Hickory Peak Road, as the road passes through BLM administered public lands only.

The Horse Valley Road is located in south-central Beaver County and north-central Iron County, approximately 10 miles west-southwest of Minersville, Utah, and is approximately nine miles in length. Approximately two miles are in Beaver County and approximately seven miles are in Iron County. Application information submitted by the State and Counties indicates that initial road use began in the 1920s and construction (grading) occurred in the 1940s. The road construction and use was and is for access to grazing and general public access in the local area. The surface of the road is native dirt, and graded throughout its length. The recordable disclaimer of interest applications pertain to those road segments across public lands administered by BLM. One road segment approximately 0.66 mile long is across State of Utah land and is not a part of the application.

The State of Utah and the Counties of Daggett, Beaver and Iron assert that they hold a joint and undivided property interest in the road rights-of-way identified above as granted pursuant to the authority provided by Revised Statute 2477 (43 U.S.C. 932, repealed October 21, 1976) over public lands administered by the Bureau of Land Management. The State submitted the following information with the application in both paper copy and in electronic form (Compact Disk):

1. Narrative description of the location, characteristics and attributes of Road D28, Road D30, Hickory Peak Road, and Horse Valley Road. The claimed right-of-way (disturbed) width for Road D28 is 40 feet. The claimed right-of-way (disturbed) width for road D30 is 45 feet. The claimed right-of-way (disturbed) width for Hickory Peak Road ranges from 24 to 30 feet. The claimed right-of-way (disturbed) width for Horse Valley Road is 24 feet in Beaver County and ranges from 10 to 12 feet wide in Iron County.

2. Centerline description of the roads based on Global Positioning System (GPS) data.

3. Detailed descriptions of the rights-of-way (one identified segment for each road) passing through public lands including beginning and end points, surface type, and disturbed width.

4. Legal description by aliquot part (*e.g.* ¼¼ section) of the land parcels through which the roads pass.

5. Maps showing location of the identified road rights-of-way and the location and dates of water diversion points and mining locations to which the highway provides access.

6. Aerial photography dated 1976 and after 1990.

7. Signed and notarized affidavits by persons attesting to the location of both roads; their establishment as a highway prior to October 21, 1976; familiarity with the character and attributes of both roads including type of travel surface, disturbed width, associated improvements and ancillary features such as bridges, cattleguards, etc.;

current public usage of the road; the historic and current purposes for which the road is used; and evidence of periodic maintenance.

8. Recent photographs of the roads at various points along their alignments.

The State of Utah did not identify any known adverse claimants of the identified public highway rights-of-way.

If approved, the recordable disclaimer documents would confirm that the United States has no property interest in the public highway rights-of-way as it is identified in the official records of the Bureau of Land Management as of the date of the disclaimer document.

Comments, including names and street addresses of commentors, will be available for public review at the Utah State Office (see address above), during regular business hours 8 a.m. to 4 p.m. local time, Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to hold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or business will be made available for public inspection in their entirety. Anonymous comments will not be accepted.

Dated: January 7, 2005.

Kent Hoffman,

Deputy State Director.

[FR Doc. 05–3520 Filed 2–23–05; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1310PP–ARAC]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held April 7, at the Glennallen Field Office in Glennallen, Alaska, beginning at 8:30 a.m. The public comment period will begin at 1 p.m.

FOR FURTHER INFORMATION CONTACT: Danielle Allen, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–3335 or e-mail *dallen@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics we plan to discuss include:

- Off-highway vehicle use designations on BLM-administered lands
- National Petroleum Reserve-Alaska integrated activity plans
- Status of land use planning in Alaska
- Other topics the Council may raise

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact BLM.

Dated: February 16, 2005.

Julia S. Dougan,

Associate State Director.

[FR Doc. 05–3536 Filed 2–23–05; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–930–1310–PG; F–85600]

Designation of Addition to Special Areas in National Petroleum Reserve-Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice provides official publication of an addition to the designated Special Areas located within the National Petroleum Reserve-Alaska. The designation of the Kasegaluk Lagoon Special Area is pursuant to the Naval Petroleum Reserves Production Act of 1976, and in accordance with the Record of Decision for the Northwest National Petroleum Reserve-Alaska Final Integrated Activity Plan/Environmental Impact Statement (IAP/EIS).

FOR FURTHER INFORMATION CONTACT: Mike Kleven, Bureau of Land Management (BLM), Northern Field Office, 907–474–2302. Mail may be sent to the BLM Alaska State Office (AK930) 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

SUPPLEMENTARY INFORMATION: In 1977 and 1999, to assure protection of significant subsistence, recreational, fish and wildlife, historical and scenic values, the Secretary of the Interior designated several Special Areas located within the National Petroleum Reserve-Alaska. In 2003, the BLM prepared the IAP/EIS for an 8.8 million-acre area within the National Petroleum Reserve-Alaska to determine the appropriate multiple-use management consistent with existing statutory direction which encourages oil and gas leasing while protecting important surface resources and uses. In order to meet these management responsibilities, the BLM recommended, in the Preferred Alternative of the IAP/EIS, the designation of the Kasegaluk Lagoon Special Area. On January 22, 2004, the Secretary of the Interior signed the Record of Decision (ROD) approving the Preferred Alternative, with minor modifications, and designated the following described lands as the Kasegaluk Lagoon Special Area pursuant to Section 104(b) of the Naval Petroleum Reserves Production Act of 1976, 42 U.S.C. 6501 (2000):

Umiat Meridian

The area includes the Kasegaluk Lagoon and extending inland 1 mile which is located within:

T. 12 N., R. 34 W.
Tps. 11 and 12 N., Rs. 35 & 36 W.
Tps. 10 and 11 N., Rs. 37 & 38 W.
Tps. 9, 10, and 11 N., Rs. 39 W.

The boundary of the Kasegaluk Lagoon Special Area is generally depicted on Map 1. Northwest National Petroleum Reserve of the ROD dated January 22, 2004, and identified in detail on the map entitled ''Kasegaluk Lagoon Special Area'', dated August 16, 2004. Copies of the maps are filed in BLM case file F–85600 available for public inspection at the Public Information Center, Alaska State Office, 222 W. 7th Avenue, Anchorage, Alaska, 99513, or the Northern Field Office, 1150 University Avenue, Fairbanks, Alaska, 99703.

Dated: September 8, 2004.

Henri Bisson,

State Director.

[FR Doc. 05–3521 Filed 2–23–05; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–3130–ET; GPO–04–0004; IDI–12551]

Expiration of Public Land Order and Opening of Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management announces the expiration of one public land order affecting 19.09 acres of public land. This action will open the land to surface entry and mining.

DATES: See **SUPPLEMENTARY INFORMATION** section for expiration and opening dates.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, Bureau of Land Management, Idaho State Office, 1387 South Vinnell Way, Boise, Idaho 83709, 208–373–3867.

SUPPLEMENTARY INFORMATION:

1. The following public land order (PLO), which withdrew public land for the area listed, has expired:

PLO	FR citation	Area name	Expired	Acres
5673	44 FR 44503 (1979)	Burley Administrative Site	7/22/1999	19.09

2. A copy of the expired public land order, describing the land involved, is available at the BLM Idaho State Office (address above).

3. In accordance with 43 CFR 2091.6, at 8:30 a.m., on March 28, 2005, the land withdrawn by the public land order listed in Paragraph 1 above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on March 28, 2005, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. In accordance with 43 CFR 2091.6, at 8:30 a.m., on March 28, 2005, the lands withdrawn by the public land orders listed in paragraph 1 above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (2000), shall vest no rights against the United States. State law governs acts required to establish a location and to initiate a right of possession where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Jimmie Buxton,

Branch Chief Land and Minerals.

[FR Doc. 05–3517 Filed 2–23–05; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–1430–ES; NMNM 45778–04]

Order Providing for Opening of Land; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order opens land to the public land laws generally, including the mining laws. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: The land will be open to entry at 8 a.m. March 28, 2005.

FOR FURTHER INFORMATION CONTACT: Joe Jaramillo, BLM Albuquerque Field Office, 435 Montano Road, NE, Albuquerque, New Mexico 87107, 505–761–8779.

SUPPLEMENTARY INFORMATION: In 1990, Recreation and Public Purposes Patent 30–91–0004 issued to the Village of Milan for recreation purposes. The land was not being used for the purposes conveyed; therefore, the Village of Milan conveyed the following described land back to the United States.

New Mexico Principal Meridian

T. 11 N., R. 10 W.,
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼.

Containing 465.28 acres in Cibola County.

At 8 a.m. March 28, 2005, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on March 28, 2005, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 8.a.m on March 28, 2005, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. State law governs acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessor rights since Congress has provided for such determination in local courts.

Dated: May 25, 2004.

Edwin J. Singleton,

Field Manager.

Editorial note: This document was received at the Office of the Federal Register February 18, 2005.

[FR Doc. 05–3519 Filed 2–23–05; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 50216]

Expiration of Bureau of Reclamation Withdrawal and Opening of Lands; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Public Land Order 6550, which withdrew 159.91 acres of National Forest System lands from mining for use by the Bureau of Reclamation in constructing recreation facilities associated with the Upalco

Unit of the Central Utah Project, has expired. This order opens the lands to location and entry under the mining laws.

EFFECTIVE DATE: March 28, 2005.

FOR FURTHER INFORMATION CONTACT: Rhonda Flynn, BLM Utah State Office, 324 S. State Street, Salt Lake City, Utah, 84111–2303, 801–539–4132.

SUPPLEMENTARY INFORMATION:

1. Public Land Order No. 6550, published in the **Federal Register** July 23, 1984 (49 FR 29599), which withdrew the following described National Forest System lands for use by the Bureau of Reclamation in constructing recreation facilities associated with the Upalco Unit of the Central Utah Project, expired by operation of law on July 22, 2004.

Ashley National Forest

Uintah Special Meridian

T. 2 N., R. 4 W.,
Sec. 4, lots 3 and 4, NW¼SE¼NW¼, and NE¼SW¼NW¼.
T. 3 N., R. 5 W.,
Sec. 34, SW¼SW¼ and S½NW¼SW¼.

The area described contains 159.91 acres in Duchesne County.

2. At 10 a.m. on March 28, 2005, the lands described in Paragraph 1 above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (2000), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

(Authority: 43 CFR 2091.6)

Dated: December 16, 2004.

Kent Hoffman,

Deputy State Director, Lands and Minerals.

[FR Doc. 05–3516 Filed 2–23–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–090–5700–EU; IDI–32281; DBG–05–0002]

Notice of Realty Action, Sale of Public Land in Owyhee County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Sale of Public Land in Owyhee County, Idaho.

SUMMARY: The Bureau of Land Management (BLM) has determined that 30 acres of public land located in Owyhee County, Idaho is suitable for direct sale to Owyhee County under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat 2750, 43 U.S.C. 1713).

DATES: Comments should be received by April 11, 2005.

ADDRESSES: Comments should be sent to the Bruneau Field Office 3948 Development Avenue, Boise, Idaho 83705–5389.

FOR FURTHER INFORMATION CONTACT: Candi Miracle, Realty Specialist, at the address shown above or (208) 384–3455.

SUPPLEMENTARY INFORMATION: The public land proposed for sale is described as follows:

Boise Meridian, Owyhee County, Idaho

T. 6 S., R. 4 E., section 4: W½NW¼SE¼, W½E½NW¼SE¼.

The parcel of public land contains 30 acres.

The 1981 Bruneau Management Framework Plan identified the public land as available for disposal. On February 24, 2005 the parcel will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act (FLPMA). The segregative effect will end upon issuance of patent or November 21, 2005, whichever occurs first.

The public land will not be offered for sale until April 25, 2005 at the appraised fair market value of $9,000. The patent, when issued, will contain a reservation to the United States for ditches and canals. This land is being offered by direct sale to Owyhee County pursuant to 43 CFR 2711.3–3, to provide a needed buffer around the existing Rimrock Landfill. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests will be conveyed simultaneously under the authority of Section 209 of FLPMA. A separate non-refundable filing fee of $50.00 is required from the purchaser for the conveyance of the mineral interests (43 CFR part 2720).

Dated: January 4, 2005.

Mitchell A Jaurena,

Acting Bruneau Field Manager.

[FR Doc. 05–3518 Filed 2–23–05; 8:45 am]

BILLING CODE 4310–GG–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–5410–FR–E035; MTM 93499]

Application for Conveyance of Mineral Interest; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is given that, pursuant to section 209b of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)), Mr. Tim Weikert has applied to purchase the mineral estate described as follows:

Principal Meridian, Montana

T. 7 S., R. 3 W.,
Sec. 19, W½NE¼NE¼.
Containing 20.00 acres, more or less.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface mineral ownership where there are no known mineral values or in those instances where the United States mineral reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Tami Lorenz, Legal Instruments Examiner, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–896–5053.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests within the legal description given above will be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon issuance of a conveyance document, final rejection of the application, or 2 years from the date of filing of the application May 21, 2004, whichever occurs first.

Dated: February 2, 2005.

Howard A. Lemm,

Deputy State Director, Division of Resources.

[FR Doc. 05–3522 Filed 2–23–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4489; ES–053127, Group No. 39, Illinois]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management.

ACTION: Notice of filing of plat of survey; Illinois.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the U.S. Army Corps of Engineers.

The lands we surveyed are:

Fourth Principal Meridian, Illinois

T. 7 S., Rs. 5 and 6 W.

The plat of survey represents the dependent resurvey of portions of the township boundaries, portions of the subdivisional lines and the survey of the Lock and Dam No. 24 acquisition boundary, in Township 7 South, Ranges 5 and 6 West, of the Fourth Principal Meridian, in the State of Illinois, and was accepted on January 28, 2005.

We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Dated: January 28, 2005.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 05–3560 Filed 2–23–05; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf Beaufort Sea Alaska, Oil and Gas Lease Sale 195

AGENCY: Minerals Management Service, Interior.

ACTION: Final Notice of Sale OCS Oil and Gas Lease Sale 195, Beaufort Sea

SUMMARY: The MMS will hold OCS oil and gas lease Sale 195 on March 30, 2005, in accordance with provisions of the OCS Lands Act (43 U.S.C. 1331–1356, as amended), the implementing regulations (30 CFR Part 256), and the OCS Oil and Gas Leasing Program for 2002–2007.

DATES: Lease Sale 195 is scheduled to be held on March 30, 2005, at the Wilda Marston Theatre, Z.J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska. Public reading will begin at 9 a.m. All times referred to in this document are local Anchorage, Alaska times, unless otherwise specified.

ADDRESSES: A package containing the final Notice of Sale and several supporting and essential documents referenced herein are available from: Alaska OCS Region, Information Resource Center, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823, Telephone: (907) 334–5206 or 1–800–764–2627.

These documents are also available on the MMS Alaska OCS Region's Web site at *www.mms.gov/alaska.*

Filing of Bids: Bidders will be required to submit bids to the MMS at the Alaska OCS Region Office, 3801 Centerpoint Drive, Fifth Floor, Anchorage, Alaska 99503–5823 between the hours of 8 a.m. and 4 p.m. on normal business days, prior to the Bid Submission deadline of 10 a.m., Tuesday, March 29, 2005. If bids are mailed, the envelope containing all of the sealed bids must be marked as follows: *Attention:* Mr. Fred King, Contains Sealed Bids for Sale 195.

If bids are received later than the time and date specified above, they will be returned unopened to the bidders. Bidders may not modify or withdraw their bids unless the Regional Director, Alaska OCS Region receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, March 29, 2005. Should an unexpected event such as an earthquake or travel restrictions be significantly disruptive to bid submission, the Alaska OCS Region may extend the Bid Submission Deadline. Bidders may call (907) 334–5200 for information about the possible extension of the Bid Submission Deadline due to such an event.

Note: Four blocks in the easternmost Beaufort Sea area are subject to jurisdictional claims by both the United States and Canada. This Notice refers to this area as the Disputed Portion of the Beaufort Sea. The section on Method of Bidding identifies the four blocks and describes the procedures for submitting bids for them.

Area Offered for Leasing: MMS is offering for leasing all whole and partial blocks listed in the document ''Blocks Available for Leasing in OCS Oil and Gas Lease Sale 195'' included in the FNOS 195 package. All of these blocks are shown on the following Official Protraction Diagrams (which may be purchased from the Alaska OCS Region):

- NR 05–01, Dease Inlet, revised September 30, 1997
- NR 05–02, Harrison Bay North, revised September 30, 1997
- NR05–03, Teshekpuk, revised September 30, 1997
- NR 05–04, Harrison Bay, revised September 30, 1997
- NR 06–01, Beechey Point North, approved February 1, 1996
- NR 06–03, Beechey Point, revised September 30, 1997
- NR 06–04, Flaxman Island, revised September 30, 1997
- NR 07–03, Barter Island, revised September 30, 1997
- NR 07–05, Demarcation Point, revised September 30, 1997
- NR 07–06, Mackenzie Canyon, revised September 30, 1997

Official block descriptions are derived from these diagrams; however, not all blocks included on a diagram are being offered. To ascertain which blocks are being offered and the royalty suspension provisions that apply you must refer to the document ''Blocks Available for Leasing in OCS Oil and Gas Lease Sale 195.'' The Beaufort Sea OCS Oil and Gas Lease Sale 195'' Locator Map is also available to assist in locating the blocks relative to the adjacent areas. The Locator Map is for use in identifying locations of blocks but is not part of the official description of blocks available for lease. Some of the blocks may be partially encumbered by an existing lease, or transected by administrative lines such as the Federal/state jurisdictional line. Partial block descriptions are derived from Supplemental Official OCS Block Diagrams and OCS Composite Block Diagrams, which are available upon request at the address, phone number, or internet site given above.

Statutes and Regulations: Each lease issued in this lease sale is subject to the OCS Lands Act of August 7, 1953, 67 Stat. 462; 43 U.S.C. 1331 *et seq.*, as amended (92 Stat. 629), hereinafter called ''the Act''; all regulations issued pursuant to the Act and in existence upon the effective date of the lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of the OCS and the protection of correlative rights therein; and all other applicable statutes and regulations.

Lease Terms and Conditions: For leases resulting from this sale the following terms and conditions apply:

Initial Period: Ten years.

Minimum Bonus Bid Amounts: $37.50 per hectare or a fraction thereof for all blocks in Zone A and $25 hectare or a fraction thereof for all blocks in Zone B. Refer to the final Notice of Sale, Beaufort Sea Sale 195, March 2005 map and the Summary Table of Minimum Bids, Minimum Royalty Rates, and Rental Rates shown below.

Rental Rates: The lessee shall pay the lessor, on or before the first day of each lease year which commences prior to a discovery in paying quantities of oil or gas on the leased area, then at the expiration of each lease year until the start of royalty-bearing production, a rental at the rate shown below in the Summary Table of Minimum Bids, Minimum Royalty Rates, and Rental Rates. For the time period between discovery in paying quantities until the start of royalty-bearing production, the lessee shall pay an annual rental of $13 per hectare (or fraction thereof).

Minimum Royalty Rates: After the start of royalty-bearing production, the lessee shall pay the lessor a minimum royalty of $13 per hectare, to be paid at the expiration of each lease year with credit applied for actual royalty paid during the lease year. If actual royalty paid exceeds the minimum royalty requirement, then no minimum royalty payment is due.

Royalty Rates: A 12½ percent royalty rate will apply for all blocks.

SUMMARY TABLE OF MINIMUM BIDS, MINIMUM ROYALTY RATES, AND RENTAL RATES

Terms (values per hectare or fraction thereof)	Zone A	Zone B
Royalty Rate	12½% fixed	12½% fixed
Minimum Bonus Bid	$37.50	$25.00
Minimum Royalty Rate	$13.00	$13.00
Rental Rates:		
Year 1	$7.50	$2.50
Year 2	$7.50	$3.75
Year 3	$7.50	$5.00
Year 4	$7.50	$6.25
Year 5	$7.50	$7.50
Year 6	$12.00	$10.00
Year 7	$17.00	$12.00
Year 8	$22.00	$15.00
Year 9	$30.00	$17.00
Year 10	$30.00	$20.00

Royalty Suspension Areas: Royalty suspension provisions apply to first oil production. Royalty suspensions on the production of oil and condensate, prorated by lease acreage and subject to price thresholds, will apply to all blocks. Royalty suspension volumes (RSV) are based on 2 zones, Zone A and Zone B, as depicted on the Map. More specific details regarding royalty suspension eligibility, applicable price thresholds and implementations are included in the document ''Royalty Suspension Provisions, Sale 195'' in the final Notice of Sale 195 package. Minimum royalty requirements apply during RSV periods. Depending on surface area and zone, leases will receive a RSV as follows:

Hectares	Zone A million barrels RSV	Zone B million barrels RSV
Less than 771	10	15
771 to less than 1541	20	30
1541 or more	30	45

The RSV applies only to liquid hydrocarbon production, *i.e.*, oil and condensates. Natural gas volumes that leave the lease are subject to original lease-specified royalties. The market value of natural gas will be determined by MMS's Minerals Revenue Management (MRM) office. The MRM will value the natural gas from Sale 195 based on its potential uses and applicable market characteristics at the time the gas is produced.

Debarment and Suspension (Nonprocurement): In accordance with regulations pursuant to 43 CFR, part 42, subpart C, the lessee shall comply with the U.S. Department of the Interior's nonprocurement debarment and suspension requirements and agrees to communicate this requirement to comply with these regulations to persons with whom the lessee does business as it relates to this lease by including this term as a condition to enter into their contracts and other transactions.

Stipulations and Information To Lessees: The documents entitled ''Lease Stipulations for Oil and Gas Lease Sale 195'' and ''Information to Lessees for Oil and Gas Lease Sale 195'' contain the text of the Stipulations and the Information to Lessees that apply to this sale. This document is included in the FNOS 195 package.

Method of Bidding: Procedures for the submission of bids in Sale 195 are described in paragraph (a) below. Procedures for the submission bids for the four blocks in the Disputed Portion of the Beaufort Sea will differ as described in paragraph (b) below.

(a) *Submission of Bids.* For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled ''Sealed bid for Oil and Gas Lease Sale 195, not to be opened until 9 a.m., Wednesday, March 30, 2005.'' The total amount of the bid must be in whole dollars; any cent amount above the whole dollar will be ignored by MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document ''Bid Form and Envelope'' contained in the final NOS 195 package.

(b) *Submission of Bids in the Disputed Portion of the Beaufort Sea.* Procedures for the submission of bids on blocks 6201, 6251, 6301, and 6361 in Official Protraction Diagram NR 07–06 will differ from procedures in paragraph (a) above as follows:

Separate, signed bids on these blocks must be submitted in sealed envelopes labeled only with ''Disputed Portion of the Beaufort Sea,'' Company Number, and a sequential bid number for the company submitting the bid(s). The envelope thus would be in the following format: Disputed Portion of the Beaufort Sea Bid, Company No: 00000, Bid No: 1.

On or before March 30, 2010, the MMS will determine whether it is in the best interest of the United States either to open bids for these blocks or to return

the bids unopened. The MMS will notify bidders at least 30 days before bid opening. Bidders on these blocks may withdraw their bids at any time after such notice and prior to 10 a.m. of the day before bid opening. If the MMS does not give notice by March 30, 2010, the bids will be returned unopened. The MMS reserves the right to return these bids at any time. The MMS will not disclose which blocks received bids or the names of bidders in this area unless the bids are opened.

The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 69 FR 61402 on October 18, 2004. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, *e.g.* 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders must execute all documents in conformance with signatory authorizations on file in the Alaska OCS Region. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders are advised that MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the one-fifth bonus bid amount on all high bids. A statement to this effect must be included on each bid (see the document ''Bid Form and Envelope'' contained in the FNOS 195 package).

Bonus Bid Deposit: Each bidder submitting an apparent high bid must submit a bonus bid deposit to MMS equal to one-fifth of the bonus bid amount for each such bid submitted for Sale 195. Under the authority granted by 30 CFR 256.46(b), MMS requires bidders to use electronic funds transfer (EFT) procedures for payment of the one-fifth bonus bid deposits, following the detailed instructions contained in the document ''Instructions for Making EFT Bonus Payments'' included in the final NOS 195 package. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instruction) by 1:00 p.m. Eastern Time the day following bid reading. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States. If a lease is awarded, MMS requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

Please Note: Certain bid submitters [*i.e.*, those that do not currently own or operate an OCS mineral lease or those that have ever defaulted on a one-fifth bonus payment (EFT or otherwise)] will be required to guarantee (secure) their one-fifth bonus payment prior to the submission of bids. For those who must secure the EFT one-fifth bonus payment, one of the following options may be provided: (1) A third-party guarantee; (2) an Amended Development Bond Coverage; (3) a Letter of Credit; or (4) a lump sum payment in advance via EFT. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated final NOS Sale 195 package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. The Attorney General of the United States may also review the results of the lease sale prior to the acceptance of bids and issuance of leases. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the Regional Director and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures.

Successful Bidders: As required by MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

Affirmative Action: The MMS requests that, prior to bidding, Equal Opportunity Affirmative Action Representation Form MMS 2032 (June 1985) and Equal Opportunity Compliance Report Certification Form MMS 2033 (June 1985) be on file in the Alaska OCS Region. This certification is required by 41 CFR part 60 and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967. In any event, prior to the execution of any lease contract, both forms are required to be on file in the Alaska OCS Region.

Jurisdiction: The United States claims exclusive maritime resource jurisdiction over the area offered. Canada claims such jurisdiction over the four easternmost blocks included in the sale area. These blocks are located in Official Protraction Diagram NR 07–06 as block numbers 6201, 6251, 6301, and 6351. Nothing in this Notice shall affect or prejudice in any manner the position of the United States with respect to the nature or extent of the internal waters, the territorial sea, the high seas, or sovereign rights or jurisdiction for any purpose whatsoever. Bid submission procedures pertaining to blocks in this Disputed Portion of the Beaufort Sea are described in paragraph (b) under Method of Bidding.

Notice of Bidding Systems: Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the OCS Lands Act requires that, at least 30 days before any lease sale, a Notice be submitted to Congress and published in the **Federal Register**. This Notice of Bidding Systems is for Sale 195, Beaufort Sea, scheduled to be held on March 30, 2005.

In Sale 195, all blocks are being offered under a bidding system that uses a cash bonus and a fixed royalty of 12½ percent with a royalty suspension of up to 30 million barrels of oil equivalent per lease in Zone A of the sale area or with a royalty suspension of up to 45 million barrels of oil equivalent per lease in Zone B of the sale area. The amount of royalty suspension available on each lease is dependent on the area of the lease and specified in the Sale Notice. This bidding system is authorized under 30 CFR 260.110(a)(7), which allows use of a cash bonus bid with a royalty rate of not less than 12½ percent and with suspension of royalties for a period, volume, or value of production, and an annual rental. Analysis performed by MMS indicates that use of this system provides an incentive for development of this area while ensuring that a fair sharing of revenues will result if major discoveries are made and produced.

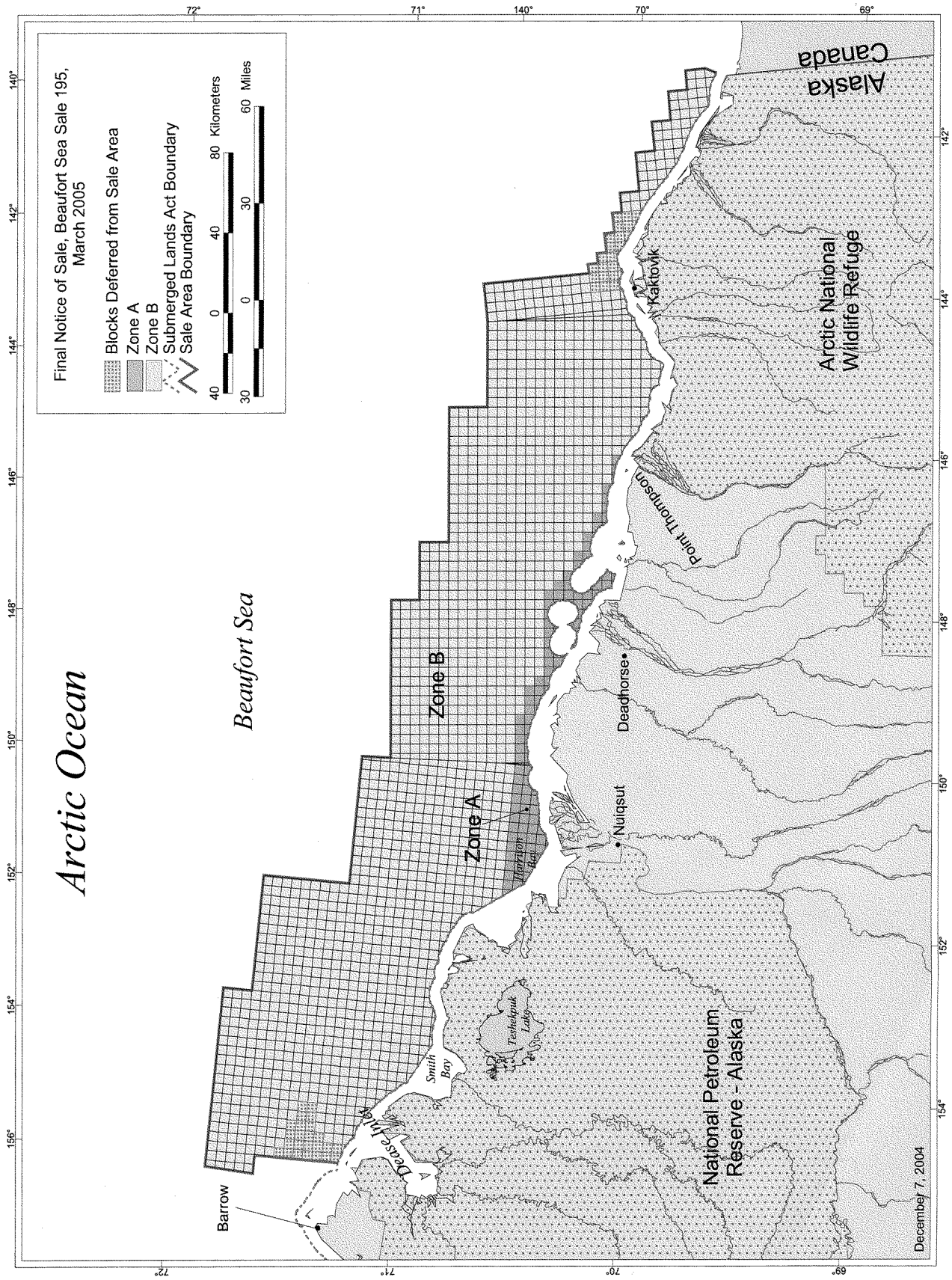
Specific royalty suspension provisions for Sale 195 are contained in the document ''Royalty Suspension Provisions, Sale 195'' included in the FNOS 195 package.

Dated: February 16, 2005.

R.M. ''Johnnie'' Burton,

Director, Minerals Management Service.

BILLING CODE 4310–MR–U


Final Notice of Sale, Beaufort Sea Sale 195, March 2005
Blocks Deferred from Sale Area
Zone A
Zone B
Submerged Lands Act Boundary
Sale Area Boundary
40 0 40 80 Kilometers
30 0 30 60 Miles
Arctic Ocean
Beaufort Sea
Zone B
Zone A
Barrow
Dease Inlet
Smith Bay
Teshekpuk Lake
Harrison Bay
Nuiqsut
Deadhorse
Point Thompson
Kaktovik
Alaska
Canada
Arctic National Wildlife Refuge
National Petroleum Reserve - Alaska
December 7, 2004
72°
71°
140°
70°
69°
140°
142°
144°
146°
148°
150°
152°
154°
156°

[FR Doc. 05–3523 Filed 2–23–05; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf Official Protraction Diagrams

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Availability of revised North American Datum of 1983 (NAD 83) Outer Continental Shelf Official Protraction Diagrams.

SUMMARY: Notice is hereby given that effective with this publication, the following NAD 83—based Outer Continental Shelf Official Protraction Diagrams last revised on the date indicated are available for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana. Copies are also available for download at *http://www.mms.gov/ld/atlantic.htm.* The Minerals Management Service in accordance with its authority and responsibility under the Outer Continental Shelf Lands Act is updating and depicting the ambulatory Submerged Lands Act boundary and Limit of ''8 (g) Zone'' for the entire Continental United States and Alaska, except where fixed under a Supplemental Decree of the United States Supreme Court. This effort is being conducted under a joint project with the NOAA National Ocean Service and the Department of State's Interdepartmental Baseline Committee to develop a new National Baseline for the United States. These diagrams constitute the basic record of the marine cadastre in the geographic area they represent.

Description	Date
NK19–04 (Boston)	19–JAN–2005
NK19–05 (Cashes Ledge)	19–JAN–2005
NK19–07 (Providence)	19–JAN–2005
NK19–08 (Chatham)	19–JAN–2005

FOR FURTHER INFORMATION CONTACT: Copies of Official Protraction Diagrams are $2.00 each. These may be purchased from the Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2519 or (800) 200–GULF.

SUPPLEMENTARY INFORMATION: Official Protraction Diagrams may be obtained in two digital formats: .gra files for use in ARC/INFO and .pdf files for viewing and printing in Adobe® Acrobat.

Dated: February 16, 2005.

Robert P. Labelle,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 05–3524 Filed 2–23–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a Draft Environmental Impact Statement for the General Management Plan (GMP) for Fort Pulaski National Monument, Savannah, GA

AGENCY: National Park Service, DOI.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, requirements of the National Parks and Recreation Act of 1978, Public Law 95–625, and National Park Service Policy in Director's Order Number 2 (Park Planning) and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making) the National Park Service (NPS) will prepare an Environmental Impact Statement for the General Management Plan for Fort Pulaski National Monument located near Savannah, Georgia. The authority for publishing this notice is contained in 40 CFR 1506.6. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the National Monument.

The NPS is currently accepting comments from interested parties on issues, concerns, and suggestions pertinent to the management of Fort Pulaski. Suggestions and ideas for managing the cultural and natural resources and visitor experiences at Fort Pulaski are encouraged. Comments may be submitted in writing to the address listed at the end of this notice or through the GMP Web site, which is linked to the park's Web site at *http://www.nps.gov/fopu.*

The NPS will publish periodic newsletters on the GMP Web site to present scoping issues and preliminary management concepts to the public as they are developed. Public meetings to present draft management concepts will be conducted in the local area. Specific locations, dates, and times will be announced in local media and on the GMP Web site.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Fort Pulaski National Monument, U.S. Highway 80 East, P.O. Box 30757, Savannah, Georgia 31410, Telephone: 912–786–5787. You may also comment via the Internet to *http://www.planning.den.nps.gov/parkweb/comments.cfm?RecordID=165.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 404–562–3124, ext. 685. Finally, you may hand-deliver comments to Fort Pulaski National Monument, Cockspur Island, U.S. Highway 80 East, Savannah, Georgia 31410. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Locations, dates, and times of public meetings will be published in local newspapers and may also be obtained by contacting the NPS Southeast Regional Office, Division of Planning and Compliance. This information will also be published on the General Management Plan Web site for Fort Pulaski.

ADDRESSES: Scoping suggestions should be submitted to the following address to ensure adequate consideration by the Service: Superintendent, Fort Pulaski National Monument, U.S. Highway 80 East, P.O. Box 30757, Savannah, Georgia 31410, Telephone: 912–786–5787.

FOR FURTHER INFORMATION CONTACT: Superintendent, Fort Pulaski National Monument, U.S. Highway 80 East, P.O. Box 30757, Savannah, Georgia 31410, Telephone: 912–786–5787.

SUPPLEMENTARY INFORMATION: The Draft and Final General Management Plan and Environmental Impact Statement

will be made available to all known interested parties and appropriate agencies. Full public participation by Federal, State, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this Environmental Impact Statement is Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 05–3501 Filed 2–23–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability for a Final Environmental Impact Statement for the General Management Plan, Big South Fork National River and Recreation Area, Kentucky and Tennessee

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and National Park Service policy in Director's Order Number 2 (Park Planning) and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making) the National Park Service announces the availability of a Final Environmental Impact Statement and General Management Plan (FEIS/GMP) for Big South Fork National River and Recreation Area (NRRA), Kentucky and Tennessee.

The FEIS/GMP analyzes three action alternatives and one no-action alternative for guiding management of the park over the next 15 to 20 years. The three action alternatives incorporate various management prescriptions to ensure resource protection and quality visitor experiences. The agency preferred alternative proposes a system of seven management zones and a formal, designated roads and trails system. The FEIS analyzes the potential environmental impacts of the alternatives.

ADDRESSES: Limited numbers of copies of the FEIS/GMP are available from the Superintendent, Big South Fork NRRA, 4564 Leatherwood Ford Road, Oneida, TN 37841, or by calling (423) 569–9778. An electronic copy of the FEIS/GMP is available on the Internet at *http://www.nps.gov/biso.*

SUPPLEMENTARY INFORMATION: The National Park Service held a series of community and focus group meetings to gather stakeholder input during the preparation of the Supplemental Draft EIS/GMP. The meetings assisted the National Park Service in developing alternatives for managing the natural, cultural, and recreational resources of Big South Fork NRRA.

The four alternatives were incorporated into the Supplemental Draft EIS/GMP and presented at community forums in March 2003. Responses from the meetings, plus 170 written comments from the public and other agencies helped refine the alternatives.

The FEIS/GMP differs from the Supplemental Draft by providing some additional recreational opportunities and proposing trail standards that are more protective of the backcountry environment. For example, the final plan allows bicycles on 13 miles of low-use, existing trails; provides a new access point for equestrians; proposes an additional horse trail on an existing alignment; and strengthens trail standards regarding slope and water management. The foregoing changes will not result in environmental impacts different from those analyzed in the Supplemental Draft EIS/GMP.

FOR FURTHER INFORMATION CONTACT: Christopher J. Stubbs, Community Planner, Big South Fork NRRA, 4564 Leatherwood Ford Road, Oneida, TN 37841. Telephone: (423) 569–9778.

The responsible official for this Environmental Impact Statement is Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: January 7, 2005.

Francis Peltier,

Associate Regional Director, Southeast Region.

[FR Doc. 05–3504 Filed 2–23–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Plan of Operations, Environmental Assessment, Lake Meredith National Recreation Area, & Alibates Flint Quarries National Monument, TX

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of Plan of Operations and Environmental Assessment for a 30-day public review at Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument.

SUMMARY: Pursuant to Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, the National Park Service (NPS) announces the availability of a Plan of Operations, prepared by Luxor Oil and Gas, Inc., to re-enter an existing natural gas well and directionally drill a lateral sidetrack leg, at Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument. The NPS has prepared an Environmental Assessment on this proposal.

DATES: The above documents are available for public review and comment for 30 days from the date of publication in the **Federal Register**.

ADDRESSES: The documents are available for review in the Office of the Superintendent, Karren Brown, Lake Meredith National Recreation Area, 419 E. Broadway, Fritch, Texas. Copies of the Plan of Operations are available, for a duplication fee; and copies of the Environmental Assessment are available upon request, and at no cost, from the Superintendent, Karren Brown, Lake Meredith National Recreation Area, P.O. Box 1460, Fritch, Texas 79306–1460.

FOR FURTHER INFORMATION CONTACT: Paul Eubank, Acting Chief, Resource Management, Lake Meredith National Recreation Area, telephone: 806–857–0309.

SUPPLEMENTARY INFORMATION: If you wish to submit comments on these documents within the 30 days, mail comments to the post office address provided above, or you may hand-deliver comments to the park at the street address provided above. Our practice is to make comments, including names and home addresses of responders, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the decision-making record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the decision-making record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: October 27, 2004.

John T. Crowley,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 05–3503 Filed 2–23–05; 8:45 am]

BILLING CODE 4312–KE–P

DEPARTMENT OF THE INTERIOR

National Park Service

ACTION: Notice of Meeting of Concessions Management Advisory Board

AGENCY: National Park Service, DOI.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10), notice is hereby given that the Concessions Management Advisory Board (the Board) will hold its 13th meeting on March 9, 2005, in Washington, DC. The meeting will be held at the Madison Hotel located at 1177 15th Street, NW., Washington, DC. The meeting will convene at 8:30 a.m. and will conclude at 4:30 p.m..

SUPPLEMENTARY INFORMATION: The Board was established by Title IV, Section 409 of the National Park Omnibus Management Act of 1998, November 13, 1998 (Pub. L. 105–391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System. The Board will meet at 8:30 a.m. for the regular business meeting for continued discussion on the following subjects:

- The ''core menu'' concept for the Pricing Program
- Concession Program Training for Superintendents
- Department of the Interior Central Reservation System
- Concession Oversight System
- Regional Concession Chiefs Update

The meeting will be open to the public, however, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-serve basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will require an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or material in an alternate format, notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it. Anyone may file with the Broad a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the board to complete its agenda within the allotted time. Such requests should be made to the Director, National Park Service, Attention: Manager, Concession Program, at least 7 days prior to the meeting.

Further information concerning the meeting may be obtained from National Park Service, Concession Program, 1849 C Street, NW., Washington, DC 20240, Telephone: 202/513–7144.

Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting, at the Concession Program Office located at 1201 Eye Street, NW., 15th Floor, Washington, DC.

Dated: February 14, 2005.

Michael Snyder,

Director, National Park Service.

[FR Doc. 05–3502 Filed 2–23–05; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Land Exchange at Petersburg National Battlefield

AGENCY: National Park Service, Interior.

ACTION: Notice.

I. The following described federally owned land administered by the National Park Service has been determined to be suitable for exchange. The authority for this exchange is the Act of July 15, 1968 (16 U.S.C. 460l–22b) and Executive Order No. 7329, dated March 30, 1936.

Petersburg National Battlefield (Battlefield) Tract 04–107 is a 0.14-acre parcel of federally owned land needed by the Commonwealth of Virginia Department of Transportation (VDOT) to improve Route 613 by widening and paving the existing roadway. The tract is located within the boundary of the Battlefield in the Commonwealth of Virginia and will remain so after consummation of the exchange. There are no threatened or endangered species or other species of management concern present on the tract. No cultural or archeological resources are known to exist on the tract.

The exchange will protect park resources and facilitate the administration of the park. The United States of America will retain mineral rights. A reverter clause will be included in the deed to VDOT whereby the property will revert at the option of the United States of America in the event that the Commonwealth of Virginia was to abandon said road.

Title will be conveyed subject to reservations and exceptions as contained in the original deeds as well as existing easements for public roads and highways, public utilities and pipelines. VDOT is responsible for the provision and maintenance of the respective roads.

II. In exchange for the land identified in Paragraph I, the United States will acquire Tract 01–150, a 0.85-acre parcel situated outside the boundary of the Battlefield near The Crater, an historic site within the boundary of the Battlefield. Federal acquisition of this tract will allow for protection of the visual integrity of the landscape from The Crater and the Crater Battlefield, a significant and threatened park resource. Executive Order No. 7329, dated March 30, 1936, authorizes the Secretary of the Interior to acquire this tract because of its proximity to The Crater property. The value of the properties to be exchanged shall be determined by a current fair market value appraisal and if they are not appropriately equal, the values shall be equalized by payment of cash as circumstances require.

For a period of 45 calendar days from the date this notice is first published, interested parties may submit comments to the Superintendent listed below. Adverse comments will be evaluated, and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

SUMMARY: Notice is hereby given that the National Park Service proposes to convey to VDOT 0.14-acre of federally owned land at Petersburg National Battlefield in exchange for 0.85-acre of land owned by the Commonwealth of Virginia as authorized by the Act of July 15, 1968 (16 U.S.C. 460l–22b), and Executive Order No. 7329, dated March 30, 1936.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this exchange, including precise legal descriptions, Land Protection Plan, environmental assessments, cultural reports and Finding of No Significant Impact are available at the following address: Superintendent, Petersburg National Battlefield Park, 1539 Hickory Hill Road, Petersburg, VA 23803.

SUPPLEMENTARY INFORMATION: The Act of July 15, 1968 (16 U.S.C. 460l–22b) authorizes the Secretary of the Interior to accept title to any non-Federal property within an area under his/her administration, and in exchange may convey to the grantor of such property any Federally owned property under the jurisdiction which he/she determines is suitable for exchange or other disposal and which is located in the same State as the property to be acquired. Executive Order No. 7329, dated March 30, 1936, authorizes the Secretary of the Interior to acquire lands located within a distance of one-half mile from the boundary of a parcel of land known as The Crater property at Petersburg National Battlefield in the Commonwealth of Virginia.

Dated: November 23, 2004.

Nadine Leisz,

Regional Director, Northeast Region.

[FR Doc. 05–3500 Filed 2–23–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Consent Decree Under the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on February 9, 2005, a proposed Consent Decree in *United States* v. *Jewel Food Stores, Inc.*, Civil Action No. 05C–0809, was lodged with the United States District Court for the Northern District of Illinois.

In a Complaint filed simultaneously with the lodging of the proposed Consent Decree, the United States sought injunctive relief and civil penalties for violations of the commercial refrigerant repair, recordkeeping, and reporting regulations at 40 CFR 82.152–82.166 (Recycling and Emission Reduction) promulgated by the Environmental Protection Agency (''EPA'') under Subchapter VI of the Act (Stratospheric Ozone Protection), 42 U.S.C. 7671–7671q, at some or all of the 194 Jewel stores listed in Appendices A, B, and C to the Consent Decree, which are in or near Chicago, Illinois. In the proposed Consent Decree, Jewel agrees to (1) install hydroflurocarbon (HFC or non-ozone depleting refrigerants) refrigeration systems in any new stores it opens in the Chicago Metropolitan Area after the effective date of the settlement; (2) implement a recordkeeping refrigerant management system directed at compliance with the regulations governing ozone-depleting refrigerants; (3) convert or retire any unit that uses a regulated refrigerant to a non-ozone depleting refrigerant, if that unit has more than 3 leaks in one year that leak at above an annualized rate of 35%; (4) convert either 75% of all scheduled ''major remodels'' (those remodels exceeding $2.5 million in costs), or 25 of its stores, whichever is greater, to use a non-ozone depleting refrigerant by the end of the year 2007; (5) retrofit all of its current chloroflurocarbons (CFCs) and HCFC refrigeration systems to non-ozone depleting refrigerants at twelve additional stores specified in the Consent Decree within three years from the date of entry of the proposed Decree; and (6) pay a civil penalty of $100,000 for its past violations.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to: *United States* v. *Jewel Food Stores, Inc.*, D.J. Ref. 90–5–2–1–08098.

The Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois 60604, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period the proposed Consent Decree may also be examined on the following Department of Justice, Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources, Division.

[FR Doc. 05–3597 Filed 2–23–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

February 17, 2005.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by March 15, 2005. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor's Departmental Clearance Officer/Team Leader, Ira L. Mills at (202) 693–4122 (this is not a toll-free number); via e-mail at: *mills.ira@dol.gov*; (202) 693–7755 (TTY); or at the Web site: *http://www.doleta.gov/usworkforce*.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Room 10235, Washington, DC 20503.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title: State Unified Plan Planning Guidance for State Unified Plans submitted under Section 501 of the Workforce Investment Act of 1998.

OMB Number: 1205–0407.

Frequency: Every five years.

Type of Response: Reporting.

Affected Public: State, local, or tribal government.

Total Respondents: 59.

Number of Annual Responses: 59.

Estimated Time Per Response: 25 hours.

Total Burden: 1,475.

Total Annualized capital/startup cost): $ 0.

Total Annual Costs (operating/maintaining systems or purchasing services): $ 0.

Description: All current Workforce Investment Act (WIA) State Plans will expire June 30, 2005. It is unlikely that Congress will pass a reauthorized WIA before that time. Therefore, the WIA State Unified Planning Guidance is designed to advise States about how to continue their Workforce Investment Act programs under Public Law 105–220.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. 05–3490 Filed 2–23–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 14, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review:Extension of currently approved collection.

Title: Qualification/Certification Program and Man Hoist Operators Physical Fitness.

OMB Number: 1219–0127.

Form Number: MSHA 5000–41.

Type of Response: Recordkeeping and Reporting.

Frequency: On occasion; Quarterly; and Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 1,989.

Information collection requirement	Annual responses	Average response time (hours)	Annual burden hours
Certified/Qualified Persons:			
Update List of certified/qualified persons*	7,956	0.08	660
Develop Training Plans*	1,989	8.00	15,912
Copy and mail Training Plans	1,989	0.50	995
Subtotal	11,934		17,567
MSHA 5000–41:			
Paper version*	448	0.28	127
Electronic version*	175	0.17	29
Subtotal	623		156
Total	10,568		17,723

* Used to calculate Annual Responses. Coping and mailing Training Plans is considered to be a sub-task under developing Training Plans.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $7,824.

Description: Under 30 CFR 75.159 and 77.106, the information is used by the mine operator and MSHA enforcement personnel to determine whether certified and qualified persons, who are properly trained, are conducting tests or examinations, and operating hoisting equipment.

Form 5000–41 allows mining operators to report to MSHA the names of persons who have satisfactorily completed required mine foreman and hoisting training. MSHA uses the information to issue certification/qualification cards to those persons who are certified/qualified.

The mine operator also uses the Form to submit an application to certify miners to perform specific required examinations and test, or to qualify miners as hoisting engineers or hoist men, in States without certification programs. The Qualification and Certification Unit then mails the applicant a certificate. This certification satisfies the law where State certification programs are not available.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–3492 Filed 2–23–05; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 14, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Veterans' Employment and Training Service.

Type of Review: Extension of a currently approved collection.

Title: Federal Contractor Veterans' Employment Report (VETS–100)

OMB Number: 1293–0005.

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 187,755.

Number of Annual Responses: 187,755.

Total Burden Hours: 140,816.

Estimated Time Per Response: 45 minutes.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Federal Contractor Veterans' Employment Report VETS–100, administered by U.S. Department of Labor, is used to facilitate Federal contractors and subcontractors reporting of their employment and new hiring activities. Title 38 U.S.C., Section 4212 requires the collection of information from entities holding contracts of $25,000 or more with Federal departments or agencies to report annually on (a) the number of current employees in each job category and at each hiring location who are special disabled veterans, the number who are veterans of the Vietnam era and the number who are other veterans who served on active duty during a war or a campaign or expedition for which a campaign badge has been authorized; (b) the total number of employees hired during the report period and of those, the number of special disabled, the number who are veterans of the Vietnam era, and the number who are other veterans; and the maximum and minimum number of employees employed by the contractor at each hiring location during the period.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–3493 Filed 2–23–05; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: FECA Medical Report Forms, Claim for Compensation (CA–7, CA–16, CA–17, CA–20, CA–1090, CA–1303, CA–1305, CA–1331, CA–1087, CA–1332, QCM Letters, OWCP–5a, OWCP–5b, and OWCP–5c). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 25, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION: FECA Medical Report Forms (CA–16, CA–17, CA–20, CA–1090, CA–1303, CA–1305, CAT–1331, CA–1087, CA–1332, QCM Letters, OWCP–5a, OWCP–5b, and OWCP–5c) and Claim for Compensation (CA–7).

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq*. The statute provides for the payment of benefits for wage loss and/or for permanent impairment to a scheduled member, arising out of a work related injury or disease. The Act outlines the elements of pay which are to be included in an individual's pay rate, and sets forth various other criteria for determining eligibility to and the amount of benefits, including augmentation of basic compensation for individuals with qualifying dependents; a requirement to report any earnings during a period that compensation is claimed; a prohibition against concurrent receipt of FECA benefits and benefits from OPM or certain VA benefits; a mandate that money collected from a liable third party found responsible for the injury for which compensation has been paid be applied to benefits paid or payable. Before compensation may be paid, the case file must contain medical evidence showing that the claimant's disability is casually related to the claimants' federal employment. As a particular claim ages, there is a continuing need for updated information to support continuing benefits. The FECA Medical Report

Forms collect medical information from physicians which are necessary to determine entitlement to benefits under the Act. The CA–7, Claim for Compensation, requests information from the injured worker regarding pay rate, dependents, earnings, dual benefits, and third-party information. This information collection is currently approved for use through August 31, 2005.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order carry out its statutory responsibility to compensate injured employees under the provisions of the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Claim for Compensation, FECA Medical Reports.

OMB Number: 1215–0103.

Agency Numbers: FECA Medical Report Forms (CA–16, CA–17, CA–20, CA–1090, CA–1303, CA–1305, CA–1331, CA–1087, CA–1332, QCM Letters, OWCP–5a, OWCP–5b, and OWCP–5c) and Claim for Compensation (CA–7).

Affected Public: Individuals or households; Business or other for-profit; Federal Government.

Total Respondents: 302,485.

Total Annual Responses: 302,485.

Estimated Total Burden Hours: 30,748.

Forms	Number of respondents	Average minutes per response	Burden hours
CA–7	400	13	87
CA–16	130,000	5	10,833
CA–17	60,000	5	5,000
CA–20	80,000	5	6,667
CA–1090	325	10	54
CA–1303	3,000	20	1,000
CA–1305	10	20	3
CA–1331	250	5	21
CA–1332	500	30	250
QCM Letters	1,000	5	83
OWCP–5a	7,000	15	1,750
OWCP–5b	5,000	15	1,250
OWCP–5c	15,000	15	3,750
Total	302,485	163	30,748

Frequency: As needed.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $120,994.00.

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: February 17, 2005.

Sue Blumenthal,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 05–3491 Filed 2–23–05; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Rehabilitation Action Report (OWCP–44). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 25, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) and the Longshore and Harbor Workers' Compensation Act (LHWCA). These Acts provide vocational rehabilitation services to eligible workers with disabilities. Section 8104(a) of the FECA and Section 939(c) of the LHWCA provides that eligible injured workers are to be furnished vocational rehabilitation services, and Section 8111(b) of the FECA and Section 908(g) of the LHWCA provide that persons undergoing such vocational rehabilitation receive maintenance allowances as additional compensation. Form OWCP–44 is used to collect information necessary to decide if maintenance allowances should continue to be paid. This information collection is currently approved for use through August 31, 2005.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to gather information to enable OWCP rehabilitation specialist to make informed decisions on formal rehabilitation services for the disabled worker.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Rehabilitation Action Plan.

OMB Number: 1215–0182.

Agency Numbers: OWCP–44.

Affected Public: Business or other for-profit; State, local or tribal government.

Total Respondents: 7,000.

Total Annual responses: 7,000.

Estimated Total Burden Hours: 1,169.

Estimated Time Per Response: 10 minutes.

Frequency: On Occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 17, 2005.

Sue Blumenthal,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 05–3494 Filed 2–23–05; 8:45 am]

BILLING CODE 4510–CF–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2005–1]

Registration of Claims to Copyright: New Format for Certain Copyright Registration Certificates

AGENCY: Copyright Office, Library of Congress.

ACTION: Policy decision, correction.

SUMMARY: The Copyright Office announces a modification to a policy decision announced January 21, 2005, concerning changing the format of certain copyright registration certificates. The modification clarifies how the Office will select applications for registration to be included in a pilot program in which certificates of registration will be generated from registration data scanned from the applications and stored in an electronic information system.

FOR FURTHER INFORMATION CONTACT: Jeff Cole, Acting Reengineering Program Manager, or Kent Dunlap, Principal Legal Advisor to the General Counsel. Telephone: (202) 707–8350. Telefax: (202) 707–8366.

Correction

The Copyright Office recently announced that it is changing the format of certain copyright registration certificates issued for motion pictures and other audiovisual works registered in class PA, as part of a pilot project. Unlike traditional certificates of registration, the certificates issued as part of the pilot project will not be facsimiles of the applications for registration, but will be electronically generated from data entered from the applications. See 70 FR 3231 (January 21, 2005).

In that announcement, the Office included a discussion of the ''Transition Period'' as follows:

4. Transition Period

Certificates in the new format will be produced only for applications included in the pilot project and initially received in the Copyright Office on or after the start date, February 14, 2005. For applications for motion pictures and other class PA audiovisual works already in process in the Copyright Office on that date, including those for which correspondence is pending, certificates will continue to be issued in the current format, even after the pilot begins.

However, in order to implement the pilot project, the Office has modified its policy with respect to which applications will be included in the project. The Office's policy is as follows:

4. Transition Period

Certificates in the new format will be produced only for applications included in the pilot project, and processing in the pilot will be gradually phased–in to cover more and more applications for motion pictures and other class PA audiovisual works. While the start date for the pilot is February 14, 2005, some applications will be included in the pilot which were received before that date. Also, some applications received on or after the start date will be processed under the old procedures, and will be issued certificates which are a copy of the application.

Dated: February 17, 2005.

David O. Carson,

General Counsel.

[FR Doc. 05–3578 Filed 2–23–05; 8:45 am]

BILLING CODE 1410–30–S

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 69 FR 61409, and one comment was received. NSF is

forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission may be obtained by calling (703) 292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION: On October 18, 2004, we published in the **Federal Register** (69 FR 61409) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending September 14, 2004. We received one comment regarding this notice.

Comment: One commenter wrote that taxpayers should not fund this program and that participants should pay for their own involvement.

Response: NSF believes that because the comment does not pertain to the collection of information on the required forms for which NSF is seeking OMB approval, NSF is preceding with the clearance request.

Title of Collection: Application for NATO Advanced Study Institutes Travel Award and NATO Advanced Study Institutes Travel Award Report Form.

OMB Approval Number: 3145–0001.

Abstract: The North Atlantic Treaty Organization (NATO), initiated its Advanced Study Institutes Program in 1958 modeled after a small number of very successful summer science ''courses'' that were held in Europe and that sought to rebuild Europe's science strength following World War II. The goal was to bring together both students and researchers from the leading centers of research in highly targeted fields of science and engineering to promote the ''American'' approach to advanced learning, spirited give-and-take between students and teachers, that was clearly driving the rapid growth of U.S. research strength. Today the goal remains the same; but due to the expansion of NATO, each year an increasing number of ASIs are held in NATO Partner Countries along with those held in NATO Member Countries. In the spirit of cooperation with this important activity, the Foundation inaugurated in 1959 a small program of travel grants for advanced graduate students to assist with the major cost of such participation, that of transatlantic travel. It remains today a significant means for young scientists and engineers to develop contact with their peers throughout the world in their respective fields of specialization.

The Advanced Study Institutes (ASI) travel awards are offered to advanced graduate students, to attend one of the NATO's ASIs held in the NATO-member and partner countries of Europe. The NATO ASI program is targeted to those individuals nearing the completion of their doctoral studies in science, technology, engineering and mathematics (STEM) who can take advantage of opportunities to become familiar with progress in their respective fields of specialization in other countries.

The Division of Graduate Education (DGE) in the Education and Human Resources (EHR) Directorate administers the NATO ASI Travel Awards Program. The following describes the procedures for the administration of the Foundation's NATO Advanced Study Institute (ASI) Travel Awards, which provide travel support for a number of U.S. graduate students to attend the ASIs scheduled for Europe.

- Advanced Study Institute Determination: Once NATO has notified DGE that the schedule of institutes is final, and DGE has received the descriptions of each institute, DGE determines which institutes NSF will support. The ASI travel award program supports those institutes that offer instruction in the STEM fields traditionally supported by NSF as published in *Guide to Programs.* The program will not support institutes that deal with clinical topics, biomedical topics, or topics that have disease-related goals. Examples of areas of research that will not be considered are epidemiology; toxicology; the development or testing of drugs or procedures for their use; diagnosis or treatment of physical or mental disease, abnormality, or malfunction in human beings or animals; and animal models of such conditions. However, the program does support institutes that involve research in bioengineering, with diagnosis or treatment-related goals that apply engineering principles to problems in biology and medicine while advancing engineering knowledge. The program also supports bioengineering topics that aid persons with disabilities. Program officers from other Divisions in NSF will be contacted should scientific expertise outside of DGE be required in the determination process.
- Solicitation for Nominations: Following the final determination as to which Advanced Study Institutes NSF will support, DGE contacts each institute director to ask for a list of up to 5 nominations to be considered for NSF travel support.
- DGE/EHR Contact With the Individuals Nominated: Each individual who is nominated by a director will be sent the rules of eligibility, information about the amount of funding available, and the forms (NSF Form 1379, giving our Division of Financial Management (DFM) electronic banking information; NSF Form 1310 (already cleared), and NSF Form 192 (Application for International Travel Grant)) necessary for our application process.
- The Funding Process:

Once an applicant has been selected to receive NSF travel award support, his or her application is sent to DFM for funding. DFM electronically transfers the amount of $1000 into the bank or other financial institution account identified by the awardee.

Our plan is to have the $1000 directly deposited into the awardee's account prior to the purchase of their airline ticket. An electronic message to the awardee states that NSF is providing support in the amount of $1000 for transportation and miscellaneous expenses. The letter also states that the award is subject to the conditions in F.L. 27, *Attachment to International Travel Grant,* which states the U.S. flag-carrier policy.

As a follow-up, each ASI director may be asked to verify whether all NSF awardees attended the institute. If an awardee is identified as not utilizing the funds as prescribed, we contact the awardee to retrieve the funds. However, if our efforts are not successful, we will forward the awardee's name to the Division of Grants and Agreements (DGA), which has procedures to deal with that situation.

We also ask the awardee to submit a final report on an NSF Form 250, which we provide as an attachment to the electronic award message.

• Selection of Awardees:

The criteria used to select NSF Advanced Study Institute travel awardees are as follows:

1. The applicant is an advanced graduate student.

2. We shall generally follow the order of the nominations, listed by the director of the institute, within priority level.

3. Those who have not attended an ASI in the past will have a higher priority than those who have.

4. Nominees from different institutions and research groups have higher priority than those from the same institution or research group. (Typically, no more than one person is invited from a school or from a research group.)

Use of the Information: For NSF Form 192, information will be used in order to verify eligibility and qualifications for the award. For NSF Form 250, information will be used to verify attendance at Advanced Study Institute and will be included in Division annual report.

Estimate of Burden: Form 192—1.5 hours; Form 250—2 hours.

Respondents: Individuals.

Estimated Number of Responses per Award: 150 responses, broken down as follows: For NSF Form 250, 75 respondents; for NSF Form 192, 75 respondents.

Estimated Total Annual Burden on Respondents: 262. 5 hours, broken down by 150 hours for NSF Form 250 (2 hours per 75 respondents); and 112.5 hours for NSF Form 192 (1.5 hours per 75 respondents).

Frequency of Responses: Annually.

Dated: February 17, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–3495 Filed 2–23–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Seeks Qualified Candidates for the Advisory Committee on Reactor Safeguards

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for résumés.

SUMMARY: The U.S. Nuclear Regulatory Commission is seeking qualified candidates for appointment to its Advisory Committee on Reactor Safeguards (ACRS).

ADDRESSES: Submit resumés to: Ms. Sherry Meador, Administrative Assistant, ACRS/ACNW, Mail Stop T2E–26, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or e-mail *SAM@NRC.gov.*

SUPPLEMENTARY INFORMATION: Congress established the ACRS to provide the NRC with independent expert advice on matters related to the safety of existing and proposed nuclear power plants and on the adequacy of proposed reactor safety standards. The Committee work currently emphasizes safety issues associated with the operation of 103 commercial nuclear units in the United States; the pursuit of a risk-informed and performance-based regulatory approach; license renewal applications; risk-informed revisions to 10 CFR Part 50; power uprates; transient and accident analysis codes; materials degradation issues; use of mixed oxide and high burnup fuels; and advanced reactor designs. The ACRS also has some involvement in security matters related to the integration of safety and security of commercial reactors. This work involves technical issues associated with consequence analysis and the assessment of effective mitigation strategies.

The ACRS membership includes individuals from national laboratories, academia, and industry who possess specific technical expertise along with a broad perspective in addressing safety concerns. Committee members are selected from a variety of engineering and scientific disciplines, such as nuclear power plant operations, nuclear engineering, mechanical engineering, electrical engineering, chemical engineering, metallurgical engineering, risk assessment, structural engineering, materials science, and instrumentation and process control systems. Committee members serve a 4-year term with the possibility of reappointment up to a maximum of two terms, for a potential total service of 12 years. At this time, candidates are specifically being sought who have 10 or more years of experience in the areas of thermal hydraulics, materials and metallurgy and/or plant operations. Candidates with pertinent graduate level experience will be given additional consideration. Individuals should have a demonstrated record of accomplishments in the area of nuclear reactor safety. It is the NRC's policy to select the best qualified applicant for the job, regardless of race, gender, age, religion, or any other non-merit factor.

Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear safety matters, and the ability to solve problems. Additionally, the Commission considers the need for specific expertise in relationship to current and future tasks. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with varying views and of diverse backgrounds so that the membership on the Committee will be fairly balanced in terms of the points of view represented and functions to be performed by the Committee.

Because conflict-of-interest regulations restrict the participation of members actively involved in the regulated aspects of the nuclear industry, the degree and nature of any such involvement will be weighed. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities issued by nuclear industry entities, or discontinuance of industry-funded research contracts or grants. A security background investigation for a Q clearance (or the transfer of an up-to-date Q clearance) will also be required.

Candidates must be citizens of the United States and be able to devote approximately 80–100 days per year to Committee business. A résumé describing the educational and professional background of the candidate, including any special accomplishments, professional references, current address, and telephone number should be provided. All qualified candidates will receive careful consideration. Applications will be accepted until June 6, 2005.

Dated: February 17, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 05–3488 Filed 2–23–05; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–2]

Virginia Electric and Power Company (Dominion); Notice of Issuance of Environmental Assessment and Finding of No Significant Impact for License Renewal of the Surry Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Mary Jane Ross-Lee, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–3781; fax number: (301) 415–8555; e-mail *mjr2@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering renewing Virginia Electric and Power Company's (Dominion's) (the applicant's) License No. SNM–2501 under the requirements of Title 10 of the Code of Federal Regulations, Part 72 (10 CFR Part 72) authorizing the continued operation of the Surry Independent Spent Fuel Storage Installation (ISFSI) located at the Surry Power Station in Surry County, Virginia. The Commission's Office of Nuclear Material Safety and Safeguards has completed its review of the environmental report submitted by the applicant on April 29, 2002, in support of its application for a renewed materials license. The staff's ''Environmental Assessment related to the renewal of the Surry Independent Spent Fuel Storage Installation'' has been issued in accordance with 10 CFR Part 51.

I. Summary of Environmental Assessment (EA)

Description of the Proposed Action: The proposed licensing action would authorize the applicant to continue operating a dry storage ISFSI at the Surry site. The purpose of the ISFSI is to allow for interim spent fuel storage and, indirectly, power generation capability, beyond the term of the current ISFSI license to meet future power generation needs. The current license will expire July 31, 2006. The renewed ISFSI license would permit 40 additional years of storage beyond the current license period. The current ISFSI employs five different cask systems licensed for the Surry ISFSI. These cask systems include the General Nuclear Systems, Inc., (GNSI) CASTOR V/21 and CASTOR X/33, the Westinghouse MC–10, the NAC INTACT 28 S/T, and the Transnuclear, Inc., TN–32. Currently, the facility is licensed to store spent fuel storage casks on three reinforced concrete pads that are 230 feet long, 32 feet wide, and 3 feet thick. Two of the three storage pads have been built. Each pad is designed to accommodate 28 casks.

Need for the Proposed Action: The Surry ISFSI is needed to provide continued spent fuel storage capacity so that the Surry Power Station can continue to generate electricity. This renewal is needed to provide an option that allows for interim spent fuel storage and, indirectly, power generation capability, beyond the term of the current ISFSI license to meet future system generating needs. The renewed ISFSI license would permit 20 additional years of storage beyond the current license period. An exemption would allow 20 years of storage beyond the renewal period.

Environmental Impacts of the Proposed Action: The NRC staff has concluded that the license renewal of the Surry ISFSI will not result in a significant impact to the environment. The Surry ISFSI will require one additional storage pad during the license renewal term. The pad would be built on previously disturbed ground adjacent to the existing pads. Construction impacts of the third storage pad of the ISFSI will be minor, and limited to the approximately 800 feet by 800 feet ISFSI site. No areas designated by the U.S. Fish and Wildlife Service as ''critical habitat'' for endangered species exist at the site. The only terrestrial community at the site consist of remnants of mixed pine-hardwood forest that were used for timber production prior to the site's acquisition by Dominion. Thus, the staff does not expect the ISFSI to impact any threatened or endangered species. The Environmental Assessment for the ISFSI construction acknowledged that although the station was located in a historic region, no historical resources were identified within the boundaries of the site. During the Surry Power Station license renewal process, Dominion commissioned a cultural resource survey of the property. The survey identified one previously recorded archaeological site on the west side of the property and classified the remainder of the property into one of three categories, based on the potential for archaeological resources. The ISFSI, because it rests on previously disturbed land, was classified as having no potential for cultural resources.

There will be no significant radiological or non-radiological environmental impacts from routine operation of the ISFSI. The staff evaluated radiological impacts from operations to ensure that the radiation dose to both workers and the public is as low as reasonably achievable (ALARA). The Surry Power Station ALARA program, including ISFSI operations, complies with 10 CFR Part 20, Radiation Protection Programs, and is consistent with Regulatory Guide 8.8, ''Information Relevant to Ensuring That Occupational Radiation Exposures at Nuclear Power Stations Will Be As Low As Reasonably Achievable.''

There are several parks and preserves in Surry County, primarily along the south bank of the James River. Immediately adjacent to the Surry Power Station is the Hog Island tract of Hog Island Wildlife Management Area (HIWMA) (zoned A–R), at the north end of the peninsula on which the Surry Power Station is located. In addition, south of the Surry Power Station are the Carlisle and Stewart tracts of HIWMA. West of the Surry Power Station, bordering the James River, is Chippokes Plantation State Park, and further west are Swanns Point and Pipsico Reservations.

The ISFSI licensing basis for the annual dose to the nearest permanent resident, located 1.53 miles from the ISFSI, was based on 84 GNSI CASTOR V/21 casks. The annual dose calculated for that case was 6.0×10^{-5} mrem, which is well below the 10 CFR 72.104 and 10 CFR 20.1101 limits. The revised calculations based on 84 TN–32 casks results in a dose of 5.6×10^{-5} mrem per year, which is less than the original licensing basis. The staff reviewed the calculations and assumptions provided by Dominion. Based on these results, normal ISFSI operations will not have a significant offsite radiological impact and will remain well within the 10 CFR 20.1101 and 72.104 limits. The staff also evaluated radiological consequences of a release of the entire gaseous inventory of a cask and found that Dominion's calculated dose to an individual at the nearest site boundary is 84 mrem, which is well within the 5 rem criteria of 10 CFR 72.106.

The annual collective dose from 84 TN–32 casks to 48 residents within a two-mile radius of the ISFSI is calculated to be 2.7×10^{-6} person-rem, which is several orders of magnitude less than the collective dose from natural background radiation.

Radiological decommissioning of the ISFSI would be complete when the last cask is removed from the site. Small occupational exposures to workers

could occur during decontamination activities, but these exposures would be much less than those associated with cask loading and transfer operations. Due to the design of the sealed surface storage casks, no residual contamination is expected to be left behind on the concrete base pad. The base pad, fence, and peripheral utility structures are defacto decommissioned when the last cask is removed.

Alternatives to the Proposed Action: The applicant's Environmental Report and the staff's EA discuss several alternatives to the proposed ISFSI license renewal. These alternatives include shipment of spent fuel off-site, and other methods to increase on-site spent fuel storage capacity, as well as the no action alternative. In the first category, the alternatives of shipping spent fuel from Surry to a permanent Federal Repository, to a reprocessing facility, or to a privately owned spent fuel storage facility were determined to be non-viable alternatives, as no such facilities are currently available in the United States, and shipping the spent fuel to other power stations is impractical because the receiving utility would have to be licensed to store the Surry spent fuel, and it is unlikely that another utility would be willing to accept it, in light of their own limitations on spent fuel storage capacity. Another off-site alternative is to construct an ISFSI at a site away from the Surry Power Station. However, it was concluded that this alternative does not offer net environmental benefits

Other on-site storage alternatives considered by the applicant included increasing the capacity of the existing spent fuel pools by re-racking or spent fuel rod consolidation, or construction of a new spent fuel storage pool. Dominion has already increased the original capacity of the existing pool and cannot increase it further. Although the applicant could construct an additional spent fuel pool, the high cost associated with constructing and maintaining such a facility and all of the necessary support equipment, coupled with the significant occupational exposures resulting from the extensive fuel handling operations, make this alternative impractical. Modifying operations of the plants was also considered such as extending fuel burnup or operating at reduced power. However, such operational changes may alter the amount of fuel to be stored, but they do not eliminate the need for storage. Also, consideration of researching other technologies for interim disposal was determined non-viable because of additional doses associated with repackaging.

The no action alternative could result in the extended or permanent shutdown of the Surry Power Station. The fuel currently stored would have to be removed. The electrical generation capacity lost would likely negatively impact the local economy and infrastructure of the area. For these reasons, the ''no action'' alternative is not considered a practical alternative.

As discussed in the EA, the Commission has concluded that there are no significant environmental impacts associated with renewing the license of the Surry ISFSI, and other alternatives were not pursued because of significantly higher costs, additional occupational exposures, and the unavailability of offsite storage options.

Agencies and Persons Contacted: Officials from the Virginia Department of Emergency Services, the Virginia Department of Historic Resources, the U.S. Fish and Wildlife Service, and the Virginia Department of Environmental Quality, were contacted in preparing the staff's environmental assessment. The conclusions by all agencies consulted were consistent with the staff's conclusions.

II. Finding of No Significant Impact

The staff has reviewed the environmental impacts of renewing the Surry ISFSI license relative to the requirements set forth in 10 CFR Part 51, and has prepared an EA. Based on the EA, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that issuance of renewal of the license for the interim storage of spent nuclear fuel at the Surry ISFSI will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31 and 51.32, a finding of no significant impact is appropriate and an environmental impact statement need not be prepared for the renewal of the materials license for the Surry ISFSI.

Supporting documentation is available for inspection at NRC's Public Electronic Reading Room at: *http://www.nrc.gov/reading-rm/ADAMS.html.* A copy of the license application, dated April 29, 2002 as supplemented October 6, 2003, and the staff's EA, dated February 2005, can be found at this site using the ADAMS accession numbers ML021290068, ML032900118, and ML040560156. Any questions should be referred to Mary Jane Ross-Lee, Spent Fuel Project Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mailstop O13D13, telephone (301) 415–3781; fax number (301) 415–8555.

Dated at Rockville, Maryland, this 11th day of February 2005.

For the U.S. Nuclear Regulatory Commission.

Mary Jane Ross-Lee,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–3487 Filed 2–23–05; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Week of February 21, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 21, 2005

Tuesday, February 22, 2005

1:25 p.m. Affirmation Session (Public Meeting) (Tentative)
a: Safety Light Corporation (Materials Licensing Suspension) (Tentative)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

ADDITIONAL INFORMATION: By a vote of 5–0 on February 18, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rule that ''Affirmation of Safety Light Corporation (Materials Licensing Suspension)'' be held February 22, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no

longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 ((301) 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 18, 2005.

Sandy Joosten,

Office of the Secretary.

[FR Doc. 05–3625 Filed 2–22–05; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1994; Computer Matching Programs; Office of Personnel Management/Social Security Administration

AGENCY: Office of Personnel Management (OPM).

ACTION: Publication of notice of computer matching to comply with Public Law 100–503, the Computer Matching and Privacy Act of 1988.

SUMMARY: OPM is publishing notice of its computer matching program with the Social Security Administration (SSA) to meet the reporting requirements of Pub. L. 100–503. The purpose of this match is for SSA to establish the conditions under which the SSA agrees to disclose tax return and/or Social Security benefit information to OPM. The SSA records will be used in redetermining and recomputing the benefits of certain annuitants and survivors whose computations are based, in part, on military service performed after December 1956 under the Civil Service Retirement System (CSRS) and certain annuitants and survivors whose annuity computation under the Federal Employees Retirement System (FERS) have a CSRS component.

DATES: The matching program will begin 40 days after the **Federal Register** notice has been published and the letters to Congress and OMB have been issued. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months thereafter. The data exchange will begin at a date mutually agreed upon between OPM and SSA after February 2005, unless comments on the match are received that result in cancellation of the program. Subsequent matches will take place semi-annually on a recurring basis until one of the parties advises the other in writing of its intention to reevaluate, modify and/or terminate the agreement.

ADDRESSES: Send comments to Marc Flaster, Chief, RIS Support Services Group, Office of Personnel Management, Room 4316, 1900 E Street, NW. Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James Sparrow, (202) 606–1803.

SUPPLEMENTARY INFORMATION: The SSA will agree to provide OPM with the disclosure of tax return information. The SSA records will be used in redetermining and recomputing the benefits of certain annuitants and survivors whose computations are based, in part, on military service performed after December 1956 under the Civil Service Retirement System (CSRS) and certain annuitants and survivors whose annuity computation under the Federal Employees Retirement System (FERS) have a CSRS component. The SSA components responsible for the disclosure are the Office of Income Security Programs. The responsible component for OPM is the Center for Retirement and Insurance Services. OPM, as the agency actually using the results of this matching activity in its programs, will publish the notice required by Title 5 United States Code (U.S.C.) 552a(e)(12) in the **Federal Register**.

Office of Personnel Management.

Dan G. Blair,

Acting Director.

Report of Computer Matching Program Between the Office of Personnel Management and Social Security Administration

A. Participating Agencies

OPM and SSA.

B. Purpose of the Matching Program

This computer matching agreement sets forth the responsibilities of the Social Security Administration (SSA) and the Office of Personnel Management (OPM) with respect to information disclosed pursuant to this agreement and is executed under the Privacy Act of 1974, 5 U.S.C. 552a, as amended, and the regulations and guidance promulgated thereunder.

C. Description of the Match and Records

SSA will disclose data from its MBR file (60–0090, Master Beneficiary Record, SSA/OEEAS) and MEF file (60–0059, Earning Recording and Self-Employment Income System, SSA/OEEAS), and manually extracted military wage information from SSA's ''1086'' microfilm file when required. OPM will provide SSA with a electronic finder file from the OPM System of Records published as OPM/Central–1 (Civil Service and Insurance Records), on October 8, 1999 (64 FR 54930), as amended on May 3, 2000 (65 FR 2575). The systems of records involved have routine uses permitting the disclosures needed to conduct this match.

The systems of records are protected under the Privacy Act of 1974, as amended, and in accordance with Internal Revenue Manual 1.16.8, Physical Security Standards Handbook. Either OPM or SSA may make onsite inspection or make other provisions to ensure that adequate safeguards are being maintained by the other agency.

D. Privacy Safeguards and Security

Both SSA and OPM will safeguard information provided by the reciprocal agency as follows: Access to the records matched and to any records created by the match will be restricted to only those authorized employees and officials who need the records to perform their official duties in connection with the uses of the information authorized in the agreement. SSA and OPM will protect Federal Tax information in the same manner which IRS systems of records are protected under the Privacy Act of 1974, as amended, and in accordance with Internal Revenue Manual 1.16.8, Physical Security Standards Handbook. Either OPM or SSA may make onsite inspection or make other provisions to ensure that adequate safeguards are being maintained by the other agency.

E. Disposal of Records

Records causing closeout or suspend actions would also be annotated and returned to OPM for recordkeeping purposes. All records returned to OPM are considered ''response'' records and any not used in the update process must be purged by SSA immediately after all processing is completed.

[FR Doc. 05–3580 Filed 2–23–05; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–28772]

Application and Opportunity for Hearing: Mrs. Fields Famous Brands, LLC, Mrs. Fields Financing Company, Inc., and Certain Guarantors

February 17, 2005.

The Securities and Exchange Commission gives notice that Mrs. Fields Famous Brands, LLC, Mrs. Fields Financing Company, Inc., and certain

guarantors have filed an application under section 304(d) of the Trust Indenture Act of 1939. Mrs. Fields Famous Brands, Mrs. Fields Financing Company, and certain guarantors ask the Commission to exempt from the certificate or opinion delivery requirements of section 314(d) of the 1939 Act certain provisions of an indenture dated March 16, 2004, as supplemented by an indenture dated February 9, 2005, between Mrs. Fields Famous Brands, Mrs. Fields Financing Company, certain guarantors, and the Bank of New York, as trustee. The indenture relates to 11½% Senior Secured Notes due 2011 and 9% Senior Secured Notes due 2011.

Section 304(d) of the 1939 Act, in part, authorizes the Commission to exempt conditionally or unconditionally any indenture from one or more provisions of the 1939 Act. The Commission may provide an exemption under section 304(d) if it finds that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the 1939 Act.

Section 314(d) requires the obligor to furnish to the indenture trustee certificates or opinions of fair value from an engineer, appraiser or other expert upon any release of collateral from the lien of the indenture. The engineer, appraiser or other expert must opine that the proposed release will not impair the security under the indenture in contravention of the provisions of the indenture. The application requests an exemption from section 314(d) for specified dispositions of collateral that are made in Mrs. Fields Famous Brands', Mrs. Fields Financing Company's, and the guarantors' ordinary course of business.

In its application, Mrs. Fields Famous Brands, Mrs. Fields Financing Company, and the guarantors allege that:

1. The indenture permits Mrs. Fields Famous Brands, Mrs. Fields Financing Company, and the guarantors to dispose of collateral in the ordinary course of their business;

2. Mrs. Fields Famous Brands, Mrs. Fields Financing Company, and the guarantors will deliver to the trustee annual consolidated financial statements audited by certified independent accountants; and

3. Mrs. Fields Famous Brands, Mrs. Fields Financing Company, and the guarantors will deliver to the trustee a semi-annual certificate stating that all dispositions of collateral during the relevant six-month period occurred in Mrs. Fields Famous Brands', Mrs. Fields Financing Company's, and the guarantors' ordinary course of business and that all of the proceeds were used as permitted by the indenture.

Any interested persons should look to the application for a more detailed statement of the asserted matters of fact and law. The application is on file in the Commission's Public Reference Section, File Number 22–28772, 450 Fifth Street, NW., Washington, DC 20549.

The Commission also gives notice that any interested persons may request, in writing, that a hearing be held on this matter. Interested persons must submit those requests to the Commission no later than March 18, 2005. Interested persons must include the following in their request for a hearing on this matter:

—The nature of that person's interest;
—The reasons for the request; and
—The issues of law or fact raised by the application that the interested person desires to refute or request a hearing on.

The interested person should address this request for a hearing to: Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. At any time after March 18, 2005, the Commission may issue an order granting the application, unless the Commission orders a hearing.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–751 Filed 2–23–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26762; 812–12823]

SEI Institutional Managed Trust, et al.; Notice of Application

February 17, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'') under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: SEI Investments Management Corporation (''SIMC'') and any person controlling, controlled by or under common control with SIMC (together with SIMC, the ''Advisers''); SEI Investments Fund Management (''SEI Management,'' and together with SIMC, ''SEI''); SEI Institutional Managed Trust, SEI Institutional Investments Trust, SEI Institutional International Trust, SEI Index Funds, SEI Asset Allocation Trust, SEI Liquid Asset Trust, SEI Daily Income Trust, SEI Tax Exempt Trust (each, a ''Trust'' and collectively, the ''Trusts''), for and on behalf of each of their series now or hereafter existing (collectively, the ''SEI Funds'').

FILING DATES: The application was filed on May 16, 2002, and amended on February 2, 2005.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 14, 2005, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Timothy D. Barto, Esq., SEI Investments, One Freedom Valley Drive, Oaks, PA 19456.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 551–6815 or Mary Kay Frech, Branch Chief, at (202) 551–6621 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each Trust is registered under the Act as an open-end management investment company and is organized as a Massachusetts business trust.[1] Each Trust offers multiple Funds. The Funds of the Trusts are all in the same group of investment companies as defined in section 12(d)(1)(G)(ii) of the Act. SIMC is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to certain SEI Funds. SIMC is the owner of all beneficial interest in SEI Management, which provides the SEI Funds with overall administrative services.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may need to borrow money from the same or similar banks for temporary purposes to satisfy redemption requests, to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a Fund has been delayed, or for other temporary purposes. Currently, the SEI Funds have uncommitted lines of credit with various banks and overdraft protection provided by their custodian bank.

3. If a Fund were to borrow money through its line of credit or incur an overdraft with its custodian bank, the Fund would pay interest on the borrowed cash at a rate that would be higher than the rate that other non-borrowing Funds would earn on repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants state that this differential represents the bank's profit for serving as a middleman between a borrower and a lender. Other bank loan arrangements, such as committed lines of credit, would require the Funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Fund.

4. Applicants request an order that would permit the Funds to enter into master interfund lending agreements (''Interfund Lending Agreements'') under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (an ''Interfund Loan'').[2] Applicants believe that the proposed credit facility would reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would reduce the Open-End Funds' need to borrow from banks, the Open-End Funds would be free to establish committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain their existing uncommitted lines of credit and overdraft protection.

5. Applicants anticipate that the credit facility will provide a borrowing Fund with significant cost savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Fund has insufficient cash on hand to satisfy such redemptions. When a Fund liquidates portfolio securities to meet redemption requests, it often does not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of portfolio securities fails due to circumstances beyond the Fund's control, such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional costs to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While bank borrowings could generally supply needed cash to cover unanticipated redemptions and sales fails, under the credit facility, a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants believe that the credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any loan (the ''Interfund Loan Rate'') would be determined daily and would be the average of the Repo Rate and the Bank Loan Rate, both as defined below. The Repo Rate on any day would be the highest rate available to the Funds from investments in overnight repurchase agreements, either directly or through a joint account. The Bank Loan Rate for any day would be calculated by the Interfund Lending Team (as defined below) each day an Interfund Loan is made according to a formula established by a Fund's board of trustees (''Board'') designed to approximate the lowest interest rate at which short-term bank loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, Federal funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Board periodically would review the continuing appropriateness of using the publicly available rate to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

9. Employees of SEI (the ''Interfund Lending Team'') would administer the credit facility. The Interfund Lending Team may include representative employees of SEI Management's Fund Accounting Department, a unit of SEI Management responsible for providing valuation and fund accounting services to the Funds, as well as SIMC investment professionals and other personnel from SEI Management. The

[1] Applicants request that the relief also apply to any other existing or future registered management investment company or series thereof (i) that is advised by SIMC or its successors or another Adviser or (ii) for which SEI Investments Distribution Co. (''SIDCo.'') (or its successors) serves as principal underwriter or for which SEI Management (or its successors) serves as the administrator and which is part of the same group of investment companies (as defined in section 12(d)(1)(G)(ii) of the Act) as the Trusts (collectively, the ''Future Funds'' and together with the SEI Funds, the ''Funds''). ''Successor'' means any entity that results from a reorganization into another jurisdiction or a change in the type of business organization. All existing Funds that currently intend to rely on the requested order are named as applicants. Any other existing and Future Funds that may rely on the relief in the future will do so only in accordance with the terms and conditions of the application. For Funds that are not advised by SIMC, SEI Management (as the Funds' administrator), SIDCo. (as the Funds' distributor) and/or the Board (as defined below) will be responsible for such Funds' compliance with the terms and conditions of the application.

[2] Applicants represent that any open-end Fund (an ''Open-End Fund'') may participate in the proposed credit facility as either a borrower or a lender. Applicants further represent that any closed-end Fund that participates in the proposed credit facility would only participate as a lender.

Interfund Lending Team will not include any portfolio managers of a Fund. Under the credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate as a borrower or lender. On each business day, the Interfund Lending Team would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Interfund Lending Team would allocate loans among borrowing Funds without any further communication from portfolio managers. It is expected that there typically will be far more available uninvested cash each day than borrowing demand. After the Interfund Lending Team has allocated cash for Interfund Loans, the Interfund Lending Team will invest any remaining cash in accordance with the standing instructions of portfolio managers or return remaining amounts for investment directly by the Funds.

10. The Interfund Lending Team would allocate borrowing demand and cash available for lending among the Funds on what the Interfund Lending Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate; minimum loan lot sizes; and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Board, including a majority of trustees who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. The Interfund Lending Team would (a) monitor the interest rates charged and the other terms and conditions of the loans, (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to the Boards concerning any transactions by the Funds under the credit facility and the interest rates charged.

12. SEI Management and SIMC would administer the credit facility under their existing administration agreement and advisory agreement, respectively, with each Fund and would receive no additional fee as compensation for their services. SEI Management could, however, collect reimbursement for standard pricing, record keeping, bookkeeping, and accounting costs applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees for these services would be no higher than those applicable for comparable bank loan transactions. With respect to Funds for which SIDCo. serves as principal underwriter and which have no other connection to SEI, SEI Management and SIMC will administer the credit facility pursuant to a written contract which describes the credit facility administration services and requires that such services be provided in accordance with the terms and conditions set forth in the application. The written contract also will provide that SEI Management and SIMC will receive no fee for these services.

13. Each Fund's participation in the credit facility is consistent with its organizational documents and its investment policies and limitations. The Statement of Additional Information (''SAI'') of each Fund discloses the individual borrowing and lending limitations of the Fund. The SAI of each Fund participating in the credit facility will disclose all material information about the credit facility.

14. In connection with the proposed credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) of the Act generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, such other person. Applicants state that the Funds may be under common control by virtue of having SIMC as their common investment adviser and/or by virtue of SEI's sponsorship and significant involvement with the Funds and due to the Funds' common Board.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) were intended to prevent a person with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (a) SIMC would administer the program as a disinterested fiduciary with respect to Funds it advises and as a disinterested party with respect to Funds it does not advise; (b) all Interfund Loans would consist only of uninvested cash reserves that the Funds otherwise would invest in short-term repurchase agreements or other short-term instruments; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) a lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (e) a borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that an exemptive order may be granted by the Commission from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that the Interfund Lending Team would administer the credit facility under SEI Management's and SIMC's existing management and advisory agreements, respectively, with the Funds, and would receive no additional compensation for its services. With respect to Funds for which SIDCo. serves as principal underwriter and which have no other connection to SEI, SEI Management and SIMC will administer the credit facility pursuant to a written contract which describes the credit facility administration services and requires that such services be provided in accordance with the terms and conditions set forth in the application. The written contract also will provide that SEI Management and SIMC will receive no fee for these services. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided that, immediately after the borrowing, there is an asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting the relief under section 6(c) is appropriate because the borrowing Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) of the Act and rule 17d–1 thereunder generally prohibit any affiliated person of a registered investment company, or affiliated persons of an affiliated person, when acting as principal, from effecting any joint transaction unless the transaction is approved by the Commission. Rule 17d–1(b) under the Act provides that in passing upon applications for exemptive relief, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by an unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and limitations. Applicants therefore believe that each Fund's participation in the credit facility would be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Interfund Lending Team will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate, and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, the event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement, entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after such borrowing would exceed the limits in section 18 of the Act.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its

outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all of its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid, or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the Interfund Loan.

6. No Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of the lending Fund's current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund will not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Except as set forth in this condition, no Fund may borrow through the credit facility unless the Fund has a policy that prevents the Fund from borrowing for other than temporary or emergency purposes. In the case of a Fund that does not have such a policy, the Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Interfund Lending Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds. The Interfund Lending Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Interfund Lending Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the Funds.

13. The Interfund Lending Team will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will report to the Board quarterly concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit thereunder.

14. Each Fund's Board, including a majority of the Independent Trustees, will (a) review no less frequently than quarterly each Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans, and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) review no less frequently than annually the continuing appropriateness of each Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Interfund Lending Team will promptly refer the loan for arbitration to an independent arbitrator, selected by the Board of any Fund involved in the loan, who will serve as arbitrator of disputes concerning Interfund Loans.[3] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit at least annually a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions, setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Board in connection with the review required by conditions 13 and 14.

17. The Interfund Lending Team will prepare and submit to the Board for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all the Funds are treated fairly. After the commencement of the operations of the credit facility, the Interfund Lending Team will report on the operations of the credit facility at each Board's quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates the Interfund Lending Team's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 10 and it shall be filed pursuant to item 77Q3 of Form N–SAR, as such Statements or Form may be revised, amended, or superseded from time to time. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending

[3] If a dispute involves Funds with separate Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

demand in an equitable manner and in accordance with procedures established by the Board; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51221; File No. SR–NASD–2005–018]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Foreign Private Issuers To Follow Certain Home Country Practices

February 17, 2005.

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 January 31, 2005, 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, II, and III below, which items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify NASD Rule 4350(a)(1) and (5) and Interpretive Material (''IM'') 4350–6(1) to permit foreign private issuers to follow certain home country practices.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq Small Cap Market Issuers Except for Limited Partnerships

* * * * *

(a) Applicability

(1) Foreign Private Issuers. [Nasdaq shall have the ability to provide exemptions from Rule 4350 to a foreign private issuer when provisions of this Rule are contrary to a law, rule or regulation of any public authority exercising jurisdiction over such issuer or contrary to generally accepted business practices in the issuer's country of domicile, except to the extent that such exemptions would be contrary to the federal securities laws, including without limitation those rules required by Section 10A(m) of the Act and Rule 10A–3 thereunder. A foreign issuer that receives an exemption under this subsection] *A foreign private issuer may follow its home country practice in lieu of the requirements of Rule 4350, provided, however, that such an issuer shall: comply with Rules 4350(b)(1)(B), 4350(j) and 4350(m), have an audit committee that satisfies Rule 4350(d)(3), and ensure that such audit committee's members meet the independence requirement in Rule 4350(d)(2)(A)(ii). A foreign private issuer that follows a home country practice in lieu of one or more provisions of Rule 4350* shall disclose in its annual reports filed with the Commission each requirement *of Rule 4350 that it does not follow* [from which it is exempted] and describe the home country practice[, if any,] followed by the issuer in lieu of such requirements. In addition, a foreign *private* issuer making its initial public offering or first U.S. listing on Nasdaq shall [disclose any such exemptions] *make the same disclosures* in its registration statement.

(2) through (4) No change.

(5) Effective Dates/Transition. In order to allow companies to make necessary adjustments in the course of their regular annual meeting schedule, and consistent with SEC Rule 10A–3, Rules 4200 and 4350 are effective as set out in this subsection. During the transition period between November 4, 2003 and the effective date of Rules 4200 and 4350, companies that have not brought themselves into compliance with these Rules shall continue to comply with Rules 4200–1 and 4350–1, which consist of sunsetting sections of previously existing Rules 4200 and 4350.

The provisions of Rule 4200(a) and Rule 4350(c), (d) and (m) regarding director independence, independent committees, and notification of noncompliance shall be implemented by the following dates:

- July 31, 2005 for foreign private issuers and small business issuers (as defined in SEC Rule 12b–2); and
- For all other listed issuers, by the earlier of: (1) The listed issuer's first annual shareholders meeting after January 15, 2004; or (2) October 31, 2004.

In the case of an issuer with a staggered board, with the exception of the audit committee requirements, the issuer shall have until their second annual meeting after January 15, 2004, but not later than December 31, 2005, to implement all new requirements relating to board composition, if the issuer would be required to change a director who would not normally stand for election at an earlier annual meeting. Such issuers shall comply with the audit committee requirements pursuant to the implementation schedule bulleted above.

A company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent committee requirements set forth in Rule 4350(c) on the same schedule as it is permitted to phase in its compliance with the independent audit committee requirement pursuant to SEC Rule 10A–3(b)(1)(iv)(A). Accordingly, a company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent committee requirements set forth in Rule 4350(c) as follows: (1) One independent member at the time of listing; (2) a majority of independent members within 90 days of listing; and (3) all independent members within one year of listing. Furthermore, a company listing in connection with its initial public offering shall have twelve months from the date of listing to comply with the majority independent board requirement in Rule 4350(c). It should be noted, however, that pursuant to SEC Rule 10A–3(b)(1)(iii) investment companies are not afforded the exemptions under SEC Rule 10A–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

3(b)(1)(iv). Issuers may choose not to adopt a compensation or nomination committee and may instead rely upon a majority of the independent directors to discharge responsibilities under Rule 4350(c). For purposes of Rule 4350 other than Rule 4350(d)(2)(A)(ii) and Rule 4350(m), a company shall be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act. For purposes of Rule 4350(d)(2)(A)(ii) and Rule 4350(m), a company shall be considered to be listing in conjunction with an initial public offering only if it meets the conditions in SEC Rule 10A–3(b)(1)(iv)(A) under the Act, namely, that the company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

Companies that are emerging from bankruptcy or have ceased to be Controlled Companies within the meaning of Rule 4350(c)(5) shall be permitted to phase-in independent nomination and compensation committees and majority independent boards on the same schedule as companies listing in conjunction with their initial public offering. It should be noted, however, that a company that has ceased to be a Controlled Company within the meaning of Rule 4350(c)(5) must comply with the audit committee requirements of Rule 4350(d) as of the date it ceased to be a Controlled Company. Furthermore, the executive sessions requirement of Rule 4350(c)(2) applies to Controlled Companies as of the date of listing and continues to apply after it ceases to be controlled.

Companies transferring from other markets with a substantially similar requirement shall be afforded the balance of any grace period afforded by the other market. Companies transferring from other listed markets that do not have a substantially similar requirement shall be afforded one year from the date of listing on Nasdaq. This transition period is not intended to supplant any applicable requirements of Rule 10A–3 under the Act.

[The limitations on corporate governance exemptions to foreign private issuers shall be effective July 31, 2005. However, the] *The* requirement that a foreign *private* issuer disclose *that it does not follow an otherwise applicable provision of Rule 4350* [the receipt of a corporate governance exemption from Nasdaq] shall be effective for new listings and filings made after January 1, 2004.

Rule 4350(n), requiring issuers to adopt a code of conduct, shall be effective May 4, 2004.

Rule 4350(h), requiring audit committee approval of related party transactions, shall be effective January 15, 2004.

The remainder of Rule 4350(a) and Rule 4350(b) are effective November 4, 2003.

(b) through (n) No change.

* * * * *

IM–4350–6. Applicability

1. Foreign Private Issuer *Exception* [Exemptions] and Disclosure. A foreign private issuer *(as defined in Rule 3b–4 under the Act)* listed on Nasdaq may [obtain exemptions from Nasdaq's corporate governance standards if such rules would require the issuer to do anything contrary to the laws, rules, regulations or generally accepted business practices of its home country. Issuers may request exemptions under this provision by submitting a letter from their home country counsel briefly describing the company's practice and the applicable laws, rules, regulations or generally accepted business practices of the home country.] *follow the practice in such issuer's home country (as defined in General Instruction F of Form 20–F) in lieu of some of the provisions of Rule 4350, subject to several important exceptions. First, such an issuer shall comply with Rule 4350(b)(1)(B) (Disclosure of Going Concern Opinion), Rule 4350(j) (Listing Agreement) and Rule 4350(m) (Notification of Material Noncompliance). Second, such an issuer shall have an audit committee that satisfies Rule 4350(d)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 4350(d)(2)(A)(ii) (the criteria set forth in Rule 10A–3(b)(1), subject to the exemptions provided in Rule 10A–3(c) under the Act). Finally, a foreign private issuer that elects to follow home country practice in lieu of a requirement of Rule 4350 shall submit to Nasdaq a written statement from an independent counsel in such issuer's home country certifying that the issuer's practices are not prohibited by the home country's laws. In the case of new listings, this certification is required at the time of listing. For existing issuers, the certification is required at the time the company seeks to adopt its first non-compliant practice.* In the interest of transparency, the rule requires a foreign *private* issuer to [disclose the receipt of a corporate governance exemption] *make appropriate disclosures* in the issuer's annual filings with the Commission (typically Form 20–F or 40–F), and at the time of the issuer's original listing in the United States, if that listing is on Nasdaq, in its registration statement (typically Form F–1, 20–F, or 40–F). [The disclosure should] *The issuer shall disclose each requirement of Rule 4350 that it does not follow and* include a brief statement of [what alternative measures, if any, the issuer has taken] *the home country practice the issuer follows* in lieu of [the] *these* corporate governance requirement(s) [from which it was exempted. For example, the issuer might state that it complies with the relevant standards of its home market].

(2) through (5) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change 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

The purpose of the proposed rule change is to permit foreign private issuers to follow their home country corporate governance practices in lieu of certain practices prescribed by NASD Rule 4350 without the need to seek an individual exemption from Nasdaq. The proposed exception is not intended to exempt issuers from complying with those aspects of NASD Rule 4350 that are mandated by the U.S. securities laws and regulations. As such, issuers would still be required to maintain an audit committee that has the responsibilities and the authority, and sets the procedures referenced in NASD Rule 4350(d)(3).[5] Members of such an audit committee would have to meet the criteria for independence referenced in NASD Rule 4350(d)(2)(A)(ii) (*i.e.,* the criteria set forth in Rule 10A–3(b)(1) under the Act, subject to the exemptions provided in Rule 10A–3(c) under the Act). The proposed exception would

[5] The audit committee requirement will not become applicable to foreign private issuers and, thus, will not be a condition to the proposed exception until July 31, 2005.

also not be applicable to the requirement to disclose the receipt of a going concern opinion,[6] to the requirement of a Listing Agreement in the form designated by Nasdaq,[7] and, as of July 31, 2005, to the requirement of prompt notification of material non-compliance with the requirements of NASD Rule 4350.[8]

A foreign private issuer wishing to follow its home country practices, rather than the practices set forth in NASD Rule 4350, would need to make the appropriate disclosures in its annual reports filed with the Commission and, if applicable, in its registration statement. Such an issuer would also need to provide Nasdaq with a letter from an outside counsel in that issuer's home country certifying that the issuer's practices are not prohibited by the home country's laws.

A foreign private issuer that previously received from Nasdaq an exemption pursuant to the existing NASD Rule 4350(a) may continue to rely on that exemption. However, if an issuer wishes to be exempted from any requirement of NASD Rule 4350 not covered by the previously granted exemption, then this issuer must fully comply with the procedures of the proposed rule. Of course, an issuer may not rely on a previously provided exemption if the requirement to which this exemption applies was changed after the exemption was issued.

The proposed rule change follows closely the related practices of the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''Amex'') but would provide for additional public disclosure concerning issuers' practices.[9] Both of these exchanges permit a foreign private issuer to follow its home country practices in lieu of the exchanges' own corporate governance rules (except where that would be contrary to the U.S. securities laws) without seeking a formal exemption from the exchange. Both exchanges also require disclosures of ''significant'' non-complying practices and a certification from home country counsel that the issuer's practices are not prohibited by the home country's laws. Once the proposed rule change is implemented, Nasdaq's process with respect to foreign private issuers will become substantially similar to those of the NYSE and Amex, except that the proposed rule would call for public disclosure of ''each requirement'' that the issuer does not follow, while the rules of the NYSE and Amex only require disclosure of ''any significant ways in which * * * [the issuer's] corporate governance practices differ.''[10] In addition, the proposed rule would not permit a foreign private issuer to avoid the requirement of NASD Rule 4350(b)(1)(B) that it publicly disclose the receipt of a going concern opinion. This disclosure is not required by the NYSE.

The proposed rule change also makes clear that a foreign issuer that is not a foreign private issuer must comply with each of the applicable requirements of NASD Rule 4350 and is not eligible for any exception based on its country's practice.

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)(6) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, and to remove impediments to a free and open market and a national market system. Specifically, the proposal will facilitate listings on Nasdaq by foreign private issuers, thereby increasing the level of competition for such listings among U.S. markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by Nasdaq as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

The foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Consequently, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

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.

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 No. SR–NASD–2005–018 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 No. SR–NASD–2005–018. 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

[6] *See* NASD Rule 4350(b)(1)(B).

[7] *See* NASD Rule 4350(j).

[8] *See* NASD Rule 4350(m).

[9] *See* NYSE Listed Company Manual Sections 103.00, 303A.00 and 303A.11, and Amex Company Guide Section 110.

[10] *See* NYSE Listed Company Manual Section 303A.11 and Amex Company Guide Section 110.

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File No. SR–NASD–2005–018 and should be submitted on or before March 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–752 Filed 2–23–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5001]

Determination Under Section 620(Q) of the Foreign Assistance Act and Section 512 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2005 Relating To Assistance To the Dominican Republic

Pursuant to the authority vested in me by section 620(q) of the Foreign Assistance Act of 1961, as amended (FAA), section 512 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (FOAA) (Div. D, Public Law 108–477), and by Executive Order 12163, as amended by Executive Order 13346, I hereby determine that assistance to the Dominican Republic is in the national interest of the United States and thereby waive with respect to that country, the application of section 620(q) of the FAA from the date it would otherwise have been applicable and section 512 of the FOAA, as well as any provision of law that is the same or substantially the same as such provisions, including subsequently enacted provisions.

This determination shall be reported to Congress and published in the **Federal Register**.

[17] 17 CFR 200.30–3(a)(12).

Dated: December 18, 2005.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 05–3591 Filed 2–23–05; 8:45 am]

BILLING CODE 4710–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Change to U.S. Note 2(d) to Subchapter XIX of Chapter 98 of the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Section 2004(k) of the Miscellaneous Trade and Technical Corrections Act of 2004, Public Law 108–429, designated Mauritius as eligible for certain additional benefits under the African Growth and Opportunity Act (AGOA) for one year, beginning October 1, 2004. This notice modifies the Harmonized Tariff Schedule of the United States (HTS) to reflect this designation.

DATES: Effective February 9, 2005.

FOR FURTHER INFORMATION CONTACT: Patrick Coleman, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. On December 3, 2004, the President signed the Miscellaneous Trade and Technical Corrections Act (''the Act''), which designates Mauritius as eligible for benefits under section 112(b)(3)(B) of the AGOA for one year, beginning October 1, 2004.

In Proclamation 6969 (62 FR 4413), the President delegated to the United States Trade Representative (USTR) the authority to make rectifications, technical or conforming changes, or similar modifications to the HTS. Pursuant to the authority delegated to the USTR in Proclamation 6969, U.S. Note 2(d) to subchapter XIX of chapter 98 of the HTS is modified by inserting ''Mauritius'' in alphabetical sequence in the list of countries effective for the period ending on midnight September 30, 2005, at which time ''Mauritius'' shall be deleted from the list. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. Importers seeking retroactive duty treatment pursuant to section 2004(k)(2) of the Act should direct their inquiries to the Bureau of Customs and Border Protection.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 05–3473 Filed 2–23–05; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–878]

City of Peoria and Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway Company

On November 16, 2004, the City of Peoria and the Village of Peoria Heights, IL (Cities or applicants), filed an adverse application under 49 U.S.C. 10903, requesting that the Surface Transportation Board authorize the discontinuance of service by Pioneer Industrial Railway Company (PIRY) over a line of railroad known as the Kellar Branch. The Kellar Branch is located in Peoria Heights and Peoria and runs between milepost 1.71 and milepost 10.0. The line traverses United States Postal Service ZIP Codes 61602 and 61616 and includes no stations.

The Cities state that the Kellar Branch was fully abandoned by the Chicago, Rock Island & Pacific Railroad Company and that Peoria acquired the line from the Rock Island Trustee in 1984. According to the Cities, Peoria entered into an operating agreement with Peoria and Pekin Union Railway Company (P&PU) to serve shippers. P&PU obtained an exemption from 49 U.S.C. 10901 to operate the line. *Peoria and Pekin Union Railway Co.—Exemption from 49 U.S.C. 10901*, Finance Docket No. 30545 (ICC served Sept. 18, 1984). Peoria Heights later obtained a 25 percent ownership interest in the Kellar Branch. In 1998, PIRY became the sole operator of the line as assignee of P&PU's rights under the operating agreement with the Cities. *Pioneer Industrial Railway Co.—Lease and Operation Exemption—Peoria, Peoria Heights & Western Railroad*, STB Finance Docket No. 33549 (STB served Feb. 20, 1998).

Applicants assert that the operating agreement with PIRY expired on July 10, 2004, and that, prior to that date, they notified PIRY that they intended to contract with a different operator for continued rail service on the line. The Cities indicate that they have entered

into an operating agreement with Central Illinois Railroad Company (CIRY), which has obtained an exemption from 49 U.S.C. 10901 to operate the line. *Central Illinois Railroad Company—Operation Exemption—Rail Line of the City of Peoria and Village of Peoria Heights, in Peoria and Peoria Heights, Peoria County, IL*, STB Finance Docket No. 34518 (STB served June 28, 2004).[1] According to the Cities, PIRY has indicated that it will not voluntarily relinquish its operating authority on the Kellar Branch, thus necessitating the filing of this application.

The Cities point out that the operating agreement between Peoria and CIRY is temporary until Peoria can complete construction of a connection between the Kellar Branch and a 1.9-mile rail line to the west acquired from Union Pacific Railroad Company in 2001. *See City of Peoria, IL—Construction of Connecting Track Exemption—Peoria County, IL*, STB Finance Docket No. 34395 (STB served Sept. 27, 2004). Applicants state that, after completion of the connecting track, CIRY will provide service from the west to the two shippers located on the western part of the Kellar Branch and the third shipper, located on the eastern part of the Branch, will be served from the east by CIRY or another rail carrier arranged for by Peoria. According to applicants, these shippers either support the discontinuance or are neutral on the matter. The Cities propose to turn the 6.29-mile segment of the line located in between the active shippers into a recreational trail. The Cities state that they seek discontinuance rather than abandonment authority here because the Kellar Branch had already been abandoned when Peoria acquired it without the need for Board acquisition authority.

In a decision served in this proceeding on September 10, 2004, the Cities were granted a waiver of filing requirements in 49 CFR 1152 and were given permission to file an adverse discontinuance application containing the following information: (1) The name and address of the applicant; (2) the name and address of counsel; (3) a detailed map of the facilities involved; (4) the total carloads broken out for each of the shippers currently using the line; (5) a summary of the principal commodities handled; (6) a summary operating plan for operations of the substitute carrier; (7) certification that the City's current or proposed operations comply, or will comply, with all federal and state safety requirements; (8) an opinion of counsel that the prior lease agreement with PIRY expired in accordance with its terms; (9) documentation from the Cities that authorizes the operations of the substituted service; (10) a statement on behalf of the Cities of the reasons for the application and the benefits that will be obtained if the application is approved; and (11) supporting statements from shippers. The Cities were also granted a waiver of all notice and publication requirements, but were required to serve a copy of their application on the shippers on the line, PIRY, all connecting carriers, and the Illinois Commerce Commission.

There is no indication that the line contains any federally granted rights-of-way. Any documentation in the Cities' possession will be made available promptly to those requesting it. Applicants' entire case for discontinuance of service was filed with the application.

The interests of affected railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed discontinuance or protests (including the protestant's entire opposition case). Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking, and public use requests are not appropriate. Also, offers of financial assistance (OFA) will not be entertained in this proceeding.[2]

Persons opposing the proposed adverse discontinuance who wish to participate actively and fully in the process should file a protest by March 21, 2005. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should also file comments by March 21, 2005. Parties seeking information concerning the filing of protests should refer to section 1152.25. The due date for applicants' reply is April 5, 2005.

All filings in response to this notice must refer to STB Docket No. AB–878 and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Thomas F. McFarland, Thomas F. McFarland, P.C. 208 South LaSalle Street, Suite 1890 Chicago, IL 60604–1112. Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's *''http://www.stb.dot.gov''* Web site, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in section 1152, every document filed with the Board must be served on all parties to this proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning abandonment/discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment/discontinuance regulations at 49 CFR part 1152. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

The September 10 decision waived compliance with environmental and historic regulations because the Cities proposed their application as a request to substitute operators on the line. Accordingly, no environmental assessment will be prepared in this proceeding.[3]

Board decisions and notices are available on our Web site at *''http://www.stb.dot.gov.''*

Decided: February 17, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–3549 Filed 2–23–05; 8:45 am]

BILLING CODE 4915–01–P

[1] By a decision served on July 1, 2004, the Board denied a request by PIRY for stay of the effectiveness of the exemption.

[2] As noted in the waiver decision, on July 23, 2004, PIRY filed a notice of intent to file an OFA to purchase the Kellar Branch and requested certain information and data from the Cities. PIRY has characterized the Cities' application as seeking an adverse abandonment rather than a discontinuance, in light of applicants' trail use proposal. The Cities filed a motion to reject PIRY's filing, arguing that, under Board precedent, OFAs to purchase are not entertained in discontinuance proceedings. PIRY replied to the Cities' motion on August 12, 2004. This issue will be resolved in the decision on the merits in this proceeding.

[3] The Board there noted, however, that, in light of the issue raised regarding whether this filing should be for adverse abandonment or adverse discontinuance, the Cities should be aware that they run the risk of delaying a ruling on their application if the Board concludes that the application should be for abandonment, because compliance with the Board's environmental and historic regulations might then be necessary.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 05–03]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1198]

FEDERAL DEPOSIT INSURANCE CORPORATION

NATIONAL CREDIT UNION ADMINISTRATION

Joint Guidance on Overdraft Protection Programs

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 National Credit Union Administration (NCUA).

ACTION: Final guidance.

SUMMARY: The OCC, Board, FDIC, and NCUA (the Agencies), are issuing final Joint Guidance on Overdraft Protection Programs (guidance). This guidance is intended to assist insured depository institutions in the responsible disclosure and administration of overdraft protection services.

FOR FURTHER INFORMATION CONTACT:

OCC: Michael Bylsma, Director, Margaret Hesse, Special Counsel, or Deana Lee, Attorney, Community and Consumer Law Division, (202) 874–5750; or Kim Scherer, National Bank Examiner/Credit Risk Specialist, Credit Risk Policy, (202) 874–5170.

Board: Minh-Duc T. Le, Senior Attorney, Daniel Lonergan, Counsel, or Elizabeth Eurgubian, Attorney, Division of Consumer and Community Affairs, (202) 452–3667; or William H. Tiernay, Supervisory Financial Analyst, Division of Bank Supervision and Regulation, (202) 452–2412. For users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

FDIC: Mark Mellon, Counsel, (202) 898–3884, Legal Division; James Leitner, Examination Specialist, (202) 898–6790; Patricia Cashman, Senior Policy Analyst, (202) 898–6534; or April Breslaw, Chief, Compliance Section, (202) 898–6609, Division of Supervision and Consumer Protection.

NCUA: Elizabeth A. Habring, Program Officer, Office of Examination and Insurance, (703) 518–6392; or Ross P. Kendall, Staff Attorney, Office of the General Counsel, (703) 518–6562.

SUPPLEMENTARY INFORMATION:

I. Background

The Agencies have developed this final joint guidance to address a service offered by insured depository institutions commonly referred to as ''bounced-check protection'' or ''overdraft protection.'' This service is sometimes offered to transaction account customers as an alternative to traditional ways of covering overdrafts (*e.g.*, overdraft lines of credit or linked accounts).

While both the availability and customer acceptance of these overdraft protection services have increased, aspects of the marketing, disclosure, and implementation of some of these programs have raised concerns with the Agencies. In a 2001 letter, the OCC identified some of these particular concerns.[1] In November 2002, the Board sought comment about the operation of overdraft protection programs.[2]

In response to concerns raised about overdraft protection products, the Agencies published for comment proposed Interagency Guidance on Overdraft Protection Programs, 69 FR 31858 (June 7, 2004).[3] The proposed guidance identified the historical and traditional approaches to providing consumers with protection against account overdrafts, and contrasted these approaches with the more recent overdraft protection programs that are marketed to consumers. The Agencies also identified some of the existing and potential concerns surrounding the offering and administration of such overdraft protection programs that have been identified by federal and state bank regulatory agencies, consumer groups, financial institutions, and their trade representatives.

In response to these concerns, the Agencies provided guidance in three primary sections: Safety and Soundness Considerations, Legal Risks, and Best Practices. In the section on Safety and Soundness Considerations, the Agencies sought to ensure that financial institutions offering overdraft protection services adopt adequate policies and procedures to address the credit, operational, and other risks associated with these services. The Legal Risks section of the proposed guidance outlined several federal consumer compliance laws, generally alerted institutions offering overdraft protection services of the need to comply with all applicable federal and state laws, and advised institutions to have their overdraft protection programs reviewed by legal counsel to ensure overall compliance prior to implementation. Finally, the proposed guidance set forth best practices that serve as positive examples of practices that are currently observed in, or recommended by, the industry. Broadly, these best practices address the marketing and communications that accompany the offering of overdraft protection services, as well as the disclosure, and operation, of program features.

The Agencies together received over 320 comment letters in response to the proposed guidance. Comment letters were received from depository institutions, trade associations, vendors offering overdraft protection products, and other industry representatives, as well as government officials, consumer and community groups, and individual consumers.

II. Overview of Public Comments

The Agencies received comments that addressed broad aspects of the guidance, as well as its specific provisions. Many industry commenters, for instance, were concerned about the overall scope of the guidance and whether it would apply to financial institutions that do not market overdraft protection programs to consumers but do cover the occasional overdraft on a case-by-case basis. Commenters also addressed the three specific sections of the proposed guidance.

In regard to the Safety and Soundness section, for example, many industry commenters suggested extending the proposed charge-off period from 30 days to a longer period such as 45 or 60 days, in part because they believed a longer charge-off period would provide consumers with more time to repay overdrafts and avoid being reported to credit bureaus as delinquent on their accounts. Comments were also received addressing technical reporting and accounting issues.

The Agencies received numerous comments regarding the Legal Risks section—particularly the Equal Credit Opportunity Act and Truth in Lending Act (TILA) discussions. For instance, many consumer and consumer group comments stated that overdraft protection should be considered credit covered by TILA's disclosures and other required protections. Some of these comments likened the product to payday lending, which is covered by TILA. Many industry commenters argued against the coverage of overdraft programs by TILA and Regulation Z, and argued that the payment of

[1] OCC Interpretive Letter 914, September 2001.

[2] 67 FR 72618, December 6, 2002. The Board received approximately 350 comments; most were from industry representatives describing how the programs work.

[3] The Office of Thrift Supervision joined the Agencies proposing the interagency guidance.

overdrafts does not involve credit and finance charges requiring TILA disclosures and protections.

Lastly, many commenters also offered specific criticism or recommended edits with respect to particular best practices identified in the proposal. Several industry commenters sought general clarification on whether examiners would treat the best practices as law or rules when examining institutions offering overdraft protection services.

III. Final Joint Guidance

The final joint guidance incorporates changes made by the Agencies to provide clarity and address many commenter concerns. In particular, language has been added to clarify the scope of the guidance. The Safety and Soundness section expressly states that it applies to all methods of covering overdrafts. The introduction to the Best Practices section clarifies that while the Agencies are concerned about promoted overdraft protection programs, the best practices may also be useful for other methods of covering overdrafts.

In response to the comments regarding the Safety and Soundness section, the Agencies have extended the charge-off requirement to 60 days.[4] Other technical edits have been made to further clarify reporting and accounting aspects of this section of the guidance.

The discussion regarding the applicability of TILA has been shortened to more closely focus on the relevant, existing regulatory provisions. In the proposed guidance, the discussion of TILA and Regulation Z, like the individual discussions of other laws and regulations (*e.g.*, the Federal Trade Commission Act), was not intended to represent a full explication of the scope, terms, and exceptions to those provisions. Rather, it was intended to highlight that, commonly, fees charged in connection with overdraft protection programs and traditional methods of paying overdrafts fall within an existing regulatory exception to the ''finance charge'' definition. Disparate commenters urged the Board to take positions on various aspects of TILA and Regulation Z that are unnecessary in light of the exception addressed and the appropriate scope of the guidance. The revisions to this section, and the addition of language to the Safety and Soundness section to address the credit nature of overdrafts, is not intended as a commentary on the statute, nor the adoption of any particular commenter point of view. As indicated in the proposal, the existing regulatory exceptions were created for the occasional payment of overdrafts, and as such could be reevaluated by the Board in the future, if necessary. Were the Board to address these issues more specifically, it would do so separately under its clear authority.

Lastly, in the final joint guidance, the Agencies reaffirm that the best practices are practices that have been recommended or implemented by financial institutions and others, as well as practices that may otherwise be required by applicable law. The best practices, or principles within them, are enforceable to the extent they are required by law. In addition, as mentioned above, the final guidance explicitly states that while the Agencies are particularly concerned about promoted overdraft protection programs, these practices may be useful in connection with other methods of covering overdrafts. The Agencies have also revised numerous best practices for clarity, in response to particular commenter suggestions.

The text of the final Joint Guidance on Overdraft Protection Programs follows:

Joint Guidance on Overdraft Protection Programs

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and National Credit Union Administration (NCUA), collectively ''the Agencies,'' are issuing this joint guidance concerning a service offered by insured depository institutions that is commonly referred to as ''bounced-check protection'' or ''overdraft protection.'' This credit service is sometimes offered on both consumer and small business transaction accounts as an alternative to traditional ways of covering overdrafts. This joint guidance is intended to assist insured depository institutions in the responsible disclosure and administration of overdraft protection services, particularly those that are marketed to consumers.[5]

Introduction

To protect against account overdrafts, some consumers obtain an overdraft line of credit, which is subject to the disclosure requirements of the Truth in Lending Act (TILA). If a consumer does not have an overdraft line of credit, the institution may accommodate the consumer and pay overdrafts on a discretionary, ad-hoc basis. Regardless of whether the overdraft is paid, institutions typically have imposed a fee when an overdraft occurs, often referred to as a nonsufficient funds or ''NSF'' fee. Over the years, this accommodation has become automated by many institutions. Historically, institutions have not promoted this accommodation. This approach has not raised significant concerns.

More recently, some depository institutions have offered ''overdraft protection'' programs that, unlike the discretionary accommodation traditionally provided to those lacking a line of credit or other type of overdraft service (*e.g.*, linked accounts), are marketed to consumers essentially as short-term credit facilities. These marketed programs typically provide consumers with an express overdraft ''limit'' that applies to their accounts.

While the specific details of overdraft protection programs vary from institution to institution, and also vary over time, those currently offered by institutions incorporate some or all of the following characteristics:

- Institutions inform consumers that overdraft protection is a feature of their accounts and promote the use of the service. Institutions also may inform consumers of their aggregate dollar limit under the overdraft protection program.
- Coverage is automatic for consumers who meet the institution's criteria (*e.g.*, account has been open a certain number of days; deposits are made regularly). Typically, the institution performs no credit underwriting.
- Overdrafts generally are paid up to the aggregate limit set by the institution for the specific class of accounts, typically $100 to $500.
- Many program disclosures state that payment of an overdraft is discretionary on the part of the institution, and may disclaim any legal obligation of the institution to pay any overdraft.
- The service may extend to check transactions as well as other transactions, such as withdrawals at automated teller machines (ATMs), transactions using debit cards, pre-authorized automatic debits from a consumer's account, telephone-initiated

[4] Federal credit unions are required by regulation to establish a time limit, not to exceed 45 calendar days, for a member to either deposit funds or obtain an approved loan from the credit union to cover each overdraft. 12 CFR 701.21(c)(3).

[5] Federal credit unions are already subject to certain regulatory requirements governing the establishment and maintenance of overdraft programs. 12 CFR 701.21(c)(3). This regulation requires a federal credit union offering an overdraft program to adopt a written policy specifying the dollar amount of overdrafts that the credit union will honor (per member and overall); the time limits for a member to either deposit funds or obtain a loan to cover an overdraft; and the amount of the fee and interest rate, if any, that the credit union will charge for honoring overdrafts. This joint guidance supplements but does not change these regulatory requirements for federal credit unions.

funds transfers, and on-line banking transactions.[6]

• A flat fee is charged each time the service is triggered and an overdraft item is paid. Commonly, a fee in the same amount would be charged even if the overdraft item was not paid. A daily fee also may apply for each day the account remains overdrawn.

• Some institutions offer closed-end loans to consumers who do not bring their accounts to a positive balance within a specified time period. These repayment plans allow consumers to repay their overdrafts and fees in installments.

Concerns

Aspects of the marketing, disclosure, and implementation of some overdraft protection programs, intended essentially as short-term credit facilities, are of concern to the Agencies. For example, some institutions have promoted this credit service in a manner that leads consumers to believe that it is a line of credit by informing consumers that their account includes an overdraft protection limit of a specified dollar amount without clearly disclosing the terms and conditions of the service, including how fees reduce overdraft protection dollar limits, and how the service differs from a line of credit.

In addition, some institutions have adopted marketing practices that appear to encourage consumers to overdraw their accounts, such as by informing consumers that the service may be used to take an advance on their next paycheck, thereby potentially increasing the institutions' credit exposure with little or no analysis of the consumer's creditworthiness. These overdraft protection programs may be promoted in a manner that leads consumers to believe that overdrafts will always be paid when, in reality, the institution reserves the right not to pay some overdrafts. Some institutions may advertise accounts with overdraft protection coverage as ''free'' accounts, and thereby lead consumers to believe that there are no fees associated with the account or the overdraft protection program.

Furthermore, institutions may not clearly disclose that the program may cover instances when consumers overdraw their accounts by means other than check, such as at ATMs and point-of-sale (POS) terminals. Some institutions may include overdraft protection amounts in the sum that they disclose as the consumer's account ''balance'' (for example, at an ATM) without clearly distinguishing the funds that are available for withdrawal without overdrawing the account. Where the institution knows that the transaction will trigger an overdraft fee, such as at a proprietary ATM, institutions also may not alert the consumer prior to the completion of the transaction to allow the consumer to cancel the transaction before the fee is triggered.

Institutions should weigh carefully the risks presented by the programs including the credit, legal, reputation, safety and soundness, and other risks. Further, institutions should carefully review their programs to ensure that marketing and other communications concerning the programs do not mislead consumers to believe that the program is a traditional line of credit or that payment of overdrafts is guaranteed, do not mislead consumers about their account balance or the costs and scope of the overdraft protection offered, and do not encourage irresponsible consumer financial behavior that potentially may increase risk to the institution.

Safety and Soundness Considerations

When overdrafts are paid, credit is extended. Overdraft protection programs may expose an institution to more credit risk (*e.g.*, higher delinquencies and losses) than overdraft lines of credit and other traditional overdraft protection options to the extent these programs lack individual account underwriting. All overdrafts, whether or not subject to an overdraft protection program, are subject to the safety and soundness considerations contained in this section.

Institutions providing overdraft protection programs should adopt written policies and procedures adequate to address the credit, operational, and other risks associated with these types of programs. Prudent risk management practices include the establishment of express account eligibility standards and well-defined and properly documented dollar limit decision criteria. Institutions also should monitor these accounts on an ongoing basis and be able to identify consumers who may represent an undue credit risk to the institution. Overdraft protection programs should be administered and adjusted, as needed, to ensure that credit risk remains in line with expectations. This may include, where appropriate, disqualification of a consumer from future overdraft protection. Reports sufficient to enable management to identify, measure, and manage overdraft volume, profitability, and credit performance should be provided to management on a regular basis.

Institutions also are expected to incorporate prudent risk management practices related to account repayment and suspension of overdraft protection services. These include the establishment of specific timeframes for when consumers must pay off their overdraft balances. For example, there should be established procedures for the suspension of overdraft services when the account holder no longer meets the eligibility criteria (such as when the account holder has declared bankruptcy or defaulted on another loan at the bank) as well as for when there is a lack of repayment of an overdraft. In addition, overdraft balances should generally be charged off when considered uncollectible, but no later than 60 days from the date first overdrawn.[7] In some cases, an institution may allow a consumer to cover an overdraft through an extended repayment plan when the consumer is unable to bring the account to a positive balance within the required time frames. The existence of the repayment plan, however, would not extend the charge-off determination period beyond 60 days (or shorter period if applicable) as measured from the date of the overdraft. Any payments received after the account is charged off (up to the amount charged off against allowance) should be reported as a recovery.

Some overdrafts are rewritten as loan obligations in accordance with an institution's loan policy and supported by a documented assessment of that consumer's ability to repay. In those instances, the charge-off timeframes described in the Federal Financial Institutions Examination Council (FFIEC) Uniform Retail Credit Classification and Account Management Policy would apply.[8]

With respect to the reporting of income and loss recognition on overdraft protection programs, institutions should follow generally accepted accounting principles (GAAP) and the instructions for the Reports of Condition and Income (Call Report), and NCUA 5300 Call Report. Overdraft balances should be reported on

[6] Transaction accounts at credit unions are called share draft accounts. For purposes of this joint guidance, the use of the term ''check'' includes share drafts.

[7] Federal credit unions are required by regulation to establish a time limit, not to exceed 45 calendar days, for a member to either deposit funds or obtain an approved loan from the credit union to cover each overdraft. 12 CFR 701.21(c)(3).

[8] For federally insured credit unions, charge-off policy for booked loans is described in NCUA Letter to Credit Unions No. 03–CU–01, ''Loan Charge-off Guidance,'' dated January 2003.

regulatory reports as loans. Accordingly, overdraft losses should be charged off against the allowance for loan and lease losses. The Agencies expect all institutions to adopt rigorous loss estimation processes to ensure that overdraft fee income is accurately measured. Such methods may include providing loss allowances for uncollectible fees or, alternatively, only recognizing that portion of earned fees estimated to be collectible.[9] The procedures for estimating an adequate allowance should be documented in accordance with the Policy Statement on the Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions.[10]

If an institution advises account holders of the available amount of overdraft protection, for example, when accounts are opened or on depositors' account statements or ATM receipts, the institution should report the available amount of overdraft protection with legally binding commitments for Call Report, and NCUA 5300 Call Report purposes. These available amounts, therefore, should be reported as ''unused commitments'' in regulatory reports.

The Agencies also expect proper risk-based capital treatment of outstanding overdrawn balances and unused commitments.[11] Overdraft balances should be risk-weighted according to the obligor. Under the federal banking agencies' risk-based capital guidelines, the capital charge on the unused portion of commitments generally is based on an off-balance sheet credit conversion factor and the risk weight appropriate to the obligor. In general, these guidelines provide that the unused portion of a commitment is subject to a zero percent credit conversion factor if the commitment has an original maturity of one year or less, or a 50 percent credit conversion factor if the commitment has an original maturity over one year. Under these guidelines, a zero percent conversion factor also applies to the unused portion of a ''retail credit card line'' or ''related plan'' if it is unconditionally cancelable by the institution in accordance with applicable law.[12] The phrase ''related plans'' in these guidelines includes overdraft checking plans. The Agencies believe that the overdraft protection programs discussed in this joint guidance fall within the meaning of ''related plans'' as a type of ''overdraft checking plan'' for the purposes of the federal banking agencies'' risk-based capital guidelines. Consequently, overdraft protection programs that are unconditionally cancelable by the institution in accordance with applicable law would qualify for a zero percent credit conversion factor.

Institutions entering into overdraft protection contracts with third-party vendors must conduct thorough due diligence reviews prior to signing a contract. The interagency guidance contained in the November 2000 Risk Management of Outsourced Technology Services outlines the Agencies' expectations for prudent practices in this area.

Legal Risks

Overdraft protection programs must comply with all applicable federal laws and regulations, some of which are outlined below. State laws also may be applicable, including usury and criminal laws, and laws on unfair or deceptive acts or practices. It is important that institutions have their overdraft protection programs reviewed by counsel for compliance with all applicable laws prior to implementation. Further, although the guidance below outlines federal laws and regulations as of the date this joint guidance is published, applicable laws and regulations are subject to amendment. Accordingly, institutions should monitor applicable laws and regulations for revisions and to ensure that their overdraft protection programs are fully compliant.

Federal Trade Commission Act/ Advertising Rules

Section 5 of the Federal Trade Commission Act (FTC Act) prohibits unfair or deceptive acts or practices.[13] The banking agencies enforce this section pursuant to their authority in section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818.[14] An act or practice is unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. An act or practice is deceptive if, in general, it is a representation, omission, or practice that is likely to mislead a consumer acting reasonably under the circumstances, and the representation, omission, or practice is material.

In addition, the NCUA has promulgated similar rules that prohibit federally insured credit unions from using advertisements or other representations that are inaccurate or misrepresent the services or contracts offered.[15] These regulations are broad enough to prohibit federally insured credit unions from making any false representations to the public regarding their deposit accounts.

Overdraft protection programs may raise issues under either the FTC Act or, in connection with federally insured credit unions, the NCUA's advertising rules, depending upon how the programs are marketed and implemented. To avoid engaging in deceptive, inaccurate, misrepresentative, or unfair practices, institutions should closely review all aspects of their overdraft protection programs, especially any materials that inform consumers about the programs.

Truth in Lending Act

TILA and Regulation Z require creditors to give cost disclosures for extensions of consumer credit.[16] TILA and the regulation apply to creditors that regularly extend consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments.[17]

Under Regulation Z, fees for paying overdraft items currently are not considered finance charges if the institution has not agreed in writing to pay overdrafts.[18] Even where the institution agrees in writing to pay overdrafts as part of the deposit account agreement, fees assessed against a transaction account for overdraft protection services are finance charges only to the extent the fees exceed the charges imposed for paying or returning overdrafts on a similar transaction

[9] Institutions may charge off uncollected overdraft fees against the allowance for loan and lease losses if such fees are recorded with overdraft balances as loans and estimated credit losses on the fees are provided for in the allowance for loan and lease losses.

[10] Issued by the Board, FDIC, OCC, and Office of Thrift Supervision. The NCUA provided similar guidance to credit unions in Interpretive Ruling and Policy Statement 02–3, ''Allowance for Loan and Lease Losses Methodologies and Documentation for Federally Insured Credit Unions,'' 67 FR 37445, May 29, 2002.

[11] Federally insured credit unions should calculate risk-based net worth in accordance with the rules contained in 12 CFR Part 702.

[12] See 12 CFR Part 3, Appendix A, Section 3 (b)(5) (OCC); 12 CFR Part 208, Appendix A, Section III.D.5 (Board); and 12 CFR Part 325, Appendix A, Section II.D.5 (FDIC).

[13] 15 U.S.C. 45.

[14] *See* OCC Advisory Letter 2002–3 (March 2002); and joint Board and FDIC Guidance on Unfair or Deceptive Acts or Practices by State-Chartered Banks (March 11, 2004).

[15] 12 CFR 740.2.

[16] 15 U.S.C. 1601 *et seq.* TILA is implemented by Regulation Z, 12 CFR Part 226.

[17] *See* 15 U.S.C. 1602(f) and 12 CFR 226.2(a)(17). Institutions should be aware that whether a written agreement exists is a matter of state law. *See, e.g.*, 12 CFR 226.5.

[18] *See* 12 CFR 226.4(c)(3). Traditional lines of credit, which generally are subject to a written agreement, do not fall under this exception.

account that does not have overdraft protection.

Some financial institutions also offer overdraft repayment loans to consumers who are unable to repay their overdrafts and bring their accounts to a positive balance within a specified time period.[19] These closed-end loans will trigger Regulation Z disclosures, for example, if the loan is payable by written agreement in more than four installments. Regulation Z will also be triggered where such closed-end loans are subject to a finance charge.[20]

Equal Credit Opportunity Act

Under the Equal Credit Opportunity Act (ECOA) and Regulation B, creditors are prohibited from discriminating against an applicant on a prohibited basis in any aspect of a credit transaction.[21] This prohibition applies to overdraft protection programs. Thus, steering or targeting certain consumers on a prohibited basis for overdraft protection programs while offering other consumers overdraft lines of credit or other more favorable credit products or overdraft services, will raise concerns under the ECOA.

In addition to the general prohibition against discrimination, the ECOA and Regulation B contain specific rules concerning procedures and notices for credit denials and other adverse action. Regulation B defines the term ''adverse action,'' and generally requires a creditor who takes adverse action to send a notice to the consumer providing, among other things, the reasons for the adverse action.[22] Some actions taken by creditors under overdraft protection programs might constitute adverse action but would not require notice to the consumer if the credit is deemed to be ''incidental credit'' as defined in Regulation B. ''Incidental credit'' includes consumer credit that is not subject to a finance charge, is not payable by agreement in more than four installments, and is not made pursuant to the terms of a credit card account.[23] Overdraft protection programs that are not covered by TILA would generally qualify as incidental credit under Regulation B.

Truth in Savings Act

Under the Truth in Savings Act (TISA), deposit account disclosures must include the amount of any fee that may be imposed in connection with the account and the conditions under which the fee may be imposed.[24] In addition, institutions must give advance notice to affected consumers of any change in a term that was required to be disclosed if the change may reduce the annual percentage yield or adversely affect the consumer.

When overdraft protection services are added to an existing deposit account, advance notice to the account holder may be required, for example, if the fee for the service exceeds the fee for accounts that do not have the service.[25] In addition, TISA prohibits institutions from making any advertisement, announcement, or solicitation relating to a deposit account that is inaccurate or misleading or that misrepresents their deposit contracts.

Since these automated and marketed overdraft protection programs did not exist when most of the implementing regulations were issued, the regulations may be reevaluated.

Electronic Fund Transfer Act

The Electronic Fund Transfer Act (EFTA) and Regulation E require an institution to provide consumers with account-opening disclosures and to send a periodic statement for each monthly cycle in which an electronic fund transfer (EFT) has occurred and at least quarterly if no transfer has occurred.[26] If, under an overdraft protection program, a consumer could overdraw an account by means of an ATM withdrawal or POS debit card transaction, both are EFTs subject to EFTA and Regulation E. As such, periodic statements must be readily understandable and accurate regarding debits made, current balances, and fees charged. Terminal receipts also must be readily understandable and accurate regarding the amount of the transfer. Moreover, readily understandable and accurate statements and receipts will help reduce the number of alleged errors that the institution must investigate under Regulation E, which can be time-consuming and costly to institutions.

Best Practices

Clear disclosures and explanations to consumers of the operation, costs, and limitations of an overdraft protection program and appropriate management oversight of the program are fundamental to enabling responsible use of overdraft protection. Such disclosures and oversight can also minimize potential consumer confusion and complaints, foster good customer relations, and reduce credit, legal, and other potential risks to the institution. Institutions that establish overdraft protection programs should, as applicable, take into consideration the following best practices, many of which have been recommended or implemented by financial institutions and others, as well as practices that may otherwise be required by applicable law. While the Agencies are concerned about promoted overdraft protection programs, the best practices may also be useful for other methods of covering overdrafts. These best practices currently observed in or recommended by the industry include:

Marketing and Communications With Consumers

- *Avoid promoting poor account management.* Institutions should not market the program in a manner that encourages routine or intentional overdrafts. Institutions should instead present the program as a customer service that may cover inadvertent consumer overdrafts.
- *Fairly represent overdraft protection programs and alternatives.* When informing consumers about an overdraft protection program, inform consumers generally of other overdraft services and credit products, if any, that are available at the institution and how the terms, including fees, for these services and products differ. Identify for consumers the consequences of extensively using the overdraft protection program.
- *Train staff to explain program features and other choices.* Train customer service or consumer complaint processing staff to explain their overdraft protection program's features, costs, and terms, including how to opt out of the service. Staff also should be able to explain other available overdraft products offered by the institution and how consumers may qualify for them.
- *Clearly explain discretionary nature of program.* If payment of an overdraft is discretionary, make this clear. Institutions should not represent that the payment of overdrafts is guaranteed

[19] For federal credit unions, this time period may not exceed 45 calendar days. 12 CFR 701.21(c)(3).

[20] *See* 12 CFR 226.4.

[21] 15 U.S.C. 1691 *et seq.* The ECOA is implemented by Regulation B, 12 CFR Part 202. The ECOA prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), the fact that all or part of the applicant's income derives from a public assistance program, and the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

[22] *See* 12 CFR 202.2(c) and 9.

[23] *See* 12 CFR 202.3(c).

[24] 12 U.S.C. 4301 *et seq.* TISA is implemented by Regulation DD at 12 CFR Part 230 for banks and savings associations, and by NCUA's TISA regulation at 12 CFR Part 707 for federally insured credit unions.

[25] An advance change in terms notice would not be required if the consumer's account disclosures stated that their overdraft check may or may not be paid and the same fee would apply.

[26] 15 U.S.C. 1693 *et seq.* The EFTA is implemented by Regulation E, 12 CFR Part 205.

or assured if the institution retains discretion not to pay an overdraft.

• *Distinguish overdraft protection services from ''free'' account features.* Institutions should not promote ''free'' accounts and overdraft protection programs in the same advertisement in a manner that suggests the overdraft protection program is free of charges.

• *Clearly disclose program fees.* In communications about overdraft protection programs, clearly disclose the dollar amount of the fee for each overdraft and any interest rate or other fees that may apply. For example, rather than merely stating that the institution's standard NSF fee will apply, institutions should restate the dollar amount of any applicable fee or interest charge.

• *Clarify that fees count against the disclosed overdraft protection dollar limit.* Consumers should be alerted that the fees charged for covering overdrafts, as well as the amount of the overdraft item, will be subtracted from any overdraft protection limit disclosed.

• *Demonstrate when multiple fees will be charged.* If promoting an overdraft protection program, clearly disclose, where applicable, that more than one overdraft fee may be charged against the account per day, depending on the number of checks presented on, and other withdrawals made from, the consumer's account.

• *Explain impact of transaction clearing policies.* Clearly explain to consumers that transactions may not be processed in the order in which they occurred, and that the order in which transactions are received by the institution and processed can affect the total amount of overdraft fees incurred by the consumer.

• *Illustrate the type of transactions covered.* Clearly disclose that overdraft fees may be imposed on transactions such as ATM withdrawals, debit card transactions, preauthorized automatic debits, telephone-initiated transfers or other electronic transfers, if applicable, to avoid implying that check transactions are the only transactions covered.

Program Features and Operation

• *Provide election or opt-out of service.* Obtain affirmative consent of consumers to receive overdraft protection. Alternatively, where overdraft protection is automatically provided, permit consumers to ''opt out'' of the overdraft program and provide a clear consumer disclosure of this option.

• *Alert consumers before a transaction triggers any fees.* When consumers attempt to withdraw or transfer funds made available through an overdraft protection program, provide a specific consumer notice, where feasible, that completing the withdrawal may trigger the overdraft fees (for example, it presently may be feasible at a branch teller window). This notice should be presented in a manner that permits consumers to cancel the attempted withdrawal or transfer after receiving the notice. If this is not feasible, then post notices (*e.g.*, on proprietary ATMs) explaining that transactions may be approved that overdraw the account and fees may be incurred. Institutions should consider making access to the overdraft protection program unavailable through means other than check transactions, if feasible.

• *Prominently distinguish balances from overdraft protection funds availability.* When disclosing a single balance for an account by any means, institutions should not include overdraft protection funds in that account balance. The disclosure should instead represent the consumer's own funds available without the overdraft protection funds included. If more than one balance is provided, separately (and prominently) identify the balance without the inclusion of overdraft protection.

• *Promptly notify consumers of overdraft protection program usage each time used.* Promptly notify consumers when overdraft protection has been accessed, for example, by sending a notice to consumers the day the overdraft protection program has been accessed. The notification should identify the date of the transaction, the type of transaction, the overdraft amount, the fee associated with the overdraft, the amount necessary to return the account to a positive balance, the amount of time consumers have to return their accounts to a positive balance, and the consequences of not returning the account to a positive balance within the given timeframe. Notify consumers if the institution terminates or suspends the consumer's access to the service, for example, if the consumer is no longer in good standing.

• *Consider daily limits on the consumer's costs.* Consider imposing a cap on consumers' potential daily costs from the overdraft program. For example, consider limiting daily costs from the program by providing a numerical limit on the total overdraft transactions that will be subject to a fee per day or by providing a dollar limit on the total fees that will be imposed per day.

• *Monitor overdraft protection program usage.* Monitor excessive consumer usage, which may indicate a need for alternative credit arrangements or other services, and inform consumers of these available options.

• *Fairly report program usage.* Institutions should not report negative information to consumer reporting agencies when the overdrafts are paid under the terms of overdraft protection programs that have been promoted by the institutions.

This concludes the text of the final Joint Guidance on Overdraft Protection Programs.

Dated: February 15, 2005.

Julie L. Williams,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, February 17, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

Dated at Washington, DC, the 16th day of February, 2005.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

By the National Credit Union Administration Board on February 17, 2005.

Mary F. Rupp,

Secretary of the Board.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Proposed New Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Internal Revenue Service, gives notice of a proposed new system of records entitled ''Treasury/IRS 00.009—Taxpayer Assistance Center (TAC) Recorded Quality Review Records.''

DATES: Comments must be received no later than March 28, 2005. This new system of records will be effective April 5, 2005 unless the IRS receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW.,

Washington, DC 20224. Comments will be made available for inspection and copying upon request in the Freedom of Information Reading Room (Room 1621), at the above address.

FOR FURTHER INFORMATION CONTACT: Buz Dereniuk, Territory Manager, W: CAR: FA, 777 Sonoma Ave., Room 112, Santa Rosa, California 95404, (707) 523–4673 (ext 254) (not a toll free number).

SUPPLEMENTARY INFORMATION: Without an effective quality review system, the IRS cannot be assured that its employees are providing correct answers to taxpayer questions. Currently Taxpayer Assistance Center (TAC) Managers monitor employees by occasionally sitting with them and observing the taxpayer interaction. This produces an artificial environment that does not give a true representation of employee performance, training needs, and taxpayer service abilities. A November 22, 2002, Treasury Inspector General for Tax Administration (TIGTA) review, available at *http://www.ustreas.gov/tigta/2003reports/200340023fr.html*, recommended that the Commissioner, Wage and Investment (W&I) Division, explore options such as planned remote monitoring (a.k.a. contact recording) by TAC managers for conducting quality reviews of TAC employees on a regular basis. Contact recording would remove advance notice of a manager's review, and the intrusion of the manager being physically present during the contact. It will capture an accurate recordation of employees' interaction with taxpayers in a more natural and realistic setting. The automated contact recording system will allow the IRS to improve the quality of responses to taxpayers by providing an efficient and effective means of assessing employee performance. Managers will review any audio recordings and captured computer screen images and document their evaluations of employee performances. Managers and employees may review the audio recordings and captured computer screen images when evaluating employee contacts with taxpayers. Each manager can only access records of contacts by employees under that manager's supervision. Quality reviewers will review records of contacts for purposes of identifying issues or topics about which many Taxpayer Response Representatives (TRR) would benefit from additional training, and to determine program-wide accuracy rates of information provided.

The ability to select any contact for review purposes will result in greater fairness and timeliness of reviews of employees, the ability to sample employee performance nationwide, and improved quality of assistance to taxpayers. Also, in cases where managers are not in the same location as their employees, the time and expense of travel will be significantly reduced. By recording taxpayer contacts and tracking employee actions, the IRS will be able to improve its service to the public by providing specific, tangible feedback to employees. As a result, targeted training will be provided to employees either on-line or in one-on-one coaching sessions.

Taxpayers will be notified by signs clearly posted at the TAC entry and on workstations of TRRs that their contacts may be recorded for quality improvement purposes. Taxpayers may opt out of being recorded by notifying the IRS employee. If so notified, the employee will stop any recording and will continue to assist the taxpayer. Audio recordings and captured computer screen images will be kept long enough for employee evaluation and quality review, generally not more than 45 days. However, the agency may keep audio recordings and captured computer screen images for a longer period under certain circumstances, including, but not limited to, resolution of matters pertaining to employee performance, security (threat, altercation, etc.), or conduct-related issues.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The proposed new system of records entitled ''Treasury/IRS 00.009—Taxpayer Assistance Center (TAC) Recorded Quality Review Records'' is published in its entirety below.

Dated: February 15, 2005.

Arnold I. Havens,

General Counsel.

Treasury/IRS 00.009

SYSTEM NAME:

Taxpayer Assistance Center (TAC) Recorded Quality Review Records—Treasury/IRS

SYSTEM LOCATION:

Records in this system of records will eventually be located at every Taxpayer Assistance Center (TAC). An up-to-date list of these sites is available on-line at: *http://www.irs.gov/localcontacts/index.html.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

IRS employees who respond to taxpayer assistance contacts in person.

CATEGORIES OF RECORDS IN THE SYSTEM:

Audio recordings of conversations with taxpayers, captured computer screen images of taxpayer records reviewed by Taxpayer Response Representatives during the conversation, and associated records required to administer IRS quality review and employee performance feedback programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7803.

PURPOSE:

Records in this system of records are used to evaluate and improve employee performance and the quality of service at Taxpayer Assistance Centers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose information during a proceeding before a court, administrative tribunal, or other adjudicative body when: (a) The IRS or any component thereof, (b) any IRS employee in his or her official capacity, (c) any IRS employee in his or her personal capacity where the IRS or the Department of Justice has agreed to provide representation for the employee, or (d) the United States is a party to, has an interest in, or is likely to be affected by, such proceeding, and the IRS (or its DOJ counsel) determines that the information is relevant and necessary to the proceeding and no privilege is asserted. Information may also be disclosed to the neutral to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(2) Disclose information to the Department of Justice when seeking legal advice or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof, (b) any IRS employee in his or her official capacity, (c) any IRS employee in his or her individual capacity under circumstances in which the IRS or the Department of Justice has agreed to provide representation for the

employee, or (d) the United States government is a party to the proceeding or has an interest in such proceeding, and the IRS (or its DOJ counsel) determines that the records are both relevant and necessary to the proceeding or advice sought.

(3) Disclose information to a contractor to the extent necessary for the performance of a contract.

(4) Disclose to an appropriate Federal, State, local, tribal, or foreign agency, or other public authority, responsible for implementing or enforcing, or for investigating or prosecuting the violation of, a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(5) Disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation, and no privilege is asserted.

(6) Disclose information to an arbitrator, mediator, or similar person, and to the parties, in the context of alternative dispute resolution, to the extent relevant and necessary to permit the arbitrator, mediator, or similar person to resolve the matters presented, including asserted privileges.

(7) Disclose information to the Office of Personnel Management, Merit Systems Protection Board, the Office of Special Counsel, or the Equal Employment Opportunity Commission when the records are relevant and necessary to resolving personnel, discrimination, or labor management matters within the jurisdiction of these offices.

(8) Disclose information to the Federal Labor Relations Authority, including the Office of the General Counsel of that authority, the Federal Service Impasses Board, or the Federal Mediation and Conciliation Service when the records are relevant and necessary to resolving any labor management matter within the jurisdiction of these offices.

(9) Disclose information to the Office of Government Ethics when the records are relevant and necessary to resolving any conflict of interest, conduct, financial statement reporting, or other ethics matter within the jurisdiction of that office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper records and machine-readable media.

RETRIEVABILITY:

Records are retrieved by the name of the employee to whom they apply.

SAFEGUARDS:

Safeguard access controls will not be less than those provided for by IRM 25.10.1, Information Technology Security Policy and Guidance, and IRM 1.16, Manager's Security Handbook.

RETENTION AND DISPOSAL:

Record retention will be established in accordance with 36 CFR, Chapter XII—National Archives and Records Administration, Part 1228, Subpart B—Scheduling Records. Audio recordings and captured computer screen images will be kept long enough for managerial review and feedback, and for quality review purposes, generally not more than 45 days. However, the agency may keep audio recordings and captured computer screen images for a longer period under certain circumstances, including, but not limited to, resolution of matters pertaining to poor employee performance, security (threat, altercation, etc.), or conduct-related issues.

SYSTEM MANAGER AND ADDRESS:

Commissioner, Wage and Investment Division, 401 West Peachtree Street Northwest, Stop 11–WI, Atlanta, GA 30308, (404) 338–7060 (not a toll free number).

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the system manager address listed above.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the system manager at the address listed above.

CONTESTING RECORD PROCEDURES:

See ''Record Access Procedures'' above for seeking amendment of records that are not tax records.

RECORD SOURCE CATEGORIES:

Taxpayers, Employees, IRS records of taxpayer accounts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–3474 Filed 2–23–05; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–2: OTS Nos. H–4152 and 06210]

First Federal of Northern Michigan Bancorp, Inc., Alpena, MI; Approval of Conversion Application

Notice is hereby given that on February 11, 2005, the Assistant Managing Director, Examinations and Supervision—Operations, Office of Thrift Supervision (OTS), or her designee, acting pursuant to delegated authority, approved the application of First Federal of Northern Michigan, Alpena, Michigan, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and OTS Southeast Regional Office, 1475 Peachtree Street, NE., Atlanta, GA 30309.

Dated: February 18, 2005.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 05–3547 Filed 2–23–05; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–01; OTS Nos. 17970, H–4024 and H–4153]

The Rome Savings Bank, Rome, MHC, New Rome Bancorp, Inc., Rome, NY; Approval of Conversion Applications

Notice is hereby given that on February 11, 2005, the Assistant Managing Director, Examinations and Supervision—Operations, Office of Thrift Supervision (''OTS''), or her designee, acting pursuant to delegated authority, approved the application of Rome, MHC, and The Rome Savings Bank, Rome, New York, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail

Public.Info@OTS.Treas.gov.) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and OTS Northeast Regional Office, Harborside Financial Center Plaza Five, Suite 1600, Jersey City, New Jersey 07311.

Dated: February 18, 2005.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 05–3548 Filed 2–23–05; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Adjustments for Service-Connected Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by the Veterans' Compensation Cost-of-Living Adjustment Act of 2004, Public Law 108–363, the Department of Veterans Affairs (VA) is hereby giving notice of adjustments in certain benefit rates. These adjustments affect the compensation and dependency and indemnity compensation (DIC) programs.

DATES: These adjustments are effective December 1, 2004, the date provided by Public Law 108–363.

FOR FURTHER INFORMATION CONTACT: Pamela C. Liverman, Consultant, Compensation and Pension Service (212A), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (757) 858–6148, ext. 107.

SUPPLEMENTARY INFORMATION: Section 2 of Public Law 108–363 provides for an increase in each of the rates in sections 1114, 1115(1), 1162, 1311, 1313, and 1314 of title 38, United States Code. VA is required to increase these benefit rates by the same percentage as increases in the benefit amounts payable under title II of the Social Security Act. In computing increased rates in the cited title 38 sections, fractions of a dollar are rounded down to the nearest dollar. The increased rates are required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.7 percent cost-of-living increase in Social Security benefits. Therefore, applying the same percentage, the following rates for VA compensation and DIC programs will be effective December 1, 2004:

DISABILITY COMPENSATION (38 U.S.C. 1114)

Disability evaluation	Monthly rate
10%	$108
20	210
30	324
40	466
50	663
60	839
70	1,056
80	1,227
90	1,380
100	2,299
(38 U.S.C. 1114(k) through (s))	
38 U.S.C. 1114(k)	$84; $2,860; $84; 4,012
38 U.S.C. 1114(l)	2,860
38 U.S.C. 1114(m)	3,155
38 U.S.C. 1114(n)	3,590
38 U.S.C. 1114(o)	4,012
38 U.S.C. 1114(p)	4,012
38 U.S.C. 1114(r)	1,722; 2,564
38 U.S.C. 1114(s)	2,573
Additional Compensation for Dependents (38 U.S.C. 1115(1))	
38 U.S.C. 1115(1)(A)	130
38 U.S.C. 1115(1)(B)	224; $66
38 U.S.C. 1115(1)(C)	88; $66
38 U.S.C. 1115(1)(D)	105
38 U.S.C. 1115(1)(E)	247
38 U.S.C. 1115(1)(F)	207
Clothing Allowance (38 U.S.C. 1162)	
$616 per year	

DIC TO A SURVIVING SPOUSE (38 U.S.C. 1311)

Pay grade	Monthly rate
E–1	$993
E–2	993
E–3	993
E–4	993
E–5	993
E–6	993
E–7	1,027
E–8	1,084
E–9[1]	1,131
W–1	1,049
W–2	1,091
W–3	1,123
W–4	1,188
O–1	1,049
O–2	1,084
O–3	1,160
O–4	1,227
O–5	1,351
O–6	1,523
O–7	1,645
O–8	1,805
O–9	1,931

DIC TO A SURVIVING SPOUSE (38 U.S.C. 1311)—Continued

Pay grade	Monthly rate
O–10[2]	2,118

[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, the surviving spouse's monthly rate is $1,221.

[2] If the veteran served as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, the surviving spouse's monthly rate is $2,272.

DIC TO A SURVIVING SPOUSE (38 U.S.C. 1311(A) THROUGH (D))

38 U.S.C. 1311(a) through (d)	Monthly rate
38 U.S.C. 1311(a)(1)	$993
38 U.S.C. 1311(a)(2)	213
38 U.S.C. 1311(b)	247
38 U.S.C. 1311(c)	247
38 U.S.C. 1311(d)	118

DIC TO CHILDREN (38 U.S.C. 1313)

38 U.S.C. 1313	Monthly rate
38 U.S.C. 1313(a)(1)	$421
38 U.S.C. 1313(a)(2)	605
38 U.S.C. 1313(a)(3)	87
38 U.S.C. 1313(a)(4)	787; $151

SUPPLEMENTAL DIC TO CHILDREN (38 U.S.C. 1314)

38 U.S.C. 1314	Monthly rate
38 U.S.C. 1314(a)	$247
38 U.S.C. 1314(b)	421
38 U.S.C. 1314(c)	210

Dated: February 15, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. 05–3497 Filed 2–23–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that the Veterans' Advisory Committee on Education will meet on Thursday, March 3, 2005, from 8:30 a.m. to 4 p.m.; and Friday, March 4, 2005, from 8:30 a.m. to 12 p.m. The meeting will be held

in Room 340, Cannon House Office Building, Washington, DC. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of education and training programs for veterans and servicepersons, reservists and dependents of veterans under Chapters 30, 32, 35, and 36 of Tile 38, and Chapter 1606 of Title 10, United States Code.

On March 3, the meeting will begin with an overview by Mr. James Bombard, Committee Chair. In addition, this session will include discussions on proposed and new legislation, a total force GI Bill, a California sheriffs issue, Veterans Education and Training Service, an update on VA–ONCE, and the results of the committee stakeholder engagement survey. On March 4, the Committee will review and summarize issues addressed during this meeting.

Interested persons may submit written statements to the Committee before the meeting, or within 10 days after the meeting, with Mrs. Judith B. Timko, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (225B), 810 Vermont Avenue, NW., Washington, DC 20420. Oral statements will be heard on Friday, March 4, 2005, at 9:15 a.m. Any member of the public wishing to attend the meeting should contact Mrs. Judith B. Timko or Mr. Michael Yunker at (202) 273–7187.

Dated: February 10, 2005.

By Direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–3496 Filed 2–23–05; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Thursday,
February 24, 2005

Part II

Environmental Protection Agency

40 CFR Parts 148, 261, et al.

Hazardous Waste—Nonwastewaters From Productions of Dyes, Pigments, and Food, Drug, and Cosmetic Colorants; Mass Loadings-Based Listing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, 271, and 302

[RCRA–2003–0001; FRL–7875–8]

RIN 2050–AD80

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dyes and/or Pigments Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Designation of Five Chemicals as Appendix VIII Constituents; Addition of Four Chemicals to the Treatment Standards of F039 and the Universal Treatment Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today listing as hazardous nonwastewaters generated from the production of certain dyes, pigments, and FD&C colorants. EPA is promulgating this regulation under the Resource Conservation and Recovery Act (RCRA), which directs EPA to determine whether these wastes pose a substantial present or potential hazard to human health or the environment when they are improperly treated, stored, transported, disposed of or otherwise managed. This listing sets annual mass loadings for constituents of concern, such that wastes would not be hazardous if the constituents are below the regulatory thresholds. If the wastes meet or exceed the regulatory levels for any constituents of concern, the wastes must be managed as listed hazardous wastes, unless the wastes are either disposed in a landfill unit that meets certain liner design criteria, or treated in a combustion unit as specified in the listing description. This rule also adds five toxic constituents to the list of hazardous constituents that serves as the basis for classifying wastes as hazardous. In addition, this rule establishes Land Disposal Restrictions (LDR) treatment standards for the wastes, and designates these wastes as hazardous substances subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This rule does not adjust the one pound statutory reportable quantity (RQ) for the waste.

DATES: This final rule is effective on August 23, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2003–0001. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information may not be publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. This Docket Facility is open from 8:30 a.m.–4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For general information, review our website at *http://www.epa.gov/epaoswer/hazwaste/id/dyes/index.htm.* For information on specific aspects of the rule, contact Robert Kayser, Hazardous Waste Identification Division, Office of Solid Waste (5304W), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–7304; fax number: (703) 308–0514; e-mail address: *kayser.robert@epa.gov.* For technical information on the CERCLA aspects of this rule, contact Ms. Lynn Beasley, Office of Emergency Prevention, Preparedness, and Response, Emergency Response Center (5204G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 603–9086; e-mail address: *beasley.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION:

Readable Regulations

Today's preamble and regulations are written in ''readable regulations'' format. The authors tried to use active rather than passive voice, plain language, a question-and-answer format, the pronouns ''we'' for EPA and ''you'' for the owner/generator, and other techniques to make the information in today's rule easier to read and understand. This format is part of our efforts toward regulatory improvement. We believe this format helps readers understand the regulations, which should then increase compliance, make enforcement easier, and foster better relationships between EPA and the regulated community.

ACRONYMS USED IN THE RULE

Acronym	Definition
BDAT	Best Demonstrated Available Technology.
BIODG	Biodegradation.
CAA	Clean Air Act.
CARBN	Carbon absorption.
CAS	Chemical Abstract Services.
CBI	Confidential Business Information.
CCL	Compacted clay liner.
CERCLA	Comprehensive Environmental Response Compensation and Liability Act.
CFR	Code of Federal Regulations.
CHOXD	Chemical or electrolytic oxidation.
CMBST	Combustion.
CoC	Constituent of concern.
CI	Colour Index.
CPMA	Color Pigments Manufacturers Association.
CWA	Clean Water Act.
CWTP	Centralized wastewater treatment plant.
ED	Environmental Defense (previously the Environmental Defense Fund or EDF).
E.O.	Executive Order.
EP	Extraction Procedure.

ACRONYMS USED IN THE RULE—Continued

Acronym	Definition
EPA	Environmental Protection Agency.
EPACMTP	EPA's Composite Model for Leachate Migration with Transformation Products.
EPCRA	Emergency Planning and Community Right-To-Know Act.
ETAD	Ecological and Toxicological Association of Dyes and Organic Pigments Manufacturers.
EU	European Union.
fb	Followed by.
FDA	Food and Drug Administration.
FD&C	Food, Drug and Cosmetic.
FR	Federal Register.
GCL	Geosynthetic clay liner.
GC/MS	Gas Chromatography/Mass Spectroscopy.
GM	Geomembrane.
GSCM	General Soil Column Model.
HELP	Hydrologic Evaluation of Landfill Performance.
HGDB	Hydrogeologic Database.
HPLC	High Performance Liquid Chromatography.
HQ	Hazard Quotient.
HSWA	Hazardous and Solid Waste Amendments.
ICR	Information Collection Request.
kg/yr	Kilogram/year.
LDR	Land Disposal Restriction.
mg/kg	Milligram per kilogram.
mg/L	Milligram per liter.
MSW	Municipal Solid Waste.
MT	Metric ton.
NAICS	North American Industrial Classification System.
OMB	Office of Management and Budget.
OSW	Office of Solid Waste.
OSWER	Office of Solid Waste and Emergency Response.
POTW	Publicly owned treatment works.
ppm	Parts per million.
PRA	Paperwork Reduction Act.
QA	Quality Assurance.
QC	Quality Control.
RCRA	Resource Conservation and Recovery Act.
RFA	Regulatory Flexibility Act.
RFSA	Regulatory Flexibility Screening Analysis.
RQ	Reportable Quantity.
SAB	Science Advisory Board.
SBA	Small Business Administration.
SBREFA	Small Business Regulatory Enforcement Fairness Act.
SIC	Standard Industry Code.
SW–846	Test Methods for Evaluating Solid Wastes.
TRI	Toxic Release Inventory.
UCLM	Upper confidence limit of the mean.
UMRA	Unfunded Mandates Reform Act.
U.S.C.	United States Code.
UTS	Universal Treatment Standard.
WETOX	Wet air oxidation.

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I. Overview

A. Who Will Be Affected by This Final Rule?

Today's final action will affect those who handle the wastes that we are adding to EPA's list of hazardous wastes under the RCRA program. This regulation could directly impact businesses that generate and manage certain organic dyes and/or pigment production wastes. In addition, manufacturers that do not make dyes or pigments, but that generate wastes containing selected constituents of concern, may be indirectly impacted. This is because we are adding new treatment standards for four chemicals, and we are adding five new constituents to the list of hazardous constituents on Appendix VIII of part 261. Thus, these actions may result in indirect impacts on these manufacturers. In addition, landfill owners/operators who previously accepted these wastes may be indirectly impacted. This action may also affect entities that need to respond to releases of these wastes as CERCLA hazardous substances. Impacts on potentially affected entities, direct and indirect, are summarized in section VIII of this Preamble. The document, ''Economic Assessment for the Proposed Loadings-Based Listing of Non-Wastewaters from the Production of Selected Organic Dyes, Pigments, and Food, Drug, and Cosmetic Colorants,'' November 2003 (hereafter known as the Economic Assessment Document) presents a comprehensive analysis of potentially impacted entities. Further updated analysis is also presented in the ''Revised Impacts Assessment.'' [1] These documents are available in the docket for today's rule. A summary of potentially affected businesses is provided in the table below.

TABLE 1.—SUMMARY OF FACILITIES POTENTIALLY AFFECTED BY THE U.S. EPA'S 2005 DYES AND/OR PIGMENTS MANUFACTURING WASTE LISTING FINAL RULE

SIC code	NAICS code	Industry sector name	Estimated number of relevant facilities*
Directly Impacted:			
2865	325132–1	Synthetic Organic Dyes	31.
	325132–4	Synthetic Organic Pigments, Lakes, and Toners.	
Indirectly Impacted:			
2800 (except 2865)	325 (except 325132)	Chemical Manufacturing	Less than 50 facilities total.**
4953	562212	Solid Waste Landfills and Disposal Sites, Nonhazardous.	
5169	42269	Other Chemicals and Allied Products (wholesale).	

SIC—Standard Industrial Classification.
NAICS—North American Industry Classification System.
***Note:** The figures in this column represent individual facilities, not companies. A total of 22 companies are expected to be impacted under this NAICS.
**Estimate based on 13 expanded scope facilities plus no more than 37 separate solid waste landfills (562212) potentially receiving wastes of concern.

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding entities likely to be regulated by this action. This table lists those entities that we are aware of that potentially could be affected by this action. However, this action may affect other entities not listed in the table. To determine whether your facility is regulated by this action, you should examine 40 CFR parts 260 and 261 carefully in concert with the final rules amending these regulations that are found at the end of this **Federal Register** document. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

B. What Are the Statutory Authorities for This Final Rule?

Today's hazardous waste regulations are promulgated under the authority of Sections 2002(a), 3001(b), 3001(e)(2), 3004(d)–(m) and 3007(a) of the Solid Waste Disposal Act, 42 U.S.C. 6912(a), 6921(b) and (e)(2), 6924(d)–(m) and 6927(a), as amended several times, most importantly by the Hazardous and Solid

[1] Memorandum from Lyn D. Luben to the RCRA Docket, July 21, 2004.

Waste Amendments of 1984 (HSWA). These statutes commonly are referred to as the Resource Conservation and Recovery Act (RCRA), are codified at Volume 42 of the United States Code (U.S.C.), Sections 6901 to 6992(k) (42 U.S.C. 6901–6992(k)).

Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a) is the authority under which the CERCLA aspects of this rule are promulgated.

C. How Does the ED v. Johnson Consent Decree Impact This Final Rule?

HSWA established deadlines for completion of a number of listing determinations, including for dyes and pigment production wastes (see RCRA section 3001(e)(2)). Due to competing demands for Agency resources and shifting priorities, these deadlines were not met. As a result, in 1989, the Environmental Defense Fund (EDF, currently Environmental Defense or ED) filed a lawsuit to enforce the statutory deadlines for listing decisions in RCRA section 3001(e)(2). (*Environmental Defense* v. *Johnson,* D.D.C. Civ. No. 89–0598, subsequently referred to in this notice as the ED consent decree.) To resolve most of the issues in the case, in 1991 ED and EPA entered into a consent decree which has been amended several times to revise the deadlines for EPA action. Paragraph 1.h.(i) (as amended in December 2002) of the consent decree addresses the organic dyes and pigment production industries:

> EPA shall promulgate final listing determinations for azo/benzidine, anthraquinone, and triarylmethane dye and pigment production wastes on or before February 16, 2005* * * These listing determinations shall be proposed for public comment on or before November 10, 2003.

Furthermore, paragraph 6.e. (as amended) stipulates that:

> On or before November 10, 2003, EPA's Administrator shall sign a notice of proposed rulemaking proposing land disposal restrictions for dye and pigment wastes proposed for listing under paragraph 1.h.(i). EPA shall promulgate a final rule establishing land disposal restrictions for dye and pigment wastes listed under paragraph 1.h.(i) on the same date that it promulgates a final listing determination for such wastes.

Today's final rule satisfies EPA's duty under paragraphs 1.h and 6.e of the ED consent decree to finalize listing determinations and land disposal restrictions for the specified organic dyes and/or pigment production wastes.

II. Summary of Today's Action

In today's notice, EPA is promulgating regulations that add one waste generated by the dyes and/or pigments manufacturing industries to the list of hazardous waste in 40 CFR 261.32:

> K181—Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in paragraph (c) of this section that are equal to or greater than the corresponding paragraph (c) levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are: (i) Disposed in a subtitle D landfill unit subject to the design criteria in § 258.40, (ii) disposed in a subtitle C landfill unit subject to either § 264.301 or § 265.301, (iii) disposed in other subtitle D landfill units that meet the design criteria in § 258.40, § 264.301, or § 265.301, or (iv) treated in a combustion unit that is permitted under subtitle C, or an onsite combustion unit that is permitted under the Clean Air Act. For the purposes of this listing, dyes and/or pigments production is defined in paragraph (b)(1) of this section. Paragraph (d) of this section describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous under §§ 261.21–261.24 and 261.31–261.33 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met.

This listing provides a flexible approach that focuses the regulation on wastes that present a risk to human health and the environment. All quantities of wastes generated during a calendar year up to the mass loading limits are not listed hazardous waste. Only wastes subsequently generated that meet or exceed the annual limits would potentially become hazardous waste. However, the listing includes a conditional exemption for wastes that are disposed of in a subtitle D or subtitle C landfill unit that meet the design standards specified in the listing description and for wastes treated in certain combustion units with the specified permits. Therefore, wastes that are below the mass loading limits, or wastes that meet the conditional exemption as described in the regulation, are excluded from the listing from their point of generation, and would not be subject to any RCRA subtitle C management requirements for generation, storage, transport, treatment, or disposal (including the land disposal restrictions).

EPA is listing this waste as hazardous based on the criteria set out in 40 CFR 261.11. As described in the November 25, 2003 proposed rule (68 FR 66164), we assessed and considered these criteria to determine whether nonwastewaters and wastewaters from the manufacture of dyes and/or pigments warranted listing. We evaluated the risks potentially posed by these residuals using quantitative risk assessment techniques.

After assessing public comments submitted in response to our proposal, we are finalizing the K181 hazardous waste listing, with several modifications. The final rule continues to establish mass-loading limits for seven of the eight proposed constituents of concern (CoCs), and continues to allow for the contingent exemption of wastes that meet or exceed these limits but that are managed in landfill units that are subject to the design criteria of either § 258.40, § 264.301, or § 265.301. We revised the exemption to also include wastes that are disposed in other non-municipal landfills (industrial landfills) that meet the liner design requirements in § 258.40, § 264.301 or § 265.301. We also added an exemption for wastes that are treated in combustion units that are either permitted under subtitle C, or that are onsite units permitted under the Clean Air Act (CAA). We are not, however, finalizing the proposed mass-loading levels for toluene-2,4-diamine; neither are we adding this constituent to Appendix VII of part 261 or to part 268.20 or 268.40 of the Land Disposal Restriction (LDR) standards.

Upon the effective date of today's final rule, wastes meeting the K181 listing description will become hazardous wastes and must be managed in accordance with RCRA subtitle C requirements, unless the wastes are to be managed in a manner that complies with the contingent management exemptions contained in the listing description. Residuals from the treatment, storage, or disposal of this newly listed hazardous waste also will be classified as hazardous waste pursuant to the ''derived-from'' rule (40 CFR 261.3(c)(2)(i)). Also, any mixture of a listed hazardous waste and a solid waste is itself a RCRA hazardous waste (40 CFR 261.3(a)(2)(iii) and (iv), ''the mixture rule''). We are not promulgating any exemption for treatment residuals from the derived-from rule for the reasons set out in the proposed rule (68 FR 66199). The mass-based approach already builds in an exemption for wastes that are generated with constituent masses below the loading limit, are disposed of in landfills with liner design requirements, or are treated in certain combustion units. Once a waste meets the classification for K181, any treatment residuals remain hazardous wastes, unless delisted under § 260.22.

Today's rule also takes final action on our proposed decision not to list as hazardous, as discussed in the proposal, wastewaters from the production of dyes and/or pigments.

Descriptions of wastes from the production of dyes and/or pigments can be found in the document entitled ''Background Document for Identification and Listing of Wastes from the Production of Organic Dyes and Pigments,'' November 2003 (hereafter referred to as the Listing Background Document), available in the docket for the rulemaking. Responses to public comments submitted on the November 25, 2003 proposal can be found in the ''Response to Comments Background Document—Hazardous Waste Listing Determination for Dyes and/or Pigments Manufacturing Wastes (Final Rule),'' dated February 2005 (hereafter referred to as the ''Response to Comments Background Document''), also available in the docket. In addition, a number of commenters incorporated comments submitted in prior rulemakings into their 2003 public comments. Our responses to these ''incorporated'' comments are also available in the docket for today's final rule in a document entitled, ''Background Document—Responses to Incorporated Historical Comments on Prior Rulemakings,'' dated February 2005.

We are also promulgating other changes to the RCRA regulations as a result of this final listing determination. These changes include adding constituents to Appendices VII and VIII of part 261, and setting land disposal restrictions for the newly listed waste. We are adding the following seven constituents to Appendix VII of 40 part CFR 261 due to the fact that these constituents serve as the basis for the new listing: Aniline, o-anisidine, 4-chloroaniline, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, and 1,3-phenylenediamine. We are adding the following five constituents to Appendix VIII of 40 CFR part 261 as ''hazardous constituents'' because scientific studies show the chemicals have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms (*see* § 261.11(a)(3)): o-anisidine, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, and 1,3-phenylenediamine.[2] Section IV.D of today's rule describes the changes to the land disposal restrictions establishing treatment standards for the specific constituents in the newly-listed waste.

Also, as a result of this final rule, this listed waste becomes a hazardous substance under CERCLA. Therefore, in today's rule we are designating these wastes as CERCLA hazardous substances. These changes are described in section VII of today's final rule.

III. Summary of Proposed Rule

A. What Wastes Did EPA Propose To List as Hazardous?

In the November 25, 2003 proposed rule (68 FR 66164), EPA proposed to list one waste generated by the dyes and/or pigments manufacturing industry as hazardous waste under RCRA:

> K181: Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in paragraph (c)(1) of this section that are equal to or greater than the corresponding paragraph (c)(1) levels, as determined on a calendar year basis. These wastes would not be hazardous if: (i) The nonwastewaters do not contain annual mass loadings of the constituent identified in paragraph (c)(2) of this section at or above the corresponding paragraph (c)(2) level; and (ii) the nonwastewaters are disposed in a Subtitle D landfill cell subject to the design criteria in § 258.40 or in a Subtitle C landfill cell subject to either § 264.301 or § 265.301. For the purposes of this listing, dyes and/or pigments production is defined in paragraph (b)(1) of this section. Paragraph (d) of this section describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous under §§ 261.21–24 and 261.31–33 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met.

A summary of the proposed listing determination is presented below. More detailed discussions are provided in the preamble to the proposed rule and in the Background Documents included in the docket for the proposed rule.

In connection with the proposed K181 listing, EPA proposed to amend Appendix VIII of 40 CFR part 261 to add o-anisidine, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, and 1,3-phenylenediamine to the list of hazardous constituents.

We proposed to establish treatment standards for K181. We also proposed to add the following constituents to the Universal Treatment Standards (UTS) Table in 268.24 and to the F039 treatment standards applicable to hazardous waste landfill leachate: o-anisidine, p-cresidine, 2,4-dimethylaniline, toluene-2,4-diamine, and 1,3-phenylenediamine. The effect of adding these constituents to the UTS Table (in addition to the requirements for treatment of these constituents in K181 wastes) would be to require all characteristic hazardous wastes that contain any of these constituents as underlying hazardous constituents above their respective UTS levels to be treated for those constituents prior to land disposal.

We also proposed to add K181 to the list of CERCLA hazardous substances.

B. How Was This Proposal Different From Prior Hazardous Waste Listing Determinations?

In previous hazardous waste listings promulgated by EPA, we typically describe the scope of the listing in terms of the waste material and the industry or process generating the waste. However, we proposed to use a newly developed ''mass loadings-based'' approach for listing dyes and/or pigment production wastes. In a mass loadings-based listing, a waste would be hazardous once a determination is made that it contains any of the constituents of concern (CoC) at or above the specified mass-based levels of concern.

In the proposed rule, we identified CoCs likely to be present in nonwastewaters which may pose a risk above specified mass loading levels. Using risk assessment tools developed to support our hazardous waste identification program, we assessed the potential risks associated with the CoCs in plausible waste management scenarios. From this analysis, we developed ''listing loading limits'' for each of the CoCs.

We proposed that if you generate any dyes and/or pigment production nonwastewaters addressed by the proposed rule, you would be required either to determine whether or not your waste is hazardous or assume that it is hazardous as generated under the proposed K181 listing. (Note, we proposed that if wastes are otherwise hazardous due to an existing listing in §§ 261.31–261.33 or the hazardous waste characteristics in §§ 261.21–261.24, the listing under K181 would not apply.) We proposed a three-step determination process. The first step was a categorical determination where you would determine whether your waste falls within the categories of wastes covered by the listing (*e.g.*, nonwastewaters generated from the production of dyes and/or pigments that fall within the product classes of azo, triarylmethane, perylene or anthraquinone) and whether any of the regulated constituents could be in your waste. We proposed that if you

[2] For toxicity information, see section 7 of the ''Risk Assessment Technical Background Document for the Dye and Pigment Industries Listing Determination,'' November 2003 in the docket.

determine under this first step that your waste meets the categorical description of K181 and that your waste may contain any K181 constituent, you would then in the second step determine whether your waste meets the numerical standards for K181 (*e.g.*, compare the mass loadings of the regulated constituents in your waste to the numerical standards). Your waste would be a listed hazardous waste if it contains any of the CoCs at a mass loading equal to or greater than the annual hazardous mass limit identified for that constituent (unless the waste is eligible for a conditional exemption under step three). Under the proposed approach, all waste handlers could manage as nonhazardous all wastes generated up to the mass loading limit, even if the waste subsequently exceeds one or more annual mass loading limits. Finally, in the third step, we proposed that you would be able to determine whether your waste is eligible for a conditional exemption from the K181 listing. We proposed that you would need to demonstrate that your waste does not exceed a higher mass loading limit for one constituent and that it is being disposed of in a landfill subject to design standards set out in § 258.40, § 264.301, or § 265.301.

The 2003 proposal (and today's final rule) differs markedly from two prior proposed listing determinations for the dyes and/or pigment manufacturing wastes. On December 22, 1994, we previously proposed traditional listings of five specific wastes from these industries (59 FR 66072). On July 23, 1999, we subsequently proposed to list an additional two wastes using a concentration-based listing approach (64 FR 40192). The 2003 proposal, and the final rule promulgated today, completely supercede the prior 1994 and 1999 proposals. See 68 FR 66171 for further discussion of the early background of this listing determination.

C. Which Constituents Did EPA Propose To Add to Appendix VIII of 40 CFR Part 261?

EPA proposed to add five constituents to the list of hazardous constituents at 40 CFR part 261. These chemicals and their Chemical Abstract Services (CAS) numbers are:

o-anisidine (CAS No. 90–04–0),
p-cresidine (CAS No. 120–71–8),
2,4-dimethylaniline (CAS No. 95–68–1),
1,2-phenylenediamine (CAS No. 95–54–5), and
1,3-phenylenediamine (CAS No. 108–45–2).

We proposed these chemicals as CoCs for the proposed K181 listing. Based on our assessment of the available toxicity data, we believed that these chemicals met the § 261.11(a) criteria for inclusion on Appendix VIII. Therefore, we proposed to add them to Appendix VIII of 40 CFR part 261.

D. What Was the Proposed Status of Landfill Leachate From Previously Disposed Wastes?

We proposed to amend the existing exemption from the definition of hazardous waste for landfill leachate generated from certain previously disposed hazardous waste (40 CFR 261.4(b)(15)) to include leachate collected from non-hazardous waste landfills that previously accepted the proposed K181 waste. We proposed to temporarily defer the application of the proposed new waste code to such leachate to avoid disruption of ongoing leachate management activities.

The Agency proposed the deferral because information available to EPA at the time indicated that the wastes proposed to be listed as hazardous have been managed previously in non-hazardous waste landfills. Leachate derived from the treatment, storage, or disposal of listed hazardous wastes is classified as hazardous waste by the derived-from rule in 40 CFR 261.3(c)(2). Without such a deferral, we were concerned about forcing pretreatment of leachate even though pretreatment is neither required by nor needed under the Clean Water Act (CWA).

E. What Were the Proposed Treatment Standards Under RCRA's Land Disposal Restrictions Standards?

We proposed, where possible, to apply existing universal treatment standards (UTS) for the proposed K181 constituents of concern (CoCs). We proposed to apply the UTS to these wastes because the waste compositions were found to be similar to other wastes for which applicable treatment technologies have been demonstrated.

We found that there is significant structural similarity among many of the CoCs, including those for which we had not previously set technology-specific standards. We proposed that all CoCs for these wastes can be treated with equal effectiveness (i.e., destroyed or removed so as to be no longer detectable) by similar methods of treatment. We proposed combustion as the most effective BDAT treatment for nonwastewater forms of these wastes. For wastewaters derived from K181, we proposed a treatment train of wet air oxidation (WETOX) or chemical oxidation (CHOXD) followed by carbon adsorption (CARBN), or application of combustion (CMBST) as BDAT for the CoCs for which treatment standards had not previously been developed.

We also assessed the potential of developing numerical standards for those constituents with current technology-based treatment standards and those CoCs in K181 that lack current treatment requirements. Commenters to the July 23, 1999 listing proposal (64 FR 40192) suggested that EPA establish numerical standards, because they allow any treatment, other than impermissible dilution, to be used to comply with the land disposal restrictions. We found that there was adequate documentation in existing SW–846 [3] methods 8270, 8315, and 8325 to calculate numerical standards for the CoCs, with the exception of 1,3-phenylenediamine; 1,2-phenylenediamine; and 2,4-dimethylaniline. For 1,3-phenylenediamine and 2,4-dimethylaniline, we proposed to transfer the numerical standards of similar constituents as the universal treatment standards.

For 1,2-phenylenediamine, we found during past method performance evaluations that it can be difficult to achieve reliable recovery from aqueous matrixes and precise measurements. Therefore, for this constituent, we proposed that wastewaters be treated by CMBST; or CHOXD followed by BIODG or CARBN; or BIODG followed by CARBN, and all nonwastewaters would be treated by CMBST. We noted that if data adequate for the development of a numerical standard were presented in comments, the Agency might promulgate a numerical standard as an alternative, or as the treatment requirement.

We indicated, however, that if these numerical standards were shown in comments not to be achievable or otherwise appropriate, we would adopt methods of treatment as the exclusive treatment standard. Under this technology only approach, all nonwastewaters identified as K181 would be treated by CMBST, and all derived from wastewaters would be treated by either WETOX or CHOXD, followed by CARBN or CMBST.

We also proposed to add the constituents in K181 with numerical treatment standards to the Universal Treatment Standards listed at 40 CFR 268.48. As a result, characteristic wastes that also contain these constituents would require additional treatment before disposal, if constituent

[3] Manual of test methods from EPA/OSW: ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' SW–846; see *http://www.epa.gov/epaoswer/hazwaste/test/sw846.htm.*

concentrations exceed the proposed levels.

We proposed to amend the CoCs in F039 as necessary to include the constituents identified in K181 not already specified in F039. F039 applies to landfill leachates generated from multiple listed wastes in lieu of the original waste codes. F039 wastes are subject to numerical treatment standards equivalent to the universal treatment standards listed at 40 CFR 268.48. Without this change in existing regulations, F039 landfill leachates may not receive proper treatment for the constituents of K181.

The proposed treatment standards reflected the performance of best demonstrated treatment technologies, and were not based on the listing levels of concern derived from the risk assessment for dyes and/or pigments wastes. In that risk assessment, our analysis focused on the plausible management practices for only the dyes and pigment industries. As a result, our models did not attempt to assess all possible pathways, because the plausible management practice (disposal in a municipal subtitle D landfill) provides a certain level of control over some potential release pathways. In addition, our assessment of potential releases modeled engineered barriers in the form of various types of liner systems.

As discussed in the proposal, it was not appropriate to use the mass loading levels derived from these risk assessments as levels at which threats to human health and to the environment are minimized. Because there remained significant uncertainties as to what levels of hazardous constituents in these wastes would minimize threats to human health and to the environment posed by these wastes' land disposal, we chose to develop treatment standards for these wastes based on performance of the Best Demonstrated Available Technology for these wastes. *HWTC III,* 886 F. 2d at 361–363 (accepting this approach). For the same reason, we found that these technology-based treatment standards were not more stringent than the risk-based levels at which we could find that threats to human health and to the environment are minimized.

F. What Risk Assessment Approach Was Used for the Proposed Rule?

For the proposed rule, we conducted a risk assessment to calculate the maximum mass loading of individual constituents that could be present in dye and pigment waste and remain below a specified level of risk to both humans and the environment.

To establish these listing levels, we: (1) Selected constituents of potential concern in waste from dye and/or pigment production, (2) evaluated plausible waste management scenarios, (3) calculated exposure concentrations by modeling the release and transport of the constituents from the waste management unit to the point of exposure, and (4) calculated waste constituent loadings that are likely to pose an unacceptable risk. In addition, we conducted a screening level ecological risk assessment to ensure that the mass loading limits were protective of the environment.

The risk analysis for the dyes and/or pigment production wastes estimated the mass loading of individual constituents that can be present in each waste without exceeding a specified level of protection to human health and the environment. The risk assessment evaluated waste management scenarios that may occur nationwide. We selected a national analysis that captures variability in meteorological and hydrogeological conditions for this listing determination because facilities that manage these wastes are found in many areas of the country.

For this listing determination, we defined the target level of protection for human health to be an incremental lifetime cancer risk of no greater than one in 100,000 (10-5) for carcinogenic chemicals and a hazard quotient (HQ) of 1.0 for non-carcinogenic chemicals. The hazard quotient is the ratio of an individual's daily dose of a constituent to the reference dose for that constituent, where the reference dose is an estimate of the daily dose that is likely to be without appreciable risk of harmful effects over a lifetime.

To determine the allowable mass loadings for CoCs, we used a probabilistic analysis to calculate the exposure to nearby residents from disposal of those constituents in the types of waste management units that could be used by the dyes and pigments industries. We then established the allowable mass loading level such that the exposure to each constituent would not exceed the target level of protection for 90 percent of the nearby residents including both adults and children. Thus, the allowable mass loadings met a target cancer risk level of 10-5 or hazard quotient of one for 90 percent of the receptor scenarios we evaluated.

In this probabilistic analysis, we varied sensitive parameters for the distributions of data that were available. The parameters varied for this analysis include waste management unit size, parameters related to the location of the waste management unit such as climate and hydrogeologic data, location of the receptors relative to the waste management units, and exposure factors such as intake rates and residence times.

The preamble to the proposed rule (*see* 68 FR 66181, November 25, 2003) and the Risk Assessment Technical Background Document for the Dye and Pigment Industries Listing Determination (hereafter known as the Risk Assessment Background Document) provide more detail on this risk assessment.

IV. What Is the Rationale for Today's Final Rule?

A. Final Listing Determination

We are promulgating today a final listing for nonwastewaters generated from the production of dyes and/or pigments. As explained below, we are revising the listing language slightly from the proposal in response to comments. The final listing description follows:

> K181: Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in paragraph (c) of this section that are equal to or greater than the corresponding paragraph (c) levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are: (i) Disposed in a Subtitle D landfill unit subject to the design criteria in § 258.40, (ii) disposed in a Subtitle C landfill unit subject to either § 264.301 or § 265.301, (iii) disposed in other Subtitle D landfill units that meet the design criteria in § 258.40, § 264.301, or § 265.301, or (iv) treated in a combustion unit that is permitted under Subtitle C, or an onsite combustion unit that is permitted under the Clean Air Act. For the purposes of this listing, dyes and/or pigments production is defined in paragraph (b)(1) of this section. Paragraph (d) of this section describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous under §§ 261.21–24 and 261.31–33 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met.

EPA is listing nonwastewaters from the production of dyes and/or pigments as hazardous because this wastestream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous. As described in the proposal (68 FR 66179), the criteria provided in 40 CFR 261.11(a)(3) include eleven factors for determining ''substantial present or potential hazard to human health or the environment.'' Most of these factors were incorporated into EPA's risk assessment, as discussed

further below. The risk analyses conducted in support of our proposed listing determination are presented in detail in the Risk Assessment Background Document, which is in the docket for today's rule.

We considered the toxicity of the chemicals potentially present in these wastes (§ 261.11(a)(3)(i)). We found that the CoCs are toxic chemicals with established health-based benchmarks for cancer and noncancer endpoints.[4] We considered constituent concentrations (§ 261.11(a)(3)(ii)) and the quantities of waste generated (§ 261.11(a) (3)(viii)) in establishing mass loading limits for specific CoCs. Thus, the listing description for K181 includes mass loading limits for specific CoCs that present risk to consumers of groundwater. In setting the mass loading limits, we used fate and transport models to determine the potential for migration, persistence, and degradation of the hazardous constituents and any degradation products (§§ 261(a)(3)(iii), 261.11(a)(3)(iv), and 261.11(a)(3)(v)).[5] Bioaccumulation of the constituents (§ 261.11(a)(3)(vi)) is not relevant to the key exposure pathway EPA assessed (consumption of groundwater).

As discussed in the proposal (68 FR 66178), we considered two other factors, plausible mismanagement and other regulatory actions ((§§ 261.11(a)(3)(vii) and 261.11(a)(3)(x)) in establishing the waste management scenario(s) modeled in the risk assessment. We considered mass loading limits based on two plausible waste management scenarios, clay-lined and composite-lined landfills. We are promulgating a final listing with mass loading limits for wastes in a clay-lined landfill, and a conditional exemption for wastes managed in landfills that are subject to (or otherwise meet) the liner design requirements specified in the listing description for municipal landfills (§ 258.40) or hazardous waste landfills (§ 264.301 or § 265.301). We are also adding an exemption for wastes treated in certain permitted combustion units. Thus, if generators of wastes potentially subject to the K181 listing use landfills meeting these design standards, or treat the waste in the specified combustion units, then the loading limits set forth in K181 would not apply and the waste would not be hazardous.

We also considered one factor beyond the risk assessment, that is, whether damage cases indicate impacts on human health or the environment from improper management of the wastes of concern (§ 261.11(a)(3)(ix)).[6] We concluded that the wastes in the damage cases may include wastes not in the scope of today's rule, and that the cases reflect management scenarios that are not currently common or plausible (see 68 FR 66189). Thus, while the damage cases indicated that some dyes and/or pigment production wastes may sometimes pose risks, EPA relied on its quantitative risk assessment in formulating today's final rule.

Significant comments submitted on this proposal and the supporting analyses are summarized below. The Response to Comment Background Document provides all of the comments and our responses to them.

1. Toluene-2,4-diamine

Toluene-2,4-diamine was one of the eight constituents of concern (CoC) for which EPA proposed a § 261.31(c)(1) mass loading limits. We also proposed a higher mass loading limit for toluene-2,4-diamine under § (c)(2) that would have identified a mass loading limit above which wastes would no longer be eligible for a contingent management exemption and would have been a hazardous waste. Toluene-2,4-diamine was the only CoC for which we proposed a § 261.32(c)(2) level.

Commenters argued that it is inappropriate to use toluene-2,4-diamine as a CoC because it is ''not typically or frequently used in dyes production'' (Ecological and Toxicological Association of Dyes and Organic Pigments Manufacturers or ETAD) and is ''not used in any color pigment facility for the production of color pigments'' (Color Pigments Manufacturing Association or CPMA). In the proposal, we described data collected from the Toxic Release Inventory (TRI), the Colour Index (CI), and two facilities' websites that potentially link use of toluene-2,4-diamine to facilities known to manufacture dyes and/or pigments. The commenters have addressed these potential links. Based on these arguments, we believe the commenters have successfully demonstrated that toluene-2,4-diamine is rarely used. Only one dye manufacturer reported using this constituent, and this use does not generate any waste containing this CoC; it is not used at all by any pigment manufacturers. (See Response to Comments Background Document for more detailed discussion regarding the use, or lack of use of toluene-2,4-diamine.) As a result, we do not believe it is appropriate to include toluene-2,4-diamine as a basis for listing K181 in today's final rule. Accordingly, we have removed this constituent from the proposed § 261.31(c)(1) standards, and have deleted entirely the proposed § 261.32(c)(2) standard in this action.

2. Use of Clay-Lined and Composite-Lined Landfills

We proposed to list nonwastewaters from dye and/or pigment manufacturing that met or exceeded mass loading limits for eight constituents of concern. These ''baseline'' loading limits were based on our risk assessment of management of the waste in a clay-lined landfill. We also proposed to conditionally exempt wastes managed in landfills subject to liner regulations for municipal or hazardous waste landfills, if the mass of one constituent of concern (toluene-2,4-diamine) was below a specified mass loading limit. The basis for this conditional exemption was a risk assessment of wastes managed in a composite-lined landfill.

A number of dye and pigment manufacturers submitted comments stating that they do not use unlined or clay-lined landfills, and most indicated that their waste is managed in landfills that have ''synthetic liners.'' The trade association for the dye manufacturers (ETAD) surveyed their members and stated that there is ''no use of unregulated clay-lined landfills or unlined landfills'' and that ''all known landfills currently in use are subtitle C or subtitle D landfills that incorporate a synthetic liner into their liner system.'' The association further noted that the design standards for municipal solid waste landfills promulgated in 1991 call for use of a composite liner (§ 258.40). The association also resubmitted a survey it originally submitted in 1999 in comments on the prior July 23, 1999 proposal, claiming that this showed all identified liner systems included a synthetic liner. The trade association for pigment manufacturers (CPMA) also surveyed their members and stated that their members do not use unlined or clay-lined landfills, but rather use ''synthetic lined industrial landfills'' and ''synthetic lined municipal landfills'' for their nonwastewaters. Based on this information, commenters argued that the risk assessment EPA used to establish mass loading limits for K181 should have been based on composite-lined landfills with a synthetic liner.

We continue to believe that the clay-lined landfill is an appropriate scenario for the baseline mass loading limits for K181 for several reasons. First, as noted

[4] Risk Assessment Background Document, Section 7.

[5] Risk Assessment Background Document, Sections 4 and 5.

[6] The final factor allows EPA to consider other factors as appropriate (§ 261.11(a)(3)(xi)), however we did not consider such factors.

in the proposal, our data show that the industries use municipal solid waste (MSW) landfills, and the liner requirements in § 258.40 are not applicable to existing units in operation since before October 9, 1993, or certain exempt units (§ 258.1(f)(1)). Thus, our data indicate that disposal of dye and pigment wastes into older clay-lined MSW landfills in operation is a plausible management scenario (see proposal at 68 FR 66191). In addition, the information provided by the commenters is insufficient to rebut this finding for these industries. In fact, the information provided by the commenters shows that industrial landfills are in use by some pigment manufacturers. There are no Federal liner requirements that are in place for such units. While many states have regulations for these type of industrial landfills, the requirements for liners appear variable and do not necessarily provide the same level of protection as the standards for municipal solid waste landfills in § 258.40. Finally, while commenters claimed that the landfills currently in use by respondents to their surveys have ''synthetic'' liners, they did not confirm that all landfills in use had composite liners that met the standards set out in § 258.40.

The specific landfill information resubmitted by ETAD was for seventeen landfills relevant to dye manufacturers only, and thus not representative of the landfills that could be used throughout the dye and pigment industries. (EPA estimated that there were about 2,300 MSW landfills in operation in 2000.) Furthermore, ETAD originally submitted this information in response to the proposed listing decision in 1999 for only three wastestreams generated by the dye and pigment industries; as such, ETAD did not clarify if other landfills may have been in use for other wastestreams. Finally, the limited information provided in this submission shows that the type of liner system was not specified for some landfills, and thus, it is not clear if the liner systems are composite liners that would meet the § 258.40 requirements.

We proposed mass loading limits based on two specific types of lined and fills, clay-lined and composite-lined landfills. We are promulgating a final listing with a conditional exemption for wastes managed in landfill units that meet the liner design requirements specified in the listing description (§ 258.40, 264.301 or 265.301).[7] Unlike the proposal, the final rule no longer sets a mass loading limit for toluene-2,4-diamine, and thus there are no testing requirements associated with this exemption. If generators of wastes potentially subject to the K181 listing use composite-lined municipal or subtitle C landfills, then the mass loading limits set forth in K181 would not apply and the waste would not be hazardous. (The final listing also includes an exemption for combustion, as discussed in the following section). Therefore, given the uncertainties in the types of liner systems that may be in place in landfills used by dye and pigment manufacturers, and based on the information available that indicates this is a plausible management scenario, we believe that it is appropriate to base the mass-loading limits on a clay-lined landfill.

3. Status of Wastes That Are Combusted

While we proposed a conditional exemption for wastes managed in units meeting the liner design criteria for municipal or hazardous waste landfills, we proposed that wastes that met or exceeded the baseline listing levels would be hazardous if treated by combustion. However, we solicited comment in the preamble on the option to exempt wastes going to combustion, provided the units are permitted under subtitle C or have other relevant permits under the Clean Air Act (CAA).

The comments generally supported the option of exempting wastes destined for combustion. Commenters stated that EPA should exempt wastes being combusted or include combustion in the contingent management practices qualifying for an exemption from the listing. Surveys submitted by the trade associations (ETAD and CPMA) confirmed that some facilities treated nonwastewaters by combustion, and other comments by specific companies stated they want to have the option of incineration in the future. Commenters pointed out that the proposed approach would mean that wastes that met or exceeded the baseline listing levels and are incinerated would be hazardous, while the same waste would be nonhazardous if it is managed in a landfill meeting appropriate criteria. Commenters contended that this would encourage facilities to shift from combustion to disposal in landfills, even for wastes with high organic content. Commenters suggested that wastes going to ''permitted'' combustion units should be exempt, because permitting authorities consider input fuels for commercial boilers and combustion units.

Commenters stated that regulating incineration in the absence of a risk assessment or data is not warranted, and that combustion provides at least as much protection for the environment as a synthetic-lined landfill. Commenters cited the preamble discussion in the proposal, which stated that previous analyses for other wastes determined that potential risks from the release of constituents through incineration would be several orders of magnitude below potential air risks from releases from tanks or impoundments. Commenters also noted that EPA had concluded that combustion was effective and protective in setting BDAT standards for K181. One commenter submitted a risk assessment for combustion of their waste, which was previously submitted in their comments on the 1994 proposal, and indicated that the risks are below levels of concern.

After reviewing the comments and the available information, we have decided to exempt wastes treated in certain combustion units from the K181 listing. As we noted in the proposed rule, we expect risks from combustion of the key constituents of concern to be relatively low, based on the relatively low air risks exhibited by these constituents from treatment in tanks and surface impoundments. Analyses in previous listing determinations have shown that air risks arising from releases of constituents not destroyed in combustion are much lower than risks from releases of constituents from tanks and surface impoundments (68 FR 66196). Thus, while we did not model the specific dye and pigment wastes at issue in this rule, we believe that risks from combustion would be relatively low.

As commenters pointed out, by exempting wastes going to certain landfills, but not wastes treated by combustion, we would effectively be encouraging landfill disposal over combustion. The exemption for landfill disposal may therefore cause some facilities with organic waste having significant fuel (BTU) value to change from combustion (either offsite or onsite) to disposal in landfills, to take advantage of the landfill exemption. Exempting wastes treated in appropriate combustion units would avoid this unintended outcome of the listing.

As noted in the proposal, we found ten facilities reporting in the TRI that they send wastes off site for combustion (*e.g.*, incineration, energy recovery). All of the treatment facilities are RCRA Subtitle C facilities. Because this is a management practice we believe is

[7] Note that in the final rule we have replaced the term ''landfill cell'' with ''landfill unit.'' We made this change so that the terminology used in this rule is more consistent with the use of the term ''unit'' in the RCRA regulations for landfills (Part 258 and in §§ 264.301 and 265.301).

especially appropriate for waste with high organic content, we have decided to include an exemption for wastes treated in Subtitle C combustion units. To the extent that these wastes are already managed as hazardous because they exhibit a hazardous waste characteristic or meet another hazardous waste listing description, today's final rule will have no impact on them, because the K181 listing does not apply to wastes that are hazardous for other reasons (see the listing description).

We are more concerned about the combustion of dye and pigment wastes in units that are not subject to Subtitle C regulations. We know of only two facilities that use onsite thermal treatment of dye or pigment production wastes. One of these facilities indicated that it does not produce any in-scope wastes containing any of the CoCs. The other facility generates a still bottom that may exceed the mass loading limit for aniline. This facility resubmitted a risk assessment previously included in comments on the 1994 proposal in an attempt to show no significant risk for its onsite boiler. The risk assessment, while specific to this one combustion unit, provides information on the unit that indicates that it has relatively high destruction and removal efficiency (>99% in this case for the CoC known to be present, aniline). This particular unit is also permitted by the state under the CAA, and the permit contains specific limitations on the release of the key CoC (40 kg/year).[8] Therefore, in this specific case, the state regulatory authority has evaluated and controlled the releases of this CoC through this permit. We find the comments submitted by the company compelling, given that the waste has high organic content (98.7%) and a high fuel value. Therefore, we have also decided to include an exemption for onsite combustion units (units that are located at the site of generation) that are permitted under the CAA. We are limiting the exemption to onsite combustion units because: (1) Currently we have no information that offsite combustion is occurring in non-subtitle C units, and (2) we lack information on whether any permits for non-subtitle C offsite units would necessarily address all potential CoCs. Offsite combustion units are likely to accept a wide variety of other wastes, and seem less likely to address the specific constituents of concern for dye and pigment production wastes. We have less information on the various kinds of existing or potential permits relevant to offsite combustion units that may be used for dye and pigment wastes. Permits for offsite units under the CAA would not necessarily consider the CoCs for the dye and pigment wastes (*e.g.*, of the seven CoCs, only aniline and o-anisidine are Hazardous Air Pollutants under the CAA), whereas permits for onsite units are likely to be more specific for the dye and pigment industries.

4. Scope of Listing Definition

Commenters identified several issues related to the scope of the proposed listing, as summarized below, and discussed in more detail in the Response to Comments Background Document.

a. *Perylenes and Anthraquinones.* One trade association commented that EPA erred in including perylenes in the proposed listing because Paragraph l.h.(i) of the ED consent decree (as amended in December 2002) states that ''EPA shall promulgate final listing determinations for azo/benzidine, anthraquinone, and triarylmethane dye and pigment production wastes.'' The commenter argued that perylenes are not a subclass of the anthraquinone category, and that none of the eight CoCs are used as raw materials in the manufacture of perylene color pigments.

We note, as discussed previously in the proposal, that the ED consent decree (under which today's listing determination is mandated) further specifies that ''The anthraquinone listing determination shall include the following anthraquinone dye and pigment classes: anthraquinone and perylene'' (68 FR 66173). Therefore, we must make listing determinations that cover any corresponding wastes, regardless of whether or not perylenes are properly classified as anthraquinones. Furthermore, as discussed in the proposal and in the Response to Comments Background Document, we are not differentiating between dye manufacture and pigment manufacture. While the pigments industry may not use the K181 CoCs for manufacturing perylene pigments as contended by the commenter, it is possible that the dyes industry may still use some of them for perylene dyes. Note that ETAD and its member dye manufacturers did not provide comments in this respect. Finally, we note that the consent decree does not limit EPA's authority to list wastes, but merely identifies those wastes for which EPA must make a listing determination.

Another commenter argued that none of the eight CoCs are used to produce anthraquinone dyes or pigments and, therefore, EPA should remove anthraquinone dyes and pigments from the proposed rule. The commenter further pointed out that in the 1994 proposal (59 FR 66072), EPA proposed a no-list decision for wastewater from the production of anthraquinone dyes and pigments, and in the 1999 proposal (64 FR 40192), EPA proposed a no-list decision for wastewater treatment sludge from the production of anthraquinone dyes and pigments. As discussed in the proposal, EPA identified the constituents by developing a list of chemicals that could reasonably be expected to be associated with wastes from the production of various classes of dyes and pigments, including anthraquinone dyes and pigments. *See* 68 FR at 66180–66182, and ''Background Document: Development of Constituents of Concern for Dyes and Pigments Listing Determination'' in the docket. This commenter did not provide any documentation to support its argument that none of the eight CoCs are used to produce anthraquinone dyes or pigments, or otherwise specifically address the information and findings presented in the proposal. In addition, none of the other companies or trade associations made similar claims. Finally, we note that, as discussed in the 2003 proposal (68 FR 66171–2), our 2003 proposed rule completely supercedes the 1994 and 1999 proposals. In any case, unlike the 1999 concentration-based listing in which we evaluated specific waste types from the production of individual dyes/pigments classes,[9] the 2003 proposal grouped all of the wastes that are identified in the ED consent decree into wastewaters and nonwastewaters.

Moreover, some of the listing constituents might be present in the dyes and/or pigments production nonwastewaters as a result of reaction byproducts, impurities in raw materials, or as a result of degradation of raw materials or products. Therefore, we believe it is appropriate to retain both perylene and anthraquinone production within the scope of this final K181 listing. If, however, as the commenter suggests, the CoCs are not present in the generators' wastes, then the wastes would not be considered the K181 listed waste.

b. *Post-Production.* Two commenters stated that the proposed rule does not adequately define ''production'' of dyes and/or pigments, and that some wastes covered by the ED consent decree could

[8] *See* the air permit for BASF in the docket for this rule.

[9] Spent filter aids, triarylmethane sludges and anthraquinone sludges were deferred from the 1994 proposed listing decisions for 11 of the wastes covered in the ED consent decree (59 FR 66072, December 22, 1994). EPA did not take final action on either of the 1994 and 1999 proposals.

be generated from certain types of ''post-production'' activities. They contended that the listing should not apply to ''post-production'' activities, in reference to 68 FR 66173 in which the Agency stated that the proposed rule does not apply to the end-users of dyes and/or pigments and similarly does not apply to post-production formulation and packaging. One commenter suggested that EPA should include the appropriate clarifications in the CFR language that defines the scope of the proposed listing.

In response to the commenters' request for clarification, we are adding the following language to the final rule at the end of the Listing Specific Definitions in § 261.32(b)(1): ''Wastes that are not generated at a dyes and/or pigments manufacturing site, such as wastes from the off-site use, formulation, and packaging of dyes and/or pigments, are not included in the K181 listing.'' Thus, we are specifically including this in the regulatory language to clarify that we are not including in K181 those wastes that are not generated at a dyes and/or pigments manufacturing site. However, wastes resulting from the blending, formulation, preparation, processing (grinding, dispersing, drying, finishing, filtering, purification, product standardization, etc.), dust collection, packaging and any other operations related to in-scope dyes and/or pigments that occur on site at the covered dyes and/or pigments manufacturers are potentially within the scope of today's final listing, if they meet the relevant criteria. Note that, as required under the ED consent decree, we addressed a variety of dyes and/or pigment waste streams in this listing determination. The ED consent decree states that ''Listing determinations under paragraph 1(h) of this Decree shall include the following wastes, where EPA finds such wastes are generated: spent catalysts, reactor still overhead, vacuum system condensate, process waters, spent adsorbent, equipment cleaning sludge, product mother liquor, product standardization filter cake, dust collector fines, recovery still bottoms, treated wastewater effluent, and wastewater treatment sludge.'' Some of the wastes identified in the ED consent decree (such as product standardization filter cake and dust collector fines) can be generated from various ''post-production'' activities at the dyes and/or pigments facilities.

c. *Commingling.* We described in the proposal (68 FR 66195) that the scope of the listing covers commingled wastes with mass contributions from other processes (*i.e.*, that other process wastes commingled with in-scope process wastes would be covered by the proposed K181 listing). We requested comment, however, on an alternative approach which would allow facilities to count only those mass loadings associated with azo/triarylmethane/perylene/anthraquinone dyes and/or pigments manufacture when assessing whether their wastes meet or exceed the K181 listing levels. One commenter, a trade association, favored this alternative approach. This commenter reasoned that not allowing facilities to count only those mass loadings associated with covered production will result in ''an artificial incentive to inefficiently segregate wastes, potentially increasing risks associated with their management.'' However, this commenter did not elaborate or provide any specifics.

We have carefully considered the commenter's argument, but we have decided to retain the proposed approach. The dye and pigment industries use batch processes and numerous raw materials to produce a wide variety of products, thereby generating various nonwastewaters.[10] Therefore, we believe it would not only be more difficult for the facilities to implement the proposed alternative approach (*i.e.*, tracking and keeping adequate documentation of all the mass contributions prior to commingling), but it would also be very difficult for the regulating authorities to make their own determinations for oversight and enforcement purposes. For this reason and the reasons stated at 68 FR 66195, we have decided to take the more straightforward approach of structuring the mass-based K181 listing as proposed, and not to adopt the alternative approach. Therefore, the K181 listing covers mass contributions from other processes when in-scope and out-of-scope waste sources are commingled, and the entire commingled volume is included in the waste quantity and mass loading calculations. On the other hand, if the in-scope waste sources contain none of the K181 listing constituents, the commingled volume is not subject to the K181 listing even though its mass loadings may meet or exceed the K181 listing levels.

As discussed in the proposal, a facility might choose to segregate K181 sources from non-K181 sources, so that nonwastewaters from noncovered processes would not be subject to the K181 listing. One trade association felt that the general concept of segregating waste which has no in-scope K181 contribution is reasonable.[11]

To help clarify these concepts, we present below several examples of how wastes might be commingled. (*See also* the examples previously presented in the proposal at 68 FR 66205–66207.)

Example 1: In-scope wastes without CoCs, commingled with out-of-scope wastes.

Facility A produces numerous chemical products including a small amount of azo dyes. This facility uses none of the K181 CoCs in the manufacture of azo dyes, and it finds no CoCs in the dye manufacturing process wastewaters based on recent analytical results. Thus, according to the procedure in § 261.32(d)(1), the facility determines that any resulting treatment sludge is not K181. The in-scope azo dye process wastewaters are commingled and co-treated with a much larger volume of nonhazardous wastewaters generated from the production of various out-of-scope chemicals in a centralized wastewater treatment plant (CWTP) prior to discharge to a publicly owned treatment works (POTW). The facility uses aniline in some of the other out-of-scope chemical production processes. The facility determines that the resultant wastewater treatment sludges, though found to contain aniline above the listing level, are not subject to K181 because the azo dye process wastewaters treated in the plant do not contain any of the CoCs. The facility also determines that other nonwastewaters (including filtration sludges, spent filter aids, and other process solids) generated from dye manufacturing also do not contain any CoCs, based on its knowledge of the feed raw materials (including major and minor ingredients, and impurities) and the manufacturing processes (reaction, chemical degradation, waste generation, etc.). The facility documents its findings, and appropriately manages all the CWTP sludges and dye process nonwastewaters (also determined to be not characteristically hazardous and not meeting any other listing descriptions) as nonhazardous.

Example 2: In-scope wastes with traces of CoCs, co-managed with out-of-scope wastes.

Facility B is an organic pigment manufacturer operating a number of in-scope and out-of-scope production process lines. The facility generates a total of 450 metric tons per year (MT/yr) of nonwastewaters, consisting of 350 MT/yr of sludge from the facility's onsite wastewater treatment system and as much as 100 MT/yr of production waste solids generated from all onsite processes combined. Historically, all the nonwastewaters were stored in dumpsters and periodically shipped off site for disposal in a Subtitle D landfill. Following the promulgation of the K181 listing, the facility carefully examines the material safety data

[10] ETAD also indicated in its comment that ''Dyes production involves batch processes, numerous distinct products and highly variable waste streams * * *'' and that ''The production mix and scale is entirely subject to somewhat unpredictable customer demand.''

[11] Facilities might also choose to treat the K181 listing levels as valuable pollution prevention goals and engage in process modifications designed to reduce mass loadings (irrespective of their source) below the K181 loading limits.

sheets and finds traces of p-cresidine in some of the raw materials used. Based on the material purity information, the facility uses its knowledge and, based on mass balance (*see* § 261.32(d)(2) for generated quantities less than 1,000 MT/yr), determines that a maximum of 30 kg/yr of p-cresidine could be released to and contained in the combined volume of nonwastewaters generated for the year. Since the annual mass loading of p-cresidine is less than the K181 listing level of 660 kg/yr, the facility concludes that its in-scope nonwastewaters are not a K181 waste. The facility thus documents its findings, and appropriately continues to ship the commingled wastes to a subtitle D landfill.

Example 3: Segregation of wastes destined for disposal in a municipal landfill; total in-scope waste quantities over 1,000 MT/yr.

Facility C uses some of the CoCs in its production of various organic dyes and pigments covered by the K181 listing. It commingles and co-treats all the manufacturing process wastewaters on site, generating 1,200 MT/yr of wastewater treatment sludge. In addition, it generates 50 MT/yr of process wastes with high organic content (still bottoms). Therefore, this facility's manufacturing and treatment processes yield a total of 1,250 MT/yr of in-scope nonwastewaters. Given that the K181 listing allows nonwastewaters to be disposed in a municipal landfill subject to the § 258.40 design criteria regardless of constituent levels in the wastes, the facility decides to send all the wastewater treatment sludges to a municipal landfill subject to § 258.40. The still bottoms, however, would not be managed in the same manner due to their high liquid content.

The still bottoms do not exhibit any of the hazardous waste characteristics nor meet any other listing descriptions. Because the total annual waste quantity of dyes/pigments nonwastewaters generated by all the processes would exceed 1,000 MT/yr, the facility considers the options of either: (1) Complying with the annual testing requirements of § 261.32(d)(3) and, if the CoCs are below the mass-loading levels, sending the still bottom waste offsite for combustion in a nonhazardous combustion unit, or (2) sending the waste offsite to a subtitle C combustion unit. The facility suspects that the still bottom waste will exceed the mass loading limits for several constituents. Rather than going to the expense of confirming this through testing representative samples of the waste, the facility decides to send the waste off site for treatment at a subtitle C combustion facility. Thus, this waste is also exempt from the K181 listing because it is treated in a combustion unit permitted under Subtitle C.

5. Waste Quantities

As described in the proposal at 68 FR 66176–66177, we estimated facility by facility nonwastewater quantities (for 37 active organic dyes and/or pigment production facilities known to the Agency at the time) by using engineering estimates of wastewater treatment sludge generation rates and, wherever possible, facility-specific information provided in portions of RCRA Section 3007 surveys and public comments that were not claimed as confidential business information (CBI). We then used the average of the estimated annual waste quantities (1,894 MT/yr) and a high-end waste constituent concentration of 5,000 parts per million (ppm) to calculate a mass loading cutoff of 10,000 kilograms per year (kg/yr); that is, we assumed it would be highly unlikely to find the CoC above this level in typical dyes and/or pigment production nonwastewaters (*see* discussion at 68 FR 66186).[12] In addition, we used the estimated waste quantities for cost and economic analyses of the potential impacts of the proposed listing, and for waste treatment and management capacity analyses. Below we address the public comments on our use of the estimated waste quantities for establishing the proposed mass loading levels. Comments on our use of the estimated waste quantities for economic impacts and waste management capacity analyses are addressed separately in section VIII and section IV.E, respectively.

Two trade associations and several dyes/pigments manufacturers submitted comments on the Agency's estimates of waste quantities generated by the organic dyes and pigments industries. They argued that our waste quantity estimates were overstated, and thus our estimates of possible amounts of CoCs present in the wastes were too high.

Subsequent to the November 25, 2003 proposal, ETAD conducted a confidential survey of 15 organic dye production facilities, and submitted as part of their comments masked waste quantity data from the survey.[13] Based on its survey results, ETAD contended that the proposed rule greatly exaggerates the quantity of proposed K181 wastes generated at dyes production facilities and therefore, the proposed mass loading cutoff of 10,000 kg/yr should be revised. ETAD also indicated in its survey summary that two dye production facilities use none of the proposed K181 listing constituents in dyes production. Furthermore, ETAD confirmed that two dye manufacturers ceased operation during the past year.

CPMA similarly conducted a confidential survey of 21 organic pigment manufacturers following the proposal, and provided masked waste quantity summary data for both total and in-scope nonwastewaters as part of their comments. CPMA commented that, based on its survey, EPA's estimates of nonwastewater quantities overestimate the amount of nonwastewater generated by the pigments industry by at least 400 percent, and that the actual amount of nonwastewaters generated by the dyes and pigments production industries is much less than one-half the amount estimated by the Agency.

Six organic dyes and/or pigments manufacturers also presented their waste quantities and disputed the Agency's estimates for their facilities. Several other pigment manufacturers mirrored CPMA's comment that the Agency overestimated the waste quantities generated by the industries by at least 400 percent, although they did not specifically provide their own waste quantities. Several manufacturers informed us that their in-scope manufacturing processes do not contribute any of the proposed K181 constituents to their wastes.

We reviewed the waste quantity information and data provided by the commenters, but found some data discrepancies and deficiencies that limit use of the data. Our findings are summarized below:

—Two dye manufacturers have closed.
—The organic pigment manufacturing operation of one dye and pigment production facility was recently sold to a pigments manufacturer.
—Two facilities use none of the proposed K181 listing constituents.
—Three facilities do not generate any nonwastewater.
—CPMA's survey encompassed wastes generated in 2002, while ETAD did not specify the time period covered by its survey. As such, these two sets of survey quantity data may not be fully compatible.
—Three facilities making both dyes and pigments products responded to both ETAD and CPMA surveys. However, for the reported waste quantities possibly associated with these facilities, there appears to be some discrepancies between ETAD's and CPMA's masked annual quantity data.
—Three known Food, Drug and Cosmetic (FD&C) colorant production facilities were not covered by either the ETAD or CPMA survey.

We removed from the database the two facilities using none of the

[12] That is, a constituent of concern was eliminated if the calculated allowable loading from risk modeling exceeds 10,000 kg/yr.

[13] The survey waste quantity results initially included in ETAD's February 23, 2004 comments and attachments are annual quantities of nonwastewaters relating to the manufacturing of in-scope dyes (*i.e.*, specifically covered by the proposed rule). In response to our inquiry, ETAD later submitted an amended summary of waste quantities that include the other wastestreams commingled with the in-scope wastes.

proposed K181 listing constituents, as well as the three facilities generating zero waste quantities, because they would not be impacted by the proposed rule. Next, we made assumptions in trying to match the masked data points for the three facilities that responded to both the ETAD and CPMA surveys in order to account for the overlap, using publicly available data and our best judgement. To revise our previous estimates of facility-specific waste quantities, we adopted the specific waste quantity data provided by the commenting dyes/pigments manufacturers, made assumptions based on certain comments, and applied the estimated annual revenues to match the masked waste quantities with facilities. Finally, we added the three facilities not covered by either the CPMA or ETAD survey, using waste quantities we estimated for these facilities. The consolidated data points created a set of annual waste quantities with high uncertainties for the potentially impacted dyes/pigment facilities.

In any case, we have analyzed the commenters' data and concluded that the average estimated waste quantity we used for the proposed rule (*i.e.*, 1,894 MT/yr) is well within the distributions of values reported in comments; the estimated value of 1,894 MT/yr is comparable to the 80th percentile value (1,815 MT/yr) of the consolidated data set described above. For a detailed analysis of the commenters' data, see the Response to Comments Background Document, available in the public docket for today's final rule.

Based on our analysis of the commenters' waste quantity data, and in view of the data uncertainty in the ETAD and CPMA surveys, we continue to believe that it is reasonable to retain the proposed mass loading cutoff of 10,000 kg/yr for eliminating constituents from consideration.

6. Prevalence of Constituents of Concern

Commenters submitted critiques of each of the CoCs, arguing that they do not warrant inclusion in the final listing. With the exception of the arguments submitted for toluene-2,4-diamine (as discussed in a prior section of this notice), EPA has concluded that our basis for setting standards for the seven CoCs is valid. The comments for these seven CoCs and our responses are summarized below, and provided in more detail in the Response to Comments Background Document in the docket for today's final rule.

a. *Aniline.* We proposed to include aniline as a CoC because it is widely reported to be used in the manufacture of dyes and/or pigments. We detected aniline in a variety of wastes in our analysis of waste samples, it is reported to be an intermediate in the production of various products reported by U.S. manufacturers in the Colour Index, it is reported in the TRI by various known dye and/or pigment manufacturers, it was reported to be a waste component in the RCRA § 3007 survey and in comments on our 1994 proposal, and is a known intermediate for various products reported as available on the Web sites of various U.S. dye and/or pigment manufacturers (*see* the Listing Background Document).

In addition, ETAD and CPMA comments on the November 2003 proposal provided recent survey data indicating that seven dye manufacturers use aniline in their processes, and that four pigment manufacturers use this CoC. Twelve pigment survey respondents also indicated that it is present in their wastes. Further, although CPMA stated that less than 25 percent of U.S. pigment manufacturers use aniline, nine pigment manufacturers individually commented that aniline is actually used or is likely present in their production of pigments. These data confirm our position at proposal that aniline is used widely in the manufacture of dyes and pigments.

ETAD argued that the available analytical data does not support a conclusion that aniline is likely to be present in dye wastes at levels exceeding the proposed listing level. One commenter (BASF) noted that the maximum concentration of aniline in wastewater treatment sludges reported in the proposal (31,000 ppm) was from their process, and reflects a process waste that was eliminated from their manufacturing process in 1996.

While we agree with ETAD and BASF that the available analytical data (as described in the proposal) are older, these data do provide a snapshot in time of the composition of wastes from the manufacture of dyes and/or pigments. BASF did not provide a profile of their currently generated wastes, so it is not possible to ascertain whether other wastes generated from their process(es) are as contaminated as the stream that was eliminated in 1996. BASF did, however, provide in their comments a risk assessment of releases from their onsite boiler.[14] This risk assessment contains limited waste characterization data which depicts aniline concentrations in their boiler feed even higher than the levels observed in most of the available analytical data (1.45% aniline). We note also that the commenters focused solely on the analytical data available for wastewater treatment sludges; we reported in the proposal three additional samples of ''other nonwastewaters'' that contain aniline, with a maximum value of 180,000 ppm.[15]

ETAD also argued that if EPA's estimated average waste quantity is adjusted to reflect the results of their survey, the 10,000 kilograms/year (kg/yr) screening level would be lower, eliminating aniline as a potential CoC. As discussed more fully in section IV.A.5, we believe that the waste quantity that we used in the development of the proposal is well within the distribution of waste quantities reported by commenters, and we accordingly have not adjusted it.

After considering the commenters' concerns, we believe that it is appropriate to retain the mass-loading levels for aniline in today's final rule.

b. *o-Anisidine.* We proposed to include o-anisidine as a CoC because it is widely reported to be used in the manufacture of dyes and/or pigments. We detected o-anisidine in several wastes in our analysis of waste samples, it is reported to be an intermediate in the production of various products reported by U.S. manufacturers in the Colour Index, it is reported in the TRI by known dye and/or pigment manufacturers, azo dyes derived from it are subject to regulation by the European Union (EU), and it is a known intermediate for products reported as available on the Web sites of several U.S. dye and/or pigment manufacturers (*see* the Listing Background Document).

In addition, ETAD and CPMA comments on the November 2003 proposal provided recent survey data indicating that three dye manufacturers and two pigment manufacturers use o-anisidine in their processes. Further, five CPMA survey respondents reported this CoC being present in their wastes as a contaminant. Six pigment manufacturers (which represent 11 facilities manufacturing in-scope pigments) also indicated in their individual comments that o-anisidine is actually used or likely to be present in their pigment processes.

ETAD argued that o-anisidine is only used or generated at 3 of 15 dye production facilities. CPMA stated that it is only used in the production of pigments by less than 25 percent of U.S. pigment manufacturers. We believe, however, that these usage rates are not insignificant, particularly for an

[14] *See* Comment RCRA–2003–0001–0258.

[15] *See* the aggregated EPA data in Appendix I of the Background Document for Identification and Listing of Wastes from the Production of Organic Dyes and Pigments, which is in the docket for today's rule.

industry known to manufacture a wide variety of products over time and between companies using batch operations. Further, as noted above, six pigment manufacturers also reported using or generating this CoC. Therefore, the available information indicates that o-anisidine is likely to be present in dye/pigment wastes, and it is reasonable to keep this as a constituent of concern. Moreover, even if o-anisidine were considered infrequently used, EPA would still consider that o-anisidine met the listing criteria set out in § 261.11.

ETAD noted that o-anisidine was only detected in one sample, and that the sample is outdated and of limited value as it was qualified as a ''J'' value [16] and difficult to differentiate from 2-/4-aminoaniline. We agree that the particular analytical result noted is an insufficient basis by itself to include o-anisidine in the K181 listing. However, we have other sources that confirm that this constituent is used by a number of generators in the manufacture of relevant colorants. We note that o-anisidine was also tentatively identified in four wastewater samples in the data summary presented in the proposal's Listing Background Document, and that the ETAD and CPMA surveys confirm that this constituent is still in use at a number of their members' facilities.

ETAD noted that o-anisidine was not reported in the RCRA § 3007 survey. We note that the survey data used to support the proposal represented a limited subset of the census survey (*i.e.*, those surveys without CBI claims), and may not be fully indicative of waste composition.

ETAD also argued that there is no evidence that either the calculated theoretical average concentration of o-anisidine (58 ppm) or the average waste volume of 1,894 MT/yr (described in the proposal's Listing Background Document) occurs in dyes production wastes. We agree that the data available to the Agency do not identify specific wastes that would exceed the listing levels. Nevertheless, given the format of the proposed rule (*i.e.*, a mass loadings-based listing), we believe that such data are not critical. Instead, we have demonstrated that the range of both expected waste quantities and organic waste constituent concentrations are broad enough that CoC levels in real wastes could potentially exceed the K181 loading limits.

ETAD further asserts that their newly collected data show that the median volume of o-anisidine is zero, and the maximum reported volume is less than one percent of the proposed mass loading. We do not believe these statistics are particularly meaningful. First, the commenter provided very little information about the nature of its data. For example, it is unclear what year the data reflect, or even if they represent the same calendar year among ETAD's survey respondents. Also, ETAD provided no information regarding the variability of these data over time (*e.g.*, were the data representative of typical operations? Are there relevant trends in the use of raw materials?). In an industry that produces a very diverse range of products from plant to plant and from year to year, we would not expect that the majority of manufacturers would utilize any one of the K181 constituents at any given time. Thus, the commenter's findings of a median value of zero is not surprising or relevant. Similarly, the commenter did not provide sufficient information regarding their assertion that there are no dye manufacturers whose mass loading of o-anisidine in their wastes exceed 1 percent of the K181 limit for us to remove this constituent from the listing, given all the information supporting this constituent. The commenter did not provide any information on how the survey respondents determined mass loadings of o-anisidine or other constituents in their waste, so we have no way of judging the validity of such claims. We also expect that any given facility's raw material slate will change over time in response to market demands for different colors and product characteristics. Retaining this constituent in the listing provides a clear incentive for generators to make choices in their manufacturing processes to avoid excessive levels of o-anisidine in their wastes. We note that there are three facilities that reported o-anisidine in Form A under TRI. Form A is used for chemicals with releases below 500 pounds per year (as well as other restrictions related to usage volume). The K181 mass loading level for o-anisidine is 110 kg, or 242 pounds, thus it is possible that these three facilities are above or near the K181 level.

Finally, ETAD also argued that because the groundwater modeling results indicated that the time-to-impact is more than 250 years for o-anisidine, this constituent should be excluded from the listing. As discussed later with respect to the comments on the risk assessment, we do not believe this is an unreasonable time frame.

In conclusion, we have determined that our basis for including o-anisidine in the listing is sound, and we are finalizing the o-anisidine level as proposed.

c. *4-Chloroaniline.* We proposed to include 4-chloroaniline as a CoC because it is reported to be used in the manufacture of dyes and/or pigments. We detected 4-chloroaniline in a variety of wastes in our analysis of waste samples, it is reported in the TRI by a known dye and/or pigment manufacturer, and azo dyes derived from it are subject to regulation by the EU (see the Listing Background Document).

In addition, ETAD and CPMA comments on the November 2003 proposal provided recent survey data indicating that two dye manufacturers use 4-chloroaniline in their processes, and that one pigment manufacturer also uses this CoC, although not in a process covered by the scope of the proposed K181 listing.

ETAD argued that 4-chloroaniline is only used or generated at 2 of 15 dye production facilities. We believe that this is not an insignificant response, particularly for an industry known to manufacture a wide variety of products over time at companies using batch operations. Therefore, the available information indicates that 4-chloroaniline is likely to be present in dye/pigment wastes, and it is reasonable to keep this as a constituent of concern. Moreover, even if 4-chloroaniline were considered infrequently used, EPA would still consider that 4-chloroaniline met the listing criteria set out in § 261.11.

ETAD noted that 4-chloroaniline was only detected in two samples. We point out, however, that 4-chloroaniline was also identified in two wastewater samples and one ''other nonwastewater'' sample in the data summary presented in the proposal's Listing Background Document, and that CPMA had reported the presence of this constituent in three split samples of the noted data. In addition, several commenters on prior proposals for these wastes described the presence of this CoC in their wastes. Further, the ETAD survey confirms that this constituent is currently in use at several of their members' facilities.

ETAD also pointed out that the referenced TRI data are limited to a single report in a single year. Bayer, the company that reported this TRI release, explained in their comments that 4-chloroaniline is not used by any covered dyes process and was never present in

[16] ''J'' values are chemical concentrations that were detected below the analytical reporting limit, but above the limit of detection for the method used. See OSW's methods manual, especially Chapter 1, Quality Control; ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW–846.''

the wastewater or wastewater treatment sludge generated at the facility of interest (Bushy Park, SC). While this may be the case, it is not clear whether 4-chloroaniline is used in pigment production at this site as the pigment operations were sold to Sun Chemical in January 2003.[17]

In addition, ETAD argued that the Agency's basis for regulating this constituent is weak because there are no references to the use of this chemical in the Colour Index, or in the RCRA § 3007 survey. We acknowledge both points, but note that the Colour Index, while very useful, provides an incomplete compendium of intermediates used in the production of dyes and pigments, particularly for those products that have only recently been brought to market. Furthermore, the information presented in the Colour Index is limited by certain confidentiality concerns manufacturers may have for colorants produced. In our research of products reported by manufacturers on their Web sites and those listed in the Colour Index, there were many products for which no intermediate information was available. Further, the Colour Index does in fact identify a number of manufacturers that produce colorants derived from 4-chloroaniline (*e.g.*, CI 37510, 37610), although none of them appear to be based in the U.S. This information implies that a market exists for these products, and U.S. manufacturers might produce these colorants. With respect to the lack of § 3007 survey data, we have previously described the incomplete nature of the survey data available for use in the proposed rule.

Furthermore, ETAD argued that there is no evidence that either the calculated theoretical average concentration of 4-chloroaniline (2,534 ppm) or the average waste volume of 1,894 MT/yr (described in the proposal's Listing Background Document) occurs in dyes production wastes. ETAD asserts that their newly collected data show that the median volume of 4-chloroaniline is zero, and the maximum reported volume is less than one percent of the proposed mass loading. We refer the reader to our earlier responses to similar comments on o-anisidine.

Finally, ETAD also argued that if EPA's estimated average waste quantity is adjusted to reflect the results of their survey and the assumed plausible maximum constituent concentration (5,000 ppm) were more reasonable, the 10,000 kg/yr screening level would be lower, eliminating 4-chloroaniline as a potential CoC. As discussed more fully in section IV.A.5, we believe that the waste quantity that we used in the development of the proposal is well within the distribution of waste quantities reported by commenters, and we accordingly have not adjusted it. Similarly, we believe that the assumed plausible maximum constituent concentration is appropriate, noting that we considered analytical data for both ''wastewater treatment sludge'' and ''other nonwastewaters,'' while the commenter appears to be focused only on the wastewater treatment sludge data. The data for ''other nonwastewaters'' show several constituents with concentrations in the thousands of parts per million.

In conclusion, we have determined that our basis for including 4-chloroaniline in the listing is sound, and we are finalizing the 4-chloroaniline level as proposed.

d. *p-Cresidine.* We proposed to include p-cresidine as a CoC because it is reported to be used in the manufacture of dyes and/or pigments. p-Cresidine is reported to be an intermediate in the production of various products reported by U.S. manufacturers in the Colour Index, it is reported in the TRI by a known dye and/or pigment manufacturer, azo dyes derived from it are subject to regulation by the EU, and it is a known intermediate for several products reported as available on the website of a U.S. dye and/or pigment manufacturer (see the Listing Background Document).

In addition, ETAD and CPMA comments on the November 2003 proposal provided recent survey data indicating that four dye manufacturers use p-cresidine in their processes, and that two pigment manufacturers also use this CoC (although these uses may be from onsite dye manufacture).

ETAD argued that p-cresidine is only used or generated at 4 of 15 dye production facilities. As noted previously, we believe that this is not insignificant, particularly for an industry known to manufacture a wide variety of products over time at companies using batch operations. Two pigment facilities were reported by CPMA to also use or generate this CoC. Therefore, the available information indicates that p-cresidine is likely to be present in dye/pigment wastes, and it is reasonable to keep this as a constituent of concern. Moreover, even if p-cresidine were considered infrequently used, EPA would still consider that p-cresidine met the listing criteria set out in § 261.11.

ETAD also argued that p-cresidine should be removed as a basis for the listing in part because there are no sampling and analysis data or RCRA section 3007 survey data demonstrating its presence in wastes. We acknowledge that p-cresidine was not detected in any of the samples collected in support of the 1994 rulemaking. However, the sampling was conducted at a subset of the manufacturing sites in operation at that time, and thus it is likely that these data are an incomplete profile of potential waste composition. In fact, the commenter's own data indicate that four dye manufacturers currently use p-cresidine as an intermediate, and thus the likelihood that this CoC exists in wastes at these sites is high. As mentioned previously, the § 3007 data presented in the proposal represents that portion of the data which were not subject to any confidentiality claims and, therefore, does not represent a complete profile of reported waste constituents.

In addition, ETAD argued that the TRI data does not support inclusion of p-cresidine because only one Form R and one Form A were submitted. However, we believe that it is significant that the TRI data confirm that current manufacturers of impacted colorants do use and release this CoC, supporting our basis for including p-cresidine in the K181 listing.

Further, ETAD argued that there is no evidence that either the calculated theoretical average concentration of p-cresidine (348 ppm) or the average waste volume of 1,894 MT/yr (described in the proposal's Listing Background Document) occurs in dyes production wastes. ETAD asserts that their newly collected data show that the median volume of p-cresidine is zero, and the maximum reported volume is less than one percent of the proposed mass loading. We refer the reader to our earlier responses to similar comments on o-anisidine.

Moreover, ETAD also argued that if EPA's estimated average waste quantity is adjusted to reflect the results of their survey and the assumed plausible maximum constituent concentration (5,000 ppm) were more reasonable, the 10,000 kg/yr screening level would be lower, eliminating p-cresidine as a potential CoC. We refer the reader to our earlier response to a similar comment on 4-chloroaniline.

Finally, ETAD argued that because the groundwater modeling results indicated that the time-to-impact is more than 250 years for p-cresidine, this constituent should be excluded from the listing. As discussed later with respect to the comments on the risk assessment, we do not believe this is an unreasonable time frame.

[17] *http://www.timesleader.com/mld/timesleader/5122083.htm.*

In conclusion, we have determined that our basis for including p-cresidine in the listing is sound, and we are finalizing the p-cresidine level as proposed.

e. *2,4-Dimethylaniline.* We proposed to include 2,4-dimethylaniline as a CoC because it is reported to be used in the manufacture of dyes and/or pigments. We detected 2,4-dimethylaniline in several wastes, it was reported to be a waste component in the RCRA § 3007 survey, and it is a known intermediate for several products reported as available on the websites of several U.S. dye and/or pigment manufacturers (*see* the Listing Background Document).

In addition, ETAD and CPMA comments on the November 2003 proposed rule provided recent survey data that two dye manufacturing facilities report the use of this CoC, and confirming the presence of 2,4-dimethylaniline in wastes at two pigment manufacturing facilities. Six pigment manufacturers indicated in their individual comments that this constituent is actually used or likely present in their production of pigments.

ETAD argued that 2,4-dimethylaniline is only used or generated at 2 of 15 dye production facilities. CPMA stated that it is only used in the production of pigments by less than 25 percent of U.S. pigment manufacturers. We believe, however, that these usage rates are not insignificant, particularly for an industry known to manufacture a wide variety of products over time and at companies using batch operations. Further, we note that CPMA has confirmed that this CoC is a waste component at two pigment facilities, and that six pigment manufacturers have specifically confirmed that 2,4-dimethylaniline is relevant to their processes and/or wastes. Therefore, the available information indicates that 2,4-dimethylaniline is likely to be present in dye/pigment wastes, and it is reasonable to keep this as a constituent of concern. Moreover, even if 2,4-dimethylaniline were considered infrequently used, EPA would still consider that 2,4-dimethylaniline met the listing criteria set out in § 261.11.

ETAD argued that our basis for including this constituent is weakened because this CoC was not detected in nonwastewaters. While we confirm this specific observation, we note that 2,4-dimethylaniline was detected in wastewaters by EPA, and CPMA reported this chemical in split sample analyses. These data support EPA's finding that this constituent may reasonably be expected to be present in some wastes from the production of dyes and/or pigments.

ETAD also suggests that our basis for including this constituent as a basis for the listing is weakened because we presented no linkages to the TRI, the Colour Index (or similar sources), or the EU ban for this constituent. First, we would note that 2,4-dimethylaniline is not listed in section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), and thus is not subject to TRI reporting. With respect to the Colour Index, this source does in fact identify a number of manufacturers that produce azo colorants derived from 2,4-dimethylaniline (*e.g.*, CI 14900, 16150, 29105), although none of them appear to be based in the U.S.[18] This information implies that a market exists for these products, and U.S. manufacturers might in the future choose to produce these colorants. Finally, with respect to the EU ban [Directive for a Community Ban on Azocolourants (76/769/EEC, Annex I, point 43)], as discussed in the proposal, this constituent has been studied for possible inclusion in a related ban of certain compounds in cosmetics and is regulated as a class 2 carcinogen in Germany.[19]

In addition, ETAD argued that there is no evidence that either the calculated theoretical average concentration of 2,4-dimethylaniline (53 ppm) or the average waste volume of 1,894 MT/yr (described in the proposal's Listing Background Document) occurs in dyes production wastes. We refer the reader to our earlier response to a similar comment on o-anisidine.

Furthermore, ETAD asserts that their newly collected data show that the median volume of 2,4-dimethylaniline is zero, and the maximum reported volume is less than one percent of the proposed mass loading. We refer the reader to our earlier response to a similar comment on o-anisidine.

Finally, ETAD argued that because the groundwater modeling results indicated that the time-to-impact is more than 250 years for 2,4-dimethylaniline, this constituent should be excluded from the listing. As discussed later with respect to the comments on the risk assessment, we do not believe this is an unreasonable time frame.

In conclusion, we have determined that our basis for including 2,4-dimethylaniline in the listing is sound, and we are finalizing the 2,4-dimethylaniline level as proposed.

f. *1,2-Phenylenediamine.* We proposed to include 1,2-phenylenediamine as a CoC because it is reported to be used in the manufacture of dyes and/or pigments. We detected 1,2-phenylenediamine in several wastes in our analysis of waste samples, it is reported to be an intermediate in the production of various products reported by U.S. manufacturers in the Colour Index, it was reported in the TRI by known dye and/or pigment manufacturers, and it is a known intermediate for several products reported as available on the websites of several U.S. dye and/or pigment manufacturers (*see* the Listing Background Document).

In addition, ETAD and CPMA comments on the November 2003 proposal provided recent survey data indicating that two dye manufacturers use 1,2-phenylenediamine in their processes, and that two pigment manufacturers also use this CoC. Two pigment manufacturers also indicated in their individual comments that it is present in their wastes (although possibly not from in-scope pigment processes).

ETAD argued that 1,2-phenylenediamine is only used or generated at 2 of 15 dye production facilities. We believe that this is not insignificant, particularly for an industry known to manufacture a wide variety of products over time at companies using batch operations. In addition, CPMA has confirmed that this CoC is a waste component at two pigment facilities, and that it is used in the production of pigments at two facilities. Therefore, the available information indicates that 1,2-phenylenediamine is likely to be present in dye/pigment wastes, and it is reasonable to keep this as a constituent of concern. Moreover, even if 1,2-phenylenediamine were considered infrequently used, EPA would still consider that 1,2-phenylenediamine met the listing criteria set out in § 261.11.

ETAD also argued that the TRI data does not support inclusion of 1,2-phenylenediamine because only one Form A was submitted for one year. While it is true that only one Form A was reported, the TRI data confirm that there is current use and release of this CoC, supporting our basis for including 1,2-phenylenediamine in the K181 listing.

In addition, ETAD argued that 1,2-phenylenediamine should not be

[18] One U.S. company, Bernscolor (Poughkeepsie, NY), is listed in the Colour Index as marketing CI 16150, however, neither trade association identified this facility as manufacturing in-scope dyes and/or pigments.

[19] Studied by EU in the context of Directive 76/768/EEC: SCCNFP/0495/01, Opinion of the Scientific Committee on Cosmetic Products and Non-Food Products Intended for Consumers concerning ''The Safety Review of the Use of Certain Azo-Dyes in Cosmetic Products,'' 2/27/02. *http://europa.eu.int/comm/food/fs/sc/sccp/out155_en.pdf.*

included as a basis for this listing in part because there are no RCRA § 3007 survey data demonstrating its presence in wastes. As mentioned previously, the § 3007 data presented in the proposal represent that portion of the data which were not subject to any confidentiality claims and, therefore, does not represent a complete profile of reported waste constituents. In fact, ETAD's (and CPMA's) own data indicate that a number of dye and/or pigment manufacturers currently use 1,2-phenylenediamine as an intermediate, providing further confirmation that this CoC exists in wastes at these sites.

Furthermore, ETAD noted that 1,2-phenylenediamine was only detected in one sample, and that the sample is outdated and of limited value as it was qualified as a ''J'' value, and difficult to differentiate from 1,4-phenylenediamine and o-anisidine. We agree that the particular analytical result noted is insufficient by itself to be a basis to include 1,2-phenylenediamine in the K181 listing. However, we have other sources of information that confirm that this constituent is used by a number of generators in the manufacture of relevant colorants. We note that 1,2-phenylenediamine was also tentatively identified in four wastewater samples in the data summary presented in the proposal's Listing Background Document. Two comments on the earlier proposed listing determination for these wastes also refer to the use or presence of this constituent in the wastes of concern. In addition, the ETAD and CPMA surveys confirm that this constituent is currently in use at a number of their members' facilities.

Moreover, ETAD argued that there is no evidence that either the calculated theoretical average concentration of 1,2-phenylenediamine (375 ppm) or the average waste volume of 1,894 MT/yr (described in the proposal's Listing Background Document) occurs in dyes production wastes. We refer the reader to our earlier response to a similar comment on o-anisidine.

ETAD also asserts that their newly collected data show that the median volume of 1,2-phenylenediamine is zero, and the maximum reported volume is less than one percent of the proposed mass loading. We refer the reader to our earlier response to a similar comment on o-anisidine.

Finally, ETAD argued that if EPA's estimated average waste quantity is adjusted to reflect the results of their survey and the assumed plausible maximum constituent concentration (5,000 ppm) were more reasonable, the 10,000 kg/yr screening level would be lower, eliminating 1,2-phenylenediamine as a potential CoC. We refer the reader to our earlier response to a similar comment on 4-chloroaniline.

In conclusion, we have determined that our basis for including 1,2-phenylenediamine in the listing is sound, and we are finalizing the 1,2-phenylenediamine level as proposed.

g. *1,3-Phenylenediamine.* We proposed to include 1,3-phenylenediamine as a CoC because it is reported to be used in the manufacture of dyes and/or pigments. Specifically, 1,3-phenylenediamine is reported to be an intermediate in the production of various products reported by U.S. manufacturers in the Colour Index, it was reported in the TRI by a known dye and/or pigment manufacturer, it was reported to be a waste component in the RCRA § 3007 survey, and it is a known intermediate for several products reported as available on the websites of several U.S. dye and/or pigment manufacturers (*see* the Listing Background Document).

In addition, ETAD and CPMA comments on the November 2003 proposal provided recent survey data indicating that three dye manufacturers use 1,3-phenylenediamine in their processes, and that one pigment manufacturer indicated that it is present in their wastes (although not from in-scope pigment processes).

ETAD argued that 1,3-phenylenediamine is only used or generated at three of 15 dye production facilities. We believe that this is not insignificant, particularly for an industry known to manufacture a wide variety of products over time at companies using batch operations. In addition, the available RCRA § 3007 survey results indicate that this constituent was reported by industry in at least 17 in-scope discrete wastestreams. Therefore, the available information indicates that 1,3-phenylenediamine is likely to be present in dye/pigment wastes, and it is reasonable to keep this as a constituent of concern. Moreover, even if 1,3-phenylenediamine were considered infrequently used, EPA would still consider that 1,3-phenylenediamine met the listing criteria set out in § 261.11.

ETAD also argued that 1,3-phenylenediamine should not be included as a basis for the listing in part because there are no sampling and analysis data demonstrating its presence in wastes. We acknowledge that 1,3-phenylenediamine was not detected in any of the samples collected in support of the 1994 rulemaking. However, the sampling was conducted at a subset of the manufacturing sites in operation at that time, and thus it is likely that these data are an incomplete profile of potential waste composition. The commenter's own data indicate that three dye manufacturers currently use 1,3-phenylenediamine as an intermediate, providing further confirmation that this CoC exists in wastes at these sites.

In addition, ETAD also argued that there is no evidence that either the calculated theoretical average concentration of 1,3-phenylenediamine (634 ppm) or the average waste volume of 1,894 MT/yr (described in the proposal's Listing Background Document) occurs in dyes production wastes. We refer the reader to our earlier response to a similar comment on o-anisidine.

Furthermore, ETAD asserts that their newly collected data show that the median volume of 1,3-phenylenediamine is zero, and the maximum reported volume is less than 10 percent of the proposed mass loading. We refer the reader to our earlier response to a similar comment on o-anisidine, and note that ''10 percent'' is not insignificant—process changes or stepped up production volumes might increase this maximum value to exceed the K181 loading limit.

Finally, ETAD argued that if EPA's estimated average waste quantity is adjusted to reflect the results of their survey and the assumed plausible maximum constituent concentration (5,000 ppm) were more reasonable, the 10,000 kg/yr screening level would be lower, eliminating 1,3-phenylenediamine as a potential CoC. We refer the reader to our earlier response to a similar comment on 4-chloroaniline.

In conclusion, we have determined that our basis for including 1,3-phenylenediamine in the listing is sound, and we are finalizing the 1,3-phenylenediamine level as proposed.

7. Availability of Analytical Methods for Constituents of Concern

Commenters contend that EPA did not adequately address the availability of analytical methods necessary to implement the proposed rule. The commenters pointed out that EPA's economic analysis suggested that four proposed constituents (toluene-2,4-diamine, 1,2-phenylenediamine, 1,3-phenylenediamine, and 2,4-dimethylaniline) lack established analytical methods. Most commenters were especially concerned with the lack of a verified method for one of the four constituents, toluene-2,4-diamine. One commenter also expressed concern specifically over the lack of methods for

1,2-phenylenediamine. Commenters questioned the adequacy of the methods for analyzing another proposed constituent (aniline). They referred to previous studies that indicated gas chromatography methods may cause false positive readings for aniline, because another chemical sometimes present (acetoacetanilide) often breaks down into aniline in the analysis.

We continue to believe that adequate analytical methods exist for most CoCs. However, as described previously, we have decided to no longer include toluene-2,4-diamine as a constituent of concern for K181. Therefore, analysis of this chemical will not be necessary. Concerning 1,2-phenylenediamine, we noted the problems with this constituent in the proposed rule (68 FR 66194). We have reexamined the available EPA methods and determined that, while some methods (*e.g.*, SW–846 method 8321B) show promise, the recoveries remain low. Thus, we have decided to allow generators to use their knowledge of the waste instead of determining the level of this constituent through testing. We have revised the final K181 regulatory language to reflect this change in the testing requirements by inserting (d)(3)(ii), which reads:

(d)(3)(ii) If 1,2-phenylenediamine is present in the wastes, the generator can use either knowledge or sampling and analysis procedures to determine the level of this constituent in the wastes. For determinations based on use of knowledge, the generator must comply with the procedures for using knowledge described in paragraph (d)(2) and keep the records described in paragraph (d)(2)(iv) of this section. For determinations based on sampling and analysis, the generator must comply with the sampling and analysis and recordkeeping requirements described below in this section.

We believe that the other constituents have adequate methods. While 2,4-dimethylaniline is not included as an analyte in EPA's SW–846 manual of methods, the chemical has been measured in dye and pigment waste samples by both EPA [20] and by industry.[21] As the 2003 BDAT background document indicated, the standard EPA gas chromatography/mass spectrum method (GC/MS method 8270) should be effective for this constituent. We are also confident that this GC/MS method is adequate for 1,3-phenylenediamine. This is further supported by an EPA technical paper showing that 1,3-phenylenediamine can be determined using GC/MS methods.[22] As noted by the commenters, this same technical paper describes the breakdown of the chemical acetoacetanilide to aniline during GC/MS analysis. While this could theoretically present difficulties in determining a precise concentration of aniline in wastes that also contain acetoacetanilide, generators may deal with this potential problem in several ways. The technical paper cited above shows that aniline may also be determined by other methods, *i.e.*, High Performance Liquid Chromatography (HPLC) methods. HPLC methods do not require the high temperatures needed for GC/MS analysis; thus, the presence of acetoacetanilide should not present any problems. Alternatively, a generator could conduct the GC/MS analysis, recognizing that some of the aniline detected may arise from the breakdown of acetoacetanilide. If the measured aniline in the waste is still below the aniline loading limit for K181, then the waste would not be a hazardous waste due to aniline. Because the loading limit for aniline is rather high (9,300 kg/yr), there would have to be a high level of acetoacetanilide present in the waste to cause any significant problem. In any case, the generators have the option of using the HPLC method if they believe that aniline levels would approach the mass loading limit, and if they know that the waste contains acetoacetanilide.

8. Risk Assessment

The Agency received comments on a number of issues that focused on the risk analysis that EPA conducted for the proposed K181 listing determination. The most significant of these comments, summarized below, pertain to the General Soil Column Model, biodegradation rates, infiltration rates, well distance, hydraulic conductivity, simulation durations and exposure parameters. We have developed responses for all of the public comments received on the proposed rule. The verbatim comments and our responses are provided in the Response to Comments Background Document in the docket for today's rule.

a. *General Soil Column Model (GSCM).* The landfill model that we used approximates the dynamic effects of the gradual filling of active landfills. The Generic Soil Column Model (GSCM) is a critical submodel or algorithm that predicts the fate and transport of constituents within the landfill and partitions contaminants to three phases: adsorbed (solid), dissolved (liquid), and gaseous.

Commenters contended that the GSCM is under review by the EPA's Science Advisory Board (SAB) and that the SAB panel identified significant errors that are expected to produce erroneous results. The commenters expected that the SAB panel would recommend that EPA not use the GSCM to make any regulatory decisions until a more thorough evaluation, including reanalysis of the underlying model code is completed. As a result, the commenters argued that it is unacceptable for EPA to use the GSCM to make regulatory decisions for the dyes manufacturing industry. The commenters noted that EPA has performed limited comparison simulations between the GSCM and another model (MODFLOW–SURFACT). While the results from this comparison indicated that the two simulations yield similar results, the commenters stated that the tests completed by EPA represent only a simple and potential worst-case scenario that does not test soil zone complexity. Although uniform soil zone properties are expected to result in maximum leaching, the commenters argued that EPA should also complete an evaluation of the GSCM under conditions with significant heterogeneity.

We continue to believe that the use of the GSCM is appropriate and does not produce erroneous results. In the final SAB report,[23] the SAB acknowledged that 3MRA—in its current state—could be used to support regulatory decisions for national exit concentrations. However, the SAB also recognized that 3MRA is the product of a collection of submodels (which includes the GSCM) and that any regulatory decisions that rely on 3MRA will reflect the uncertainty and the limitations of these models. The SAB panelists conducted a thorough evaluation of the GSCM and agreed with the EPA's thoughts on the strengths and limitations of the GSCM. The SAB pointed out that the GSCM—as compared to some of the legacy models in 3MRA—''is relatively untested and has some *potential* (italics added) theoretical inadequacies.'' The SAB review goes on to report on several model evaluation studies (*e.g.*,

[20] See the aggregated EPA data in Appendix I of the Background Document for Identification and Listing of Wastes from the Production of Organic Dyes and Pigments, which is in the docket for today's rule.

[21] See final table in the industry data attached to the Letter from J. Lawrence Robinson, President of the CPMA, to Ed Abrams of EPA, regarding aggregated test data resulting from analyses of the split samples, April 20, 1994, in the docket for today's rule.

[22] See the technical paper attached to the Letter from J. Lawrence Robinson, President of the CPMA, to Ed Abrams of EPA, regarding aggregated test data resulting from analyses of the split samples, April 20, 1994, in the docket for today's rule.

[23] Report of the U.S. EPA Science Advisory Board Review Panel; EPA's Multimedia, Multipathway, and Multireceptor Risk Assessment (3MRA) Modeling System; EPA–SAB–05–003, November 2004 (*http://www.epa.gov/sab/fiscal04.htm*).

conducting model-to-model studies and comparing estimated and experimental data) conducted by EPA, suggesting that these types of studies are important steps in building confidence in the model and increasing our understanding of the limitations of the GSCM.

One of the major theoretical issues raised by the SAB was the concern with the GSCM's ability to produce reliable leachate profiles for short time scales; that is, less-than-annual chemical concentration profiles for leachate. However, the Agency's risk assessment of waste from dye and/or pigment manufacture is based on long-term chronic exposures and, therefore, the concentrations at the point of exposure are averaged according to the exposure duration for each receptor. In particular, the comparison between the GSCM and MODFLOW/SURFACT (a widely used flow and transport simulator) demonstrated that long-term, average leachate concentration profiles generated by the GSCM were similar to those generated by the more robust solution technique used in MODFLOW–SURFACT. Thus, the comparison between the GSCM and MODFLOW–SURFACT demonstrated that the theoretical limitations in the GSCM do not appear to be significant when generating annual averages for the purposes of estimating long-term potential risks to humans and ecological receptors for the dyes and pigments assessment.

b. *Biodegradation.* Within the landfill, we simulated losses of mass through anaerobic biodegradation (*i.e.*, degradation processes that occur in an oxygen-free environment). In the absence of biodegradation data for seven organic chemicals, we used surrogate information for similar compounds. Commenters generally supported the use of surrogates and the appropriateness of considering biodegradation in anaerobic landfill conditions. However, commenters believed that EPA overestimated concentrations at receptor wells, because EPA used the maximum half-life from the available data (*i.e.*, we used the slowest degradation rates). Commenters suggested that it would be more appropriate to use average values for the half-life.

We continue to believe that our use of the maximum half-life for biodegradation is appropriate to ensure that the mass-loading levels are protective to compensate for the uncertainties inherent in the data. We used anaerobic degradation rates that were available in our primary reference,[24] and when degradation data were not available, we used degradation rates based on surrogate chemicals. This reference provides ranges of half lives in environmental media and the Agency acknowledges there is considerable uncertainty associated with these data. Where available, the authors use preferred data from experimental values. However, in cases where experimental values were not available, scientific judgements were made in order to estimate a value. The amount of biodegradation that occurs will also vary depending on various site-specific environmental parameters, including temperature, pH, and available biomass. In light of these uncertainties, we believe that it is prudent to use the high value in the range of values presented rather than to use an average value as suggested by the commenters.

c. *Landfill Infiltration Rates.* Our modeling for landfills included analyses for both clay liner and composite liner scenarios. For the clay-liner scenario, we used the existing databases of landfill infiltration rates and ambient regional recharge rates calculated using the Hydrologic Evaluation of Landfill Performance (HELP) water-balance model. For the composite liner scenario, we used empirical distributions of infiltration rates for composite-lined landfills compiled in a recent report (TetraTech report).[25]

The commenters stated that they identified several errors and inconsistencies with the infiltration estimates used to predict downgradient concentrations. The commenters indicated that the composite liner infiltration rates EPA used in the modeling analysis were not consistent with the infiltration rates shown in the TetraTech report. The commenters claimed that EPA incorrectly used infiltration rates for the single synthetic liner instead of the infiltration rates for the composite liner. One commenter noted that the Risk Assessment Background Document provides a leak density variable, as well as an infiltration rate for landfills, suggesting that infiltration rates through the liner are calculated. Thus, the commenter suggested that EPA clarify exactly how leachate curves are estimated. The commenter also stated that the HELP model is not an appropriate tool to determine liner percolation rates because (1) the HELP model is intended to be used as a landfill design tool to evaluate the merits of different design alternatives, and (2) the HELP model has been found to overestimate infiltration rates at landfills and to erroneously predict the timing of events.

As we described in the proposal, we based the composite liner scenario on infiltration rates extracted from the TetraTech report for composite lined landfill units, *i.e.*, units with a combination of geomembrane (GM) and clay liners (compacted clay, CCL, or geosynthetic clay, GCL). We screened the data to yield a data set of forty infiltration rates. The composite liner scenario represented only those rates from the screened set of rates and, thus, we did not use rates from single synthetic liners in this analysis. We then generated the specific values used for modeling the composite liner scenario through interpolation using the available forty infiltration rates. Thus, the interpolated values are a representative distribution of the forty rates and do not reflect single synthetic liners. Finally, we also note that we are not using the composite liner results to set mass-loading levels since we have decided to no longer include toluene-2,4-diamine as a constituent of concern for K181.

Regarding the HELP model, the Agency used the model to determine infiltration rates through capped unlined and clay lined landfills hypothetically sited at each of the 102 climate stations available in the model. Neither permeability nor leak density were included as parameters in these simulations. EPA used the HELP model, in conjunction with data from climate stations across the United States, to develop recharge and infiltration rate distributions for different liner designs.[26] Further, the landfills modeled in this analysis were consistent with standard design practices, and similar to the type of landfill HELP was designed to simulate. The Agency used the HELP model to estimate long-term infiltration rates based on the historical data available with the model. Recent evaluations of actual leachate generation rates have shown that the HELP model can also be a very good approximation of actual conditions.

d. *Well Distance.* The commenters contended that the information on well distance from EPA's National Survey of Municipal Landfills is not representative of disposal practices in the dye industry. The commenters'

[24] Howard, P.H., R.S. Boethling, W.F. Jarvis, W.M. Meylan, E.M. Michalenko, and H.T. Printup (ed.). 1991. Handbook of Environmental Degradation Rates. Lewis Publishers.

[25] ''Characterization of Infiltration Rate Data to Support Groundwater Modeling Efforts,'' Draft Final. TetraTech, Inc. September 28, 2001.

[26] See Appendix A of the EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP)—Parameters/Date Background Documents (2003).

review of the survey used to estimate well distance indicated that EPA only collected well distance information if a well was located within one mile of the landfill. The commenters contended that the survey results used by EPA are significantly skewed and any distribution calculated from these results will not be representative of municipal landfills, but only those municipal landfills with well distances less than one mile. The commenters suggested that EPA should have limited the well distance information to those facilities currently used by dye manufacturers, and resubmitted a survey of landfills originally submitted in comments on the previous 1999 proposed rule. According to the data supplied, seven of sixteen landfills have no nearby wells or have wells greater than one mile from the landfill boundary. Based on this information, the commenters argued that the Agency's well distance distribution was irrelevant for the dye industry and thereby overestimated potential migration of constituents from the landfill to the receptor well.

We believe that the use of a national distribution of landfill characteristics is appropriate. The populations of concern to EPA are those with private wells near landfills, and the selected distribution covers that population. The data supplied by the commenters are incomplete with respect to coverage of all facilities in the dyes and/or pigments industries and, therefore, may not be representative of disposal facility characteristics that could be used. The Agency adopted an approach to use a nationwide risk assessment methodology that has been applied in previous listing determinations, and this approach has been subject to peer review. As noted in our response to comments on landfill liners in section IV.A.2, the specific landfill information submitted by the commenters was for a small number of landfills relevant to dye manufacturers only, and would not be representative of the landfills that could be used (EPA estimated that there are about 2,300 MSW landfills in operation in 2000). Moreover, disposal locations, in addition to well locations, can change over time. Therefore, we used probabilistic analyses in an attempt to incorporate the variability and uncertainty in the data.

e. *Hydraulic Conductivity Values.* The commenters questioned a number of hydraulic conductivity values used in the regional hydrogeologic database. The commenters believed that these ''extremely high'' hydraulic conductivity values are implausible and skewed the model results. The commenters contended that this would over predict concentrations at the receptor well, and significantly under predict the travel time to the receptor well. Moreover, they believed that these high hydraulic permeabilities are not representative of any shallow or deep zone aquifer system in the United States.

It is the Agency's position that the hydrogeologic database (HGDB) is the best data source available to characterize subsurface parameters for conducting nationwide, probabilistic, groundwater pathway analyses. The hydraulic conductivity values used in this analysis were compiled under the auspices of the American Petroleum Institute and the National Well Water Association.[27] The objective of the data compilation was to provide the Agency an up-to-date, screened datasource for probabilistic modeling. Hydraulic conductivity values from site investigations at 400 hazardous waste sites were collected, subjected to internal review, and were subsequently published in a peer-reviewed journal.

The groundwater velocity at a specific location, such as a receptor well, has regional and local contributions. Regional groundwater velocities are proportional to hydraulic conductivity, while local velocities are governed by areal recharge and are almost independent of hydraulic conductivity. Of the entire hydraulic conductivity database, there are only two values equal to 2.21×10^7 m/yr. These values are relatively high but not implausible for fractured sedimentary rocks (Region 2). Regions 4, 5, and 6 (Sand and Gravel; Alluvial Basins, Valleys, and Fans; and River Valleys and Flood Plains, respectively) have four hydraulic conductivity values which are in excess of 10^5 m/yr. These values, although relatively high, are also not implausible. For example, literature references indicate that values of hydraulic conductivities for gravelly deposits may range from 10^4 to 10^7 m/yr.[28] We also note that these values make up an extremely small fraction of the values in the data base, thereby reflecting the likelihood of their occurrence nationally. This is consistent with the nationwide probabilistic approach we used in the risk evaluation.

f. *Simulation Durations.* The commenters pointed out that for several chemicals (o-anisidine, p-cresidine, and 2,4-dimethylaniline), the groundwater time to impact is more than 250 years. The commenters stated that simulations over this time period are computationally intensive and generate results that are unrealistic and not interpretable, because we cannot predict human behaviors that influence exposure or land uses so far in the future. Commenters suggested that EPA should limit the results to the maximum concentration within the next 100 years.

As a matter of policy, the Agency has adopted long time frames for assessing risks in the hazardous waste listing program because it allows peak concentrations to be observed at most receptor locations. This time frame is consistent with other listing determinations.[29] The EPACMTP computer model, developed by the Agency, can perform the simulation over these time frames in a computationally efficient manner on modern computers. It is well documented in the scientific literature that groundwater travel can span hundreds to thousands of years.

Therefore, we do not agree that simulations over a 250-year time period will generate results that are unrealistic and not interpretable. Furthermore, the commenter did not provide any reason why arbitrarily restricting the modeling to a 100-year time frame would be more appropriate. The Agency agrees that future changes in human behavior and environments are subject to uncertainty. However, the Agency's probabilistic approach in conjunction with relatively conservative assumptions is designed to provide a reasonable level of protection for future generations.

g. *Exposure Parameters.* Commenters stated that EPA has selected maximum values for several exposure parameters for the probabilistic analyses, and that use of maximum values overestimates potential risk.

Ingestion and inhalation rates: Commenters argued that EPA's current ranges for groundwater ingestion rates are overly conservative and that EPA overestimated the amount of water ingested by potential adult receptors. The commenters noted that the maximum values used by EPA are higher than the 99th percentile value presented in EPA's Exposure Factors

[27] Newell, C.J., L.P. Hopkins, and P.B. Bedient. 1989. Hydrogeologic Database for Ground Water Modeling. American Petroleum Institute, Washington, DC; and Newell, C.J., L.P. Hopkins, and P.B. Bedient. 1990. A hydrogeologic database for ground water modeling. Ground Water 28(5):703–714.

[28] See Freeze, R.A., J.A. Cherry. 1979. Groundwater; Prentice Hall, Englewood Cliffs, New Jersey, and Driscoll, F.G. 1986. Groundwater and Wells, Second Edition; Johnson Screens, Publisher, St. Paul, Minnesota.

[29] Paints Listing Determination; February 13, 2001; 66 FR 10093; Inorganic Chemical Manufacturing Listing Determination; September 14, 2000; 65 FR 55697.

Handbook (EPA 1997a).[30] The commenters also argued that EPA overestimates maximum inhalation rates for adult and child residents, noting that the maximum rate used by EPA exceeds the 99th percentile inhalation rates for men and women given in EPA guidance (EPA (2000), Options for Development of Parametric Probability Distributions for Exposure Factors).

We do not agree that the water ingestion and inhalation rates we used are overly conservative. The maximum values were used to truncate the distribution during sampling using a statistical software package. A large range was used in order to prevent the shape of the data distributions from being distorted. For groundwater ingestion, the mean, 50th, 90th, 95th, and 99th percentiles from the sampled data were verified by comparing them against the data provided in EPA's Exposure Factors Handbook. Similarly for inhalation, the simulated 99th percentile value for the adult inhalation rate we used was consistent with the values cited in the above document. In addition, the probabilistic analyses use values throughout the distribution of parameter values. The maximum value is only one point on the distribution curve, and thus, has a minor impact on the overall modeling results.

Exposure Duration: The commenters contended that EPA used exposure durations that are inappropriate for the receptors identified. The commenters argued that EPA overestimated the period of exposure, thereby arbitrarily increasing the risk estimates calculated. The commenters pointed out that the exposure duration for a child varied between one and 50 years, even though the greatest length of potential exposure is five years for a one-to five-year-old. Commenters stated that EPA correctly holds all other inputs within the one-to five-year age bracket; therefore, EPA's methodology could result in modeling a 22-year-old that has the body weight and ingestion rate of a five-year-old.

EPA does not agree that the exposure duration is inappropriate for the receptors identified. The exposure duration used in the analysis is selected once for each receptor at the beginning of each iteration. As we described in the proposal (68 FR 66182–66183), we evaluated a child whose exposure begins at a random age between one and six years old. We then aged the child for the number of years defined by the randomly selected exposure duration. As children mature, their physical characteristics and behavior patterns change. Depending on the exposure duration selected, a receptor (*e.g.*, a 1- to 5-year-old) ages through successive age groups (also known as cohorts). Other exposure parameters (*i.e.*, body weight, inhalation rate, drinking rate) are held constant while a receptor is in a given age cohort, but are selected again as a receptor enters the successive age cohort. For example, a receptor initiated at age three would have a constant 1- to 5-year-old body weight at ages 3, 4, and 5. At age 6, a new body weight would be selected from the 6- to 11-year-old body weight distribution to be used for the duration spent in this cohort (and so on). A 22-year-old would have a body weight selected from the adult body weight distribution, not that of a 1- to 5-year-old.

Indoor air exposures: The commenters believe that the shower model used by EPA overestimates potential exposure and risk. The commenters claim that EPA used several overly conservative exposure parameters, including the time in the bathroom. Commenters contended that it is highly unlikely that individuals regularly spend four hours in the bathroom showering and in related activities, and suggested that the total duration should not exceed a plausible value (*e.g.*, one hour total). The commenters also argued that EPA assumed that the entire constituent concentration is available for uptake and did not consider that only a fraction of that inhaled may be available and absorbed.

EPA does not believe that the indoor air exposure parameters are overly conservative. During the Monte Carlo simulation, the distributions for the time spent in showering and related activities are sampled independently, such that the combined shower exposure used in the Monte Carlo simulation is significantly lower than four hours. For example, the 50th percentile value of the combined shower exposures results in a duration of 32 minutes in the bathroom; the 99th percentile value of the combined shower exposures results in a total duration of 83 minutes in the bathroom. These are not implausible values. The commenters did not suggest any alternative exposure periods for the showering scenario, so we cannot compare any suggested values to those we used in our analysis. We note, however, that the mean, 50th, 90th, 95th, and 99th percentiles were verified by comparing them against the data provided in EPA's Exposure Factors Handbook. In addition, shower inhalation exposure was a determining exposure pathway for only two constituents (naphthalene and dichlorobenzene) and neither of these two constituents served as a basis for listing K181. Drinking water ingestion was the determining pathway for all other constituents.

In order to be protective of human health, EPA assumes that the entire constituent concentration in indoor and ambient air is available for respiratory uptake, unless chemical-specific data indicate otherwise. Data on the fraction absorbed from inhalation are not frequently available, and the commenter did not provide any such data. However, when data are available, the fraction absorbed is incorporated into the cancer and noncancer inhalation benchmarks.

Monte Carlo Distributions: In the Monte Carlo analysis, the Agency used distributions to describe several exposure parameters, including body weight, exposure duration, and drinking water intake. The commenters contended that EPA failed to follow its own guidance when developing these distributions, noting that the document Guiding Principles for Monte Carlo Analysis (EPA 1997c) stated ''risk assessors should never depend solely on goodness-of-fit tests to select the analytic form for a distribution.'' The commenters pointed out that for the distributions used in the exposure assessment, the Agency did not complete any graphical analyses of the data to ensure that the distributions selected were consistent with the results of the statistical analyses. The commenters also stated that EPA did not provide enough information to support the distribution selected for drinking water ingestion (a gamma distribution) instead of a lognormal distribution, as described in EPA's Exposure Factors Handbook.

We agree that graphical representations are often useful and we have provided such graphical representations for key exposure parameters in the Response to Comment document. However, as part of our analysis for the proposal, EPA conducted a thorough review of sampled data to ensure that the selected percentiles were representative of the data. Regarding the specific distribution selected for drinking water ingestion, the gamma model provided a better fit. In any case, we found no significant difference between using the gamma versus the log normal distributions for this data set. For example, using a gamma distribution for drinking water intake of adults, the 50th and 90th percentile simulated values are 1,272 mL/day and 2,302 mL/day, compared to

[30] U.S. EPA Exposure Factors Handbook, August 1997; EPA/600/P–95/002Fa. *http://www.epa.gov/ncea/pdfs/efh/front.pdf.*

1,252 mL/day and 2,268 mL/day for the log normal distribution.

9. Implementation

EPA received comments on a number of issues concerning the proposed implementation approach for the K181 listing determination. The most significant issues include: (1) EPA's alternative to consider all wastes generated during the year to be hazardous if the mass loading limit for a CoC in the wastes is met or exceeded at any time during the year; (2) not allowing higher quantity waste generators the option of using knowledge of their wastes to demonstrate that the wastes are nonhazardous; (3) use of the maximum detected concentration or a concentration based on the 95th percentile upper confidence limit of the mean to determine the mass of a CoC; (4) EPA's onsite recordkeeping requirements to support a nonhazardous determination for the wastes; and (5) EPA's annual follow-up testing requirements to verify that wastes remain nonhazardous. The Agency's responses to these comments are summarized below. The verbatim comments and our responses to all comments are provided in the Response to Comments Background Document.

a. *Alternative Option for Wastes Which Meet or Exceed Mass Loading Limit.* EPA took comment on an alternative option that would consider all wastes generated during the year to be hazardous if the mass loading limit for a CoC in the wastes is met or exceeded at any time during the year. Commenters on the proposed rule did not support this option. They argued that this alternative is not necessary or practical for several reasons. First, waste quantities determined to be nonhazardous based on the results of the risk assessment would be subject to hazardous waste regulation. Second, it would require the waste generators to accurately forecast customer demand for products and the amount of constituents in wastes over a one year period from highly variable waste streams that often result from batch manufacturing processes. Third, customers may have to be turned away and potential new products put on hold if a company's forecast for the mass of any CoC in its wastes is approached before the end of the calendar year and the wastes have been disposed in a nonhazardous landfill. Finally, waste management facilities (for nonhazardous wastes) may not accept such nonhazardous wastes if the wastes may later be declared hazardous.

EPA generally agrees with the concerns stated by the commenters on the alternative option. We noted some of these concerns in the proposed rule as part of our request for comment on this option. Specifically, we agree that the alternative approach would cause significant difficulties for waste management facilities that might accept initial batches of wastes as nonhazardous, but later find that these wastes are declared hazardous. As a result, the generators may have difficulty in finding waste management facilities that would accept wastes as nonhazardous under this approach. Therefore, we are finalizing the proposed approach, which considers all K181 potential wastes generated up to the mass loading limits of the CoCs to be nonhazardous and allows these wastes to be managed as nonhazardous. In other words, the K181 listing would apply to only the portion of wastes that meets or exceeds the mass loading limits for any of the K181 CoCs in a calendar year.

While the K181 listing only applies to wastes that meet or exceed the mass loading limits, the Agency notes that the annual mass loading limits, the landfill design requirements, and treatment in specified combustion units are conditions of the listing. Dyes and/or pigments nonwastewaters become K181 wastes unless a generator fulfills one of these conditions. If one or more of these conditions are not met, EPA or authorized states could bring enforcement actions for violations of hazardous waste requirements against anyone who has not managed the waste in compliance with applicable Subtitle C requirements. Furthermore, EPA can take action under section 7003 of RCRA if the management of dyes and/or pigment nonwastewaters may pose an imminent and substantial endangerment to human health or the environment. Thus, we advise generators to properly store nonwastewaters that are potentially hazardous under the K181 listing. At a minimum, we encourage generators to store all wastes in proper containers (*i.e.*, such that wastes are not placed directly on the ground) prior to disposal.

b. *Using Knowledge of Wastes To Demonstrate that Wastes are Nonhazardous.* EPA proposed that waste generators who generate or expect to generate 1,000 metric tons per year or less of K181 categorized wastes would have the option of using knowledge of their wastes to demonstrate that their wastes are nonhazardous. On the other hand, we proposed that generators who generate more than 1,000 metric tons per year (MT/yr) of K181 would be required to use the more extensive procedures in § 261.32(d)(3), which include a requirement to test for constituents reasonably expected to be present. Commenters objected to EPA's proposal that would limit who could use knowledge of their wastes to demonstrate that their wastes are nonhazardous. They stated that all waste generators should have the option of using knowledge to demonstrate that their wastes are nonhazardous, irrespective of how much waste they generate. This is because, in most cases, commenters believe that testing of wastes by generators is unnecessary and burdensome. They pointed out that waste generators have sufficient knowledge about their wastes to make appropriate determinations for any quantity of wastes that they generate. They also noted that the wastes do not contain many of the proposed CoCs for K181 and, when present, they are not likely to exceed threshold quantities. Finally, the commenters emphasized that, if toluene-2,4-diamine is not present in the wastes and the wastes are being disposed in lined landfills, then the testing requirements are irrelevant and should be deleted.

We proposed and are finalizing that all manufacturers can use knowledge of their wastes to determine which K181 constituents of concern are reasonably expected to be present in their wastes. However, we do not agree that manufacturers who generate more than 1,000 MT/yr should have the option to use knowledge to determine the level of K181 CoCs present in their wastes. This is in part because, as stated in the proposal, we believe that the larger quantities of wastes have the potential for posing greater environmental risks than smaller quantities of wastes if a nonhazardous determination based on knowledge turns out to be inaccurate (*see* 68 FR 66202). In addition, as discussed previously (section IV.A.6), we believe that the information available indicates that the constituents of concern are present in dye/pigment production wastes, and that the levels of the constituents have the potential to exceed the annual mass loading limits. Therefore, we believe that it is reasonable to require larger quantity waste generators to test their wastes. Test data represent the best information that can be obtained on the concentrations of CoCs present in the waste and for use in determining the mass loading levels for CoCs, because waste testing provides a direct indication of constituent levels. It should also be noted that, based on the conditional nature of the final listing

determination, the generators who generate more than 1,000 metric tons per year of K181 would only have to test their wastes if they are managing them in a landfill that does not meet the liner standards identified in the listing. That is, if such generators are managing their wastes in lined landfills that are subject to (or otherwise meet) § 258.40, 264.301 or 265.301, there is no need to determine the levels of K181 CoCs and thus no need to test. Finally, we note that if facilities generating 1,000 MT/yr or less use some level of waste analysis data to determine the levels of CoCs present, they are still only subject to the requirements in § 261.32(d)(2), and not the more extensive testing requirements in § 261.32(d)(3).

We are adding further language in the regulations to clarify when the generators are required to evaluate their wastes and to demonstrate their wastes are not hazardous. We have revised the beginning of § 261.32(d) to make it clear that only generators that do not dispose of the wastes in landfill units that meet the design requirements in the listing description are required to evaluate their wastes for CoCs under § 261.32(d)(1) through § 261.32(d)(3). Generators that dispose of their wastes in landfills meeting the specified design requirements do not have to evaluate their wastes, however they must document the disposal in an appropriate landfill (§ 261.32(d)(4)). Furthermore, we added language to the beginning of § 261.32(d)(3) to clarify that all steps in this subparagraph must be completed.

c. *Use of the Maximum Detected Concentration or a Concentration Based on the 95th Percentile Upper Confidence Limit of the Mean.* EPA proposed that waste generators use the maximum detected concentration or, if multiple samples are collected, use either the maximum concentration or a concentration based on the 95th percentile upper confidence limit of the mean (UCLM) in order to determine the mass of a CoC in the waste. Commenters did not support the use of the maximum concentration, since they believe it is overly conservative and would overstate the mass loading generated by a facility. The commenters also considered the use of a concentration based on the 95th percentile UCLM as complicated and open to interpretation. Instead of requiring the use of the maximum concentration or a concentration based on the 95th percentile UCLM, commenters suggested that waste generators should be allowed to use rolling averages, or average concentrations, or median concentrations.

To ensure protection of human health and the environment, we want to be reasonably conservative and see that generators use the most appropriate concentrations of CoCs to calculate the mass of each CoC in the wastes. Therefore, the use of rolling averages, average concentrations, or median concentrations would not be appropriate. Rolling averages and average concentrations are based on the simple average of the measured concentrations, with no statistical measure of the confidence limit associated with these concentrations. Therefore, the use of simple averages would not account for the possibility of a wide variability in the levels of CoCs in the waste. The median is simply the middle value in the data (*i.e.*, one-half of the values are above the median, and one-half are below it) and may not be representative of the average concentration of a CoC in the waste.

The use of maximum sample concentration is appropriate when the waste generator takes insufficient samples of a particular amount of waste. In general, because potential K181 wastes are likely to be highly variable, waste generators should be taking multiple samples to properly characterize the wastes. For multiple samples, the waste generator may use the maximum detected concentration or a concentration based on the 95th percentile upper confidence limit of the mean for a CoC. The upper confidence limit approach takes into account the variability of the waste and provides a measure of confidence that the mean concentration is below the upper bound of the confidence limit. Thus, using the 95th percentile upper confidence limit of the mean for a CoC gives a greater degree of confidence that its mass in the waste is below the mass loading limit. The 95th percentile upper confidence limit calculation, although it requires some statistical analysis, is relatively simple to calculate and has been used in other parts of the RCRA program (*e.g.*, see the implementation of the Comparable/Syngas Fuel Exclusion under 40 CFR 261.38(c)(8)(iii)(A)). [Use of the 95th percentile upper confidence level provides assurance that the mass loadings established in the regulation will be protective of human health and the environment.]

d. *Onsite Recordkeeping Requirements.* EPA proposed onsite recordkeeping requirements to support a nonhazardous determination. These included keeping records on waste sampling and analysis. Commenters questioned the need for waste analysis and onsite recordkeeping requirements associated with waste analysis if toluene-2,4-diamine is not present in the waste and the wastes are being disposed in a lined landfill. The commenters stated that EPA, at most, should require records of wastes limited to proof of transportation to the appropriate landfill.

As described previously, the Agency has reviewed the comments on toluene-2,4-diamine and has decided to no longer include toluene-2,4-diamine as a constituent of concern for K181. As a result of this decision, one of the two conditions that were proposed for the dyes and/or pigment nonwastewaters to be considered nonhazardous under the landfill exemption has been eliminated. The only remaining condition for these wastes to be considered nonhazardous in the final listing is for the wastes to be disposed in a landfill unit that meets the liner design standards specified in the listing description. (As discussed in section IV.A.3, the listing also includes an exemption for combustion.) Therefore, as long as the wastes are being disposed in these types of landfills, the waste generators do not have to test or maintain records associated with waste sampling or testing. The Agency agrees that records demonstrating that each shipment of waste was received by an acceptable type of landfill must be maintained.

A generator claiming that it is not subject to the listing would have to maintain sufficient documentation to demonstrate that it has not exceeded the relevant annual mass loading limits, that it has sent its waste to a landfill meeting the liner design standards specified under the conditional exemption, or that the waste was treated in a permitted combustion unit as specified in the listing description. EPA believes that it is critical for generators to have documentation demonstrating that the waste is below the mass loading limits, or that shipments of waste have been (or will be) sent to landfills meeting the specified design requirements or combustion units as specified in the listing. Paragraphs (d)(1), (d)(2), (d)(3) and (d)(4) of § 261.32 of the rule require generators of dyes and/or pigment nonwastewaters from the listed product classes to keep records under the authority of sections 2002 and 3007 of RCRA. Failure to comply with the recordkeeping requirements could result in an enforcement action by EPA under section 3008 of RCRA or by an authorized State under similar State authorities. Without adequate documentation, the regulating agency may presume that the generator is not complying with the requirements for

demonstrating that the wastes are nonhazardous.

Note that in the final rule, we are also clarifying that the requirement for keeping records on site for three years under paragraphs (d)(2) and (d)(3) refers to the three most recent calendar years by including more specific text in § 261.32(d)(2)(iv) and § 261.32(d)(3)(x) (*i.e.*, ''Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made''). We believe this clarification makes the recordkeeping requirement more consistent with the calendar year basis of the annual loading limits.

Below we provide examples to illustrate the types of records that need to be kept on site for two facilities, one that sends all wastes to a municipal landfill, and another that tests their waste.

Example 1: Facility D is a producer of a variety of in-scope organic dyes and pigments, generating 2,000 metric tons per year of wastewater treatment sludges. The generated wastes do not exhibit any hazardous waste characteristic nor meet any other listing descriptions. While the total quantity of wastes exceeds 1,000 MT/yr, the facility decides to send all of the wastes to a municipal landfill where the receiving units meet the liner design criteria of § 258.40. Therefore, the facility has no obligation to test for the presence of CoCs. To comply with the recordkeeping requirements of § 261.32(d)(4), the facility keeps records on site for three years to show that shipments of the wastes received by the landfill are disposed of properly. These records include documentation of the types of wastes shipped, shipping records from the transporter and the landfill documenting receipt of the waste shipment, and documentation from the landfill or state indicating that the landfill units meet the § 258.40 design standards.

Example 2: Facility E is a producer of in-scope organic dyes and pigments generating 3,500 MT/yr of process sludges. Facility E would like to manage as much as possible of the 3,500 MT as nonhazardous (*e.g.*, dispose of the waste in an industrial landfill that does not meet the liner criteria specified in the listing description), as long as the wastes are below the mass-loading limits in § 263.32(c). Since the total volume of nonwastewaters exceeds 1,000 MT/yr, the facility must follow the procedures set forth in § 263.32(d)(3) to determine the status of its nonwastewaters.

Therefore, the facility first determines that one of the K181 listing constituents is expected to be present in the facility's wastes (4-chloroaniline). This determination is based on the raw materials used for manufacturing, the impurities likely present in the process feeds, and the production chemistry involved. The facility documents this finding using the MSDS sheets for the materials used, the process reaction information reviewed, and the results of past analyses performed.

The facility develops a sampling and analysis plan that includes the requirements of § 263.32(d)(3)(iii) for characterizing the levels of the K181 constituents present in the wastes destined for disposal in an industrial landfill that does not meet the liner requirements. The facility collects and analyzes representative waste samples according to the developed sampling and analysis plan and the § 263.32(d)(3)(iv) testing requirements. The analytical results show that the annual amount of waste contains up to 6,800 kg/yr of 4-chloroaniline. The facility maintains on site the sampling and analysis plan, documents showing the analytical results and the accompanying quality assurance/quality control (QA/QC) data, and records showing the waste batches and quantities represented by the test results.

The facility keeps a running total of the 4-chloroaniline mass loadings determined throughout the year and documents the calculations performed. The facility manages those batches with cumulative mass loadings of less than 4,800 kg/yr of 4-chloroaniline as nonhazardous waste, and ships them to an industrial landfill that does not meet the design requirements of § 258.40, § 264.301, or § 265.301. The facility is careful to document the mass loadings in those batches. The facility ships the remaining waste to a municipal landfill subject to the § 258.40 design criteria. The facility keeps all of the above waste determination and management records on site for three years.

e. *Annual Follow-up Testing Requirements.* EPA proposed that waste generators continue to perform waste analysis annually after the wastes have been determined to be nonhazardous for the purpose of verifying that the wastes remain nonhazardous. However, we also proposed that the annual testing requirements for the wastes could be suspended if the annual running total mass levels for the CoCs during any three consecutive years based on the sampling and analysis results for the CoCs in the wastes are determined to be nonhazardous. We also proposed that following a significant process change (*i.e.*, if it could result in significantly higher levels of the CoCs for K181 in the wastes and greatly increase the potential for the wastes to become hazardous), the annual testing requirements for the wastes would be reinstituted. Commenters questioned the need for annual testing requirements over a period of at least three years. They believe that, after a demonstration that the wastes are nonhazardous for one year, annual follow-up testing requirements are not necessary, unless there is a significant change in the process. Also, if there is a significant process change, the commenters believe that a one year repeat demonstration should be considered sufficient to demonstrate that the wastes remain nonhazardous. In addition, commenters believe that there is no reason for annual testing of wastes disposed in lined landfills, if they do not contain toluene-2,4-diamine or if the concentration of toluene-2,4-diamine in the wastes does not change. Finally, commenters pointed out that EPA, in other hazardous waste exclusions, required an initial demonstration and repeat demonstration only when there is a significant change in the process that generates the wastes.

The Agency notes that toluene-2,4-diamine is no longer a constituent of concern for the K181 waste listing. Therefore, any waste generator that is disposing of these wastes in a landfill unit subject to the liner design criteria specified in the listing description, is not required to test or conduct repeat testing under the conditional final listing for the dyes and/or pigments nonwastewaters. However, any large waste generator that tests their wastes and is not disposing of them in this type of landfill (or treating the waste by combustion as specified in the listing) is subject to the testing requirements (as proposed) in today's final rule at § 261.32(d)(3). This is because the wastes produced by the dyes and/or pigments industries using batch processes can be highly variable.[31] As a result, we do not believe that testing for one year is sufficient to demonstrate that the waste would remain nonhazardous over a sufficiently long period of time. Thus, the Agency is requiring test data to show that the dyes and/or pigment wastes are nonhazardous for three consecutive years to provide a greater degree of confidence in the waste determination. The follow-up testing can only be suspended if it is demonstrated that the wastes are nonhazardous for three consecutive years.

10. Exemption for Non-Municipal Landfills

The proposed rule included an exemption for wastes disposed in landfill units that are subject to the liner design requirements in § 258.40. This

[31] As ETAD indicated in its comment that ''Dyes production involves batch processes, numerous distinct products and highly variable waste streams * * *''

was based on our risk analysis that demonstrated that wastes disposed in landfills with composite liners did not present significant risks for K181 dye and pigment wastes. (In the proposal, we also included a mass-loading limit for toluene-2,4-diamine for composite-lined units, but as noted previously, we are dropping this constituent in the final rule.) We also sought comment on the option of including in the exemption wastes that are disposed in other non-municipal landfills (industrial landfills) that meet the liner design requirements in § 258.40 or Subtitle C landfills. One commenter indicated that, since lined landfills do not pose a significant risk for disposal of the waste, manufacturers generating potential K181 waste should have the option of utilizing synthetic membrane lined industrial landfills which are as protective as lined municipal landfills. The commenter suggested that the generators could be responsible for assuring that a landfill is designed with an appropriate synthetic liner system.

After considering this issue fully, we agree that it would be appropriate to include industrial landfill units (*e.g.*, non-municipal landfill units) in the landfill exemption for the K181 listing, provided the units meet the specified liner design standards. While the available information indicates that generators are using primarily municipal landfills for disposal of dyes and pigment manufacturing wastes, comments submitted (see CPMA comments, Appendix B) indicate that industrial landfills are in use to some extent. We do not wish to preclude use of commercial industrial landfills that meet the liner standards for municipal landfills in § 258.40 (or for subtitle C landfills). As the commenter suggested, the generator would be responsible for documenting that the landfill meets the specified liner standards. States have regulations governing the design of non-municipal non-hazardous landfills.[32] Thus landfill operators are likely to have certifications or permit conditions available to provide to generators who wish to use such landfills instead of municipal landfill units. As described previously in the discussion on recordkeeping requirements, generators wishing to qualify for the exemption are required to maintain records to show that they are using an appropriate landfill unit, whether the unit is a municipal landfill, subtitle C landfill, or an industrial landfill. Therefore, we are finalizing the listing to include an exemption for wastes disposed in subtitle D landfills that meet the design requirements in § 258.40, § 264.301, or § 265.301. The landfill exemption in the K181 listing now reads as follows (the final rule also includes an exemption for certain combustion units, as well):

> These wastes will not be hazardous if the nonwastewaters are: (i) Disposed in a subtitle D landfill unit subject to the design criteria in § 258.40, (ii) disposed in a subtitle C landfill unit subject to either § 264.301 or § 265.301, (iii) disposed in other subtitle D landfill units that meet the design criteria in § 258.40, § 264.301, or § 265.301, or (iv) treated in a combustion unit that is permitted under subtitle C, or an onsite combustion unit that is permitted under the Clean Air Act.

B. Final ''No List'' Determination for Wastewaters

The Agency proposed not to list as hazardous wastewaters from the production of dyes and/or pigments. We received numerous comments supporting this proposal, and no adverse comments on this proposed decision. We have not independently learned of any new information requiring us to change our position on these wastes. Therefore, we are making a final decision not to list wastewaters from the production of dyes and/or pigments.

C. What Is the Status of Landfill Leachate Derived From Newly-Listed K181Wastes?

As noted in the proposed rule, actively managed landfill leachate and gas condensate generated at non-hazardous waste landfills derived from previously-disposed and newly-listed wastes could be classified as K181. We proposed to temporarily defer the application of the new waste code to such leachate to avoid disruption of ongoing leachate management activities while the Agency decides if any further integration is needed of the RCRA and CWA regulations consistent with RCRA section 1006(b)(1).

We are finalizing the revisions to the temporary deferral in § 261.4(b)(15) with no change from the proposed rule. Commenters generally supported the proposed deferral. However, two commenters stated that EPA should make the deferral permanent. One of the commenters stated that the various approaches used by EPA in listings, including the mass loadings approach proposed for the current dyes and pigments waste listing, creates uncertainty for the municipal landfill operator regarding leachate management. The other commenter also urged EPA to expand this deferral to include leachate that is derived from a surface impoundment.

As we noted in the proposal, we believe a temporary deferral is warranted. We believe that it is appropriate to defer regulation on a case-by-case basis to avoid disrupting leachate management activities, and to allow us to decide whether any further integration of the two programs is needed.[33] While the commenter suggested there were ''uncertainties'' in leachate management requirements, no specific problems were identified. In any case, a broader exemption for landfill leachate is beyond the scope of the current rulemaking. Similarly, we see no need to expand the deferral to include leachate from surface impoundments, as well as landfills. The issues raised by this commenter relate to the management of leachate from closed surface impoundments located on site. We believe that these issues are site-specific and are best left to the local regulatory agency. Therefore, we are not expanding the deferral to include impoundment leachate.

One commenter sought clarification on our use of the term ''active management,'' in the context of our statement in the proposal that ''The Agency often uses the term 'active management' as a catch-all term to describe the types of activities that may trigger RCRA subtitle C permitting requirements.'' (See 68 FR 66199, Footnote 57). The commenter noted that actions not requiring a permit may be active management and wanted to clarify that active management would include situations like 90-day storage of excavated K181 waste, which does not require a permit. The commenter is correct. We did not mean to imply that active management can only occur for actions requiring a RCRA subtitle C permit. In the case of a typical listed waste, excavated wastes stored in 90-day containers (*e.g.*, roll-off bins) would indeed be considered ''active management'' and carry the hazardous waste code designation. For the K181 listing, however, the only excavated wastes that could carry the K181 designation would be wastes that meet or exceed the mass loadings of any of the specified constituents. Furthermore, if the excavated waste is disposed in a suitable landfill that is subject to or

[32] Association of State and Territorial Solid Waste Management Officials (''ASTSWMO''), *Non-Municipal, Subtitle D Waste Survey.*

[33] EPA's Office of Water examined the need for national effluent limitations guidelines and pretreatment standards for wastewater discharges (including leachate) from certain types of landfills (see proposed rule at 63 FR 6426, February 6, 1998). EPA decided such standards were not required and did not issue pretreatment standards for Subtitle D landfill wastewaters sent to POTWs (see 65 FR 3008, January 19, 2000).

meets the specified design criteria, or treated by combustion as specified in the listing description, then the waste would be exempt from the listing.

D. What Are the Final Treatment Standards Under RCRA's Land Disposal Restrictions for the Newly-Listed Hazardous Wastes?

1. What are EPA's Land Disposal Restrictions (LDRs)?

The RCRA statute requires EPA to establish treatment standards for all wastes destined for land disposal. These are the so called ''land disposal restrictions'' or LDRs. For any hazardous waste identified or listed after November 8, 1984, EPA must promulgate LDR treatment standards within six months of the date of identification or final listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). RCRA also requires EPA to set as these treatment standards ''* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1). Once a hazardous waste is prohibited, the statute provides only two options for legal land disposal: Meet the treatment standard for the waste prior to land disposal, or dispose of the waste in a land disposal unit that satisfies the statutory no migration test. A no migration unit is one from which there will be no migration of hazardous constituents for as long as the waste remains hazardous. RCRA sections 3004 (d), (e), (f), and (g)(5).

We are finalizing the prohibitions and treatment standards for the K181 wastes which we are listing as hazardous. The date of the prohibition and treatment standard is August 23, 2005.

2. How Does EPA Develop LDR Treatment Standards?

In an effort to make treatment standards as uniform as possible, while adhering to the fundamental requirement that the standards must minimize threats to human health and the environment, EPA developed the so called Universal Treatment Standards (codified at 40 CFR 268.48). Under the UTS, whenever technically and legally possible, the Agency adopts the same technology-based numerical limit for a hazardous constituent, regardless of the type of hazardous waste in which the constituent is present. See 63 FR 28560 (May 26, 1998); 59 FR 47982 (September 19, 1994). The UTS, in turn, reflects the performance of Best Demonstrated Available Treatment (BDAT) technologies of the constituents in question. EPA is also authorized in section 3004(m) to establish methods of treatment as a treatment standard. Doing so involves specifying an actual method by which the waste must be treated (unless a variance or determination of equivalency is obtained). Given this constraint, EPA prefers to establish numerical treatment standards, which leaves the option of using any method of treatment (other than impermissible dilution) to achieve the treatment standard.

EPA also finds that the treatment standards established in today's rule are not established below levels at which threats to human health and the environment are minimized. See Hazardous Waste Treatment Council v. EPA, 886 F. 2d 355, 362 (D.C. Cir. 1990). That case held that the statute can be read to allow either technology-based or risk-based standards, and further held that technology-based LDR treatment standards are permissible so long as they are not established ''beyond the point at which there is no 'threat' to human health or the environment.'' Id. at 362. EPA's finding that today's standards are not below a ''minimize threat'' level is based on the Agency's inability at the present time to establish concentration levels for hazardous constituents which represent levels at which threats to human health and the environment are minimized. See 63 FR at 28560 (May 26, 1998) explaining at greater length why these difficulties remain. Thus, the Agency continues to find that technology-based standards remain the best approach for the national treatment standards for these wastes since such standards eliminate as much of the inherent uncertainty of hazardous waste land disposal and so fulfill the Congressional intent in promulgating the land disposal restrictions provisions. 55 FR at 6642 (Feb. 26, 1990).

3. What Are the Treatment Standards for K181?

Of the seven CoCs that form the basis of the final listing, two of them—aniline and 4-chloroaniline—have an existing UTS. For two of the other CoCs—o-anisidine, p-cresidine—there is adequate documentation in existing SW–846 methods 8270, 8315, and 8325 to calculate numerical standards. Finally, for two other constituents—2,4-dimethylaniline and 1,3-phenylenediamine—we are transferring the numerical standards of similar constituents as the universal treatment standards.

In the proposal, we had stated that if the numerical standards for these constituents were shown in comments not to be achievable or otherwise appropriate, we might adopt methods of treatment as the exclusive treatment standard. We did not receive any such comments suggesting that these numerical standards were not achievable or otherwise appropriate. Therefore, we are finalizing the proposed numerical treatment standards for these six CoCs.

For the remaining constituent of concern, 1,2-phenylenediamine, we stated in the proposed rule that in past method performance evaluations, we have found it difficult to achieve reliable recovery from aqueous matrixes and precise measurements. Therefore, we proposed technology-specific LDR treatment standards for this constituent. We also noted that if commenters submitted data adequate for us to develop a numerical standard, then we might promulgate a numerical standard in addition to, or in lieu of, the technology standard.

Because we did not receive data on 1,2-phenylenediamine, we are maintaining the technology-specific standard as the LDR treatment standard, with one change. We are expanding the treatment options for K181 nonwastewaters to include, in addition to combustion (CMBST), a treatment train of chemical oxidation (CHOXD) followed by BIODG (biodegradation) or CARBN (carbon adsorption) and a treatment train of BIODG followed by CARBN. We are making this change based on a comment we received on the proposed rule. The commenter asserted that the proposed LDR standard of CMBST has the potential to significantly disrupt the company's on-site biosolids disposal. More specifically, because of the mixture and derived-from rule, if the facility were to accept into its wastewater treatment facility wastes that meet the nonwastewater definition of K181, and it contains 1,2-phenylenediamine, the biosolids resulting from treatment would have to be combusted.

In the above scenario, we do not believe it makes sense to establish a treatment standard that would require the wastewater treatment biosolids to be combusted. As the commenter points out, and with which we agree, if a facility were to introduce a nonwastewater into its wastewater treatment system, the nonwastewater would immediately become a wastewater (by LDR definition) and would be amenable to treatment by a wastewater treatment system. Therefore, we are adding to the LDR treatment

standard for 1,2-phenylenediamine a treatment train of CHOXD followed by BIODG or CARBN and a treatment train of BIODG followed by CARBN. Note that the treatment standard for K181 wastes containing 1,2-phenylenediamine now is identical for wastewaters and nonwastewaters. We have revised the BDAT Background Document to reflect this change and placed it in the docket for today's rule.

The following table summarizes the final treatment standards for the constituents of concern.

TABLE IV–I.—TREATMENT STANDARDS FOR CONSTITUENTS IN K181

Constituents of concern	CAS No.	Wastewater (mg/L)	Nonwastewater (mg/kg)
Aniline	62–53–3	0.81	14
o-Anisidine (2-methoxyaniline)	90–04–0	0.010	0.66
4-Chloroaniline	106–47–8	0.46	16
p-Cresidine	120–71–8	0.010	0.66
2,4-Dimethylaniline (2,4-xylidine)	95–68–1	0.010	0.66
1,2-Phenylenediamine	95–54–5	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN
1,3-Phenylenediamine	108–45–2	0.010	0.66

Note: "fb" means "followed by."

In this final rule, we are also finalizing the following provisions, all of which are consistent with the proposed rule. See the Response to Comments Background Document for other LDR-specific issues raised in comments.

—We are adding the CoCs in K181 with numerical treatment standards to the Universal Treatment Standards listed at 40 CFR 268.48, which results in the addition of four new chemicals to the list: o-anisidine, p-cresidine, 2,4-dimethylaniline, and 1,3-phenylenediamine. Adding these constituents to the UTS list will ensure that, if they are present in a characteristic waste, they will be treated prior to land disposal, which in turn will minimize any risks they present to human health and the environment. (**Note:** Because toluene-2,4-diamine is not being included as a constituent of concern for this waste, it will no longer be added to the UTS list at 40 CFR 268.48.)

—We are adding to F039 those constituents identified in K181 not already specified in F039 (the same constituents named above for addition to the UTS list). F039 applies to landfill leachates generated from multiple listed wastes in lieu of the original waste codes. F039 wastes are subject to numerical treatment standards equivalent to the universal treatment standards listed at 40 CFR 268.48. Making this change ensures F039 landfill leachates receive proper treatment for the CoCs in K181.

—For debris contaminated with K181 waste, the provisions in § 268.45 apply. This means debris contaminated with K181 would be required to be treated prior to land disposal, using specific technologies from one or more of the following families of debris treatment technologies: extraction, destruction, or immobilization. If such debris is treated by immobilization, it remains a hazardous waste and must be managed in a hazardous waste facility. Residuals generated from the treatment of debris contaminated with K181 would remain subject to the treatment standards being finalized today.

—We are prohibiting K181 wastes from underground injection. Therefore, K181 wastes may not be injected underground, unless they meet the LDR treatment standards or are injected into a Class 1 well from which it has been determined that there will be no migration of hazardous constituents for as long as the wastes remain hazardous.

E. Is There Treatment Capacity for the Newly Listed Wastes?

1. Introduction

Under the land disposal restrictions (LDR) determinations, the Agency must demonstrate that adequate commercial capacity exists to manage listed hazardous wastes in compliance with the LDR treatment standards before the Agency can restrict the listed waste from further land disposal. The Agency performs capacity analyses to determine the effective date of the LDR treatment standards for the proposed listed wastes. This section summarizes the results of EPA's capacity analysis for the wastes covered by today's rule. For a detailed discussion of capacity analysis-related data sources, methodology, and analysis results for the wastes covered in this rule, see ''Background Document for Capacity Analysis for Land Disposal Restrictions: Newly Identified Dye and Pigment Manufacturing Wastes (Final Rule), February 2005'' (*i.e.*, the Capacity Background Document), available in the RCRA docket established for today's final rule.

EPA's decisions on whether to grant a national capacity variance are based on the availability of alternative treatment or recovery technologies capable of achieving the prescribed treatment standards. Consequently, the methodology focuses on deriving estimates of the quantities of newly-listed hazardous waste that will require either commercial treatment or the construction of new onsite treatment or recovery technology as a result of the LDRs. The resulting estimates of required commercial capacity are then compared to estimates of available commercial capacity. If adequate commercial capacity exists, the waste is prohibited from further land disposal, unless it meets the LDR treatment standards prior to disposal. If adequate capacity does not exist, RCRA Section 3004(h)(2) authorizes EPA to grant a national capacity variance for the waste for up to two years or until adequate alternative treatment capacity becomes available, whichever is sooner.

2. What Are the Capacity Analysis Results for K181?

In the proposed rule, EPA estimated nonwastewater quantities applying engineering estimates of wastewater treatment sludge generation rates and, wherever possible, using information provided in non-CBI portions of the RCRA section 3007 surveys and public comments in response to the 1994 and 1999 proposed rules for dyes and pigments production wastes. EPA received comments in response to the November 25, 2003 proposed rule (68 FR 66164), which stated that the Agency overestimated the amount of

nonwastewaters generated by the dyes and pigments production industry. We reviewed the information submitted by commenters on waste characteristics, quantities, and management practices. EPA found some data discrepancies and deficiencies that limit the use of the submitted data (*see* discussion on waste quantities in section IV.A.5). However, we believe the additional data from the commenters provide useful information on the likely waste quantities generated. Therefore, we have analyzed the commenters' data and revised our estimated waste quantities affected by this rule. We recognize that the actual quantity of waste requiring commercial treatment will probably be smaller due to waste-specific assessments of actual K181 CoC loadings, use of the contingent management exemptions, facility closures, changes in product formulations, or waste management practices. We also recognize the batch process nature of this industry and the speed at which facilities may change product formulations. Even relying on the larger quantities estimated for the proposed rule, we find more than adequate waste management capacity exists to accommodate wastes that would be treated or disposed as a result of today's rule.

As described in section IV.D.3 above, EPA is finalizing numerical treatment standards or methods of treatment as the treatment standards for the CoCs of the newly listed K181 waste. We expect that the CoCs in the nonwastewater or wastewater (if K181-derived wastewater is generated) forms of K181 are amenable to the treatment by combustion or other technologies in a treatment train. EPA estimates that, at most, approximately 36,000 metric tons per year of nonwastewater forms of K181 may require alternative commercial treatment and be managed off site at a commercial hazardous waste treatment facility. Furthermore, EPA anticipates that much less than 36,000 metric tons per year of the wastes may require combustion capacity because not all of these wastes are expected to exceed the mass loading limits. Furthermore, these wastes would not be hazardous if the nonwastewaters are disposed in a landfill unit that meets liner design criteria specified in the listing description, or are treated in certain combustion units. Therefore, these wastes will not require treatment to meet LDR treatment standards. In any case, we estimate that the commercially available combustion capacity for sludge, solid, and mixed media/debris/devices is approximately 0.5 million tons per year and, therefore, sufficient to treat the newly listed waste which may require treatment. We also expect that adequate landfill capacity exists for managing residuals from treating these wastes. Also, there is adequate wastewater treatment capacity available should the need for treatment of the wastewater form of K181 wastes arise. In addition, we are not listing wastewaters generated at these facilities, so there is no need for additional treatment of wastewater from the production of dyes and/or pigments (other than K181-derived wastewaters). No commenters challenged either the variance determination or available treatment or disposal capacity for nonwastewater or wastewater forms of K181 wastes. Therefore, we conclude that sufficient treatment or disposal capacity is available to manage newly-listed K181 wastes.

As discussed in section IV.D, we are also finalizing the addition of the CoCs in K181 with numerical standards to the constituent listed in F039 and the universal treatment standards. EPA does not anticipate that waste volumes subject to the treatment standards for F039 or characteristic wastes would increase because of the addition of these organic constituents to F039 and the UTS lists. Based on available data, waste generators already appear to be required to comply with the treatment requirements for other organic constituents in F039 and characteristic wastes. We received no comments, data, or information to warrant any change of this conclusion. Therefore, we expect that additional treatment due to the addition of the constituents to the F039 and UTS lists will not be required. When changing the treatment requirements for wastes already subject to LDR (including F039 wastes), EPA no longer has authority to use RCRA § 3004(h)(2) to grant a capacity variance to these wastes. However, EPA is guided by the overall objective of section 3004(h), namely that treatment standards which best accomplish the goal of RCRA § 3004(m) (to minimize threats posed by land disposal) should take effect as soon as possible, consistent with availability of treatment capacity.

For soil and debris contaminated with K181, as indicated in the proposed rule, we believe that the vast majority of contaminated soil and debris, if any, will be managed on site and, therefore, would not require substantial commercial treatment capacity. Thus, we proposed not to grant a national capacity variance for hazardous soil and debris contaminated with this newly listed waste. EPA received no comments regarding this issue. There also were no data showing mixed radioactive wastes or underground injected wastes associated with the newly listed K181 based on the public information used in the proposed rule. Thus, we also proposed not to grant a national capacity variance for mixed radioactive waste (*i.e.*, radioactive wastes mixed with K181) or waste being injected underground. EPA did not receive comments indicating that the newly listed wastes are underground injected or that they are mixed with radioactive wastes or with both radioactive wastes and soil or debris.

Therefore, EPA is finalizing its decision not to grant a national capacity variance for wastewater and nonwastewater forms of K181 wastes. We also are finalizing our decision not to grant a national capacity variance for hazardous soil and debris contaminated with the newly listed wastes, radioactive wastes mixed with K181 or contaminated soil or debris of K181, or K181 wastes being injected underground. The customary time period of six months is sufficient to allow facilities to determine whether their wastes are affected by this rule, to identify onsite or commercial treatment and disposal options, and to arrange for treatment or disposal capacity, if necessary. Therefore, LDR treatment standards for the affected wastes covered under today's rule become effective when the listing determinations become effective—the earliest possible date. This conforms to RCRA § 3004(h)(1), which indicates that land disposal prohibitions must take effect immediately when there is sufficient protective treatment capacity available for the waste.

Finally, EPA may consider a case-by-case extension to the effective date based on the requirements outlined in 40 CFR 268.5, which includes a demonstration that adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste cannot reasonably be made available by the effective date due to circumstances beyond the applicants' control, and that the petitioner has entered into a binding contractual commitment to construct or otherwise provide such capacity.

V. When Must Regulated Entities Comply With the Provisions in Today's Final Rule?

A. Effective Date

The effective date of today's rule is August 23, 2005. These provisions, promulgated under HSWA authorities, will take effect in both the federal regulations and authorized state programs at that time.

B. Section 3010 Notification

Under RCRA § 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and treatment, storage, and disposal facilities (TSDFs) that have previously notified EPA with respect to the management of other hazardous wastes. The Agency has decided to waive this notification requirement for persons who handle wastes that are covered by today's hazardous waste listing and already have (1) notified EPA that they manage other hazardous wastes, and (2) received an EPA identification number. The Agency has waived the notification requirement in this case because it believes that most, if not all, persons who manage the wastes listed as hazardous in today's rule already have notified the Agency and received an EPA identification number. However, any person who generates, transports, treats, stores, or disposes of this newly listed waste and has not previously received an EPA identification number must obtain an identification number pursuant to 40 CFR 262.12 to generate, transport, treat, store, or dispose of these hazardous wastes by May 25, 2005, for K181.

Note that nonwastewaters would not become newly listed K181 wastes if the constituent mass loadings do not meet the levels in § 261.32(c). If the wastes meet or exceed the mass loading limits, the wastes would also not be listed K181, provided the nonwastewaters are disposed in a landfill unit or treated in combustion unit as specified in the listing description. Persons who generate only wastes that meet one of these conditions need not notify EPA or obtain an identification number, because the waste would not be K181.

C. Generators and Transporters

Persons who generate newly identified hazardous wastes may be required to obtain an EPA identification number if they do not already have one (as discussed in section V.B above). If person(s) generate these wastes after the effective date of this rule, they will be subject to the generator requirements set forth in 40 CFR part 262. These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 through 262.23), pre-transport procedures (40 CFR 262.30 through 262.34), generator accumulation (40 CFR 262.34), record keeping and reporting (40 CFR 262.40 to 262.44), and import/export procedures (40 CFR 262.50 through 262.60). The generator accumulation provisions of 40 CFR 262.34 allow generators to accumulate hazardous wastes without obtaining interim status or a permit only in certain specified units (container storage units, tank systems, drip pads, or containment buildings). These regulations also place a limit on the maximum amount of time that wastes can be accumulated in these units. If K181 wastes are managed in units that are not tank systems, containers, drip pads, or containment buildings as described in 40 CFR 262.34, accumulation of these wastes is subject to the requirements of 40 CFR parts 264 and 265, and the generator is required to obtain interim status and seek a permit (or modify interim status or a permit, as appropriate). Also, persons who transport newly identified hazardous wastes will be required to obtain an EPA identification number (if they do not already have one) as described above and will be subject to the transporter requirements set forth in 40 CFR part 263.

Nonwastewaters that do not meet the mass loading levels in § 261.32(c) are not listed K181. Furthermore, in cases where the wastes meet or exceed the mass loading limits, the wastes would also not be listed K181, provided the nonwastewaters are disposed in a landfill unit or treated in a combustion unit as specified in the listing description. Therefore, persons who generate or transport wastes that meet either of these conditions are not subject to the regulations governing hazardous waste generation and transport in part 262 and 263.

D. Facilities Subject to Permitting

The listing for dyes and/or pigment wastes, K181, in today's rule is issued pursuant to HSWA authority. Therefore, EPA will regulate the management of the newly listed hazardous waste until states are authorized to regulate these wastes.

1. Facilities Newly Subject to RCRA Permit Requirements

Facilities that treat, store, or dispose of K181 wastes that are subject to RCRA regulation for the first time by this rule (that is, facilities that have not previously received a permit pursuant to section 3005 of RCRA and are not currently operating pursuant to interim status), might be eligible for interim status (see section 3005(e)(1)(A)(ii) of RCRA). To obtain interim status based on treatment, storage, or disposal of such newly identified wastes, eligible facilities are required to comply with 40 CFR 270.70(a) and 270.10(e) by providing notice under section 3010 and submitting a Part A permit application no later than August 23, 2005. Such facilities are subject to regulation under 40 CFR part 265 until a permit is issued.

In addition, under section 3005(e)(3) and 40 CFR 270.73(d), not later than August 24, 2006, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) also must submit a part B permit application and certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, interim status will terminate on that date.

2. Existing Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of the newly listed K181 wastes and are currently operating pursuant to interim status under section 3005(e) of RCRA, must file an amended part A permit application with EPA no later than the effective date of today's rule, (*i.e.*, August 23, 2005). By doing this, the facility may continue managing the newly listed wastes, pending final disposition of the permit application. If the facility fails to file an amended part A application by that date, the facility will not receive interim status for management of the newly listed hazardous wastes and may not manage those wastes until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

3. Permitted Facilities

Facilities that already have RCRA permits must request permit modifications if they want to continue managing newly listed K181 wastes (*see* 40 CFR 270.42(g)). This provision states that a permittee may continue managing the newly listed waste by following certain requirements, including submitting a Class 1 permit modification request by the date on which the waste or unit becomes subject to the new regulatory requirements (*i.e.*, the effective date of today's rule), complying with the applicable standards of 40 CFR parts 265 and 266 and submitting a Class 2 or 3 permit modification request within 180 days of the effective date.

Generally, a Class 2 modification is appropriate if the newly listed wastes will be managed in existing permitted units or in newly regulated tanks, container units, or containment

buildings, and will not require additional or different management practices than those authorized in the permit. A Class 2 modification requires the facility owner to provide public notice of the modification request, a 60-day public comment period, and an informal meeting between the owner and the public within the 60-day period. The Class 2 process includes a ''default provision,'' which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is authorized for the life of the permit (*see* 40 CFR 270.42(b)).

A Class 3 modification is generally appropriate if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involved. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60-day public comment period, the Agency will grant or deny the permit modification request according to the more extensive procedures of 40 CFR Part 124. There is no default provision for Class 3 modifications (*see* 40 CFR 270.42(c)).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR part 265 groundwater monitoring and financial responsibility requirements no later than August 24, 2006. If the facility fails to submit these certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

4. Units

Units in which newly listed hazardous wastes are generated or managed will be subject to all applicable requirements of 40 CFR part 264 for permitted facilities or 40 CFR part 265 for interim status facilities, unless the unit is excluded from such permitting by other provisions, such as the wastewater treatment tank exclusion (40 CFR 264.1(g)(6) and 265.1(c)(10)) and the product storage tank exclusion (40 CFR 261.4(c)). Examples of units to which these exclusions could never apply include landfills, land treatment units, waste piles, incinerators, and any other miscellaneous units in which these wastes may be generated or managed.

5. Closure

All units in which newly listed hazardous wastes are treated, stored, or disposed after the effective date of this regulation that are not excluded from the requirements of 40 CFR parts 264 and 265 are subject to both the general closure and post-closure requirements of subpart G of 40 CFR 264 and 265 and the unit-specific closure requirements set forth in the applicable unit technical standards subpart of 40 CFR part 264 or 265 (*e.g.*, Subpart N for landfill units). In addition, EPA promulgated a final rule that allows, under limited circumstances, regulated landfills, surface impoundments, or land treatment units to cease managing hazardous waste, but to delay subtitle C closure to allow the unit to continue to manage nonhazardous waste for a period of time prior to closure of the unit (*see* 54 FR 33376, August 14, 1989). Units for which closure is delayed continue to be subject to all applicable 40 CFR parts 264 and 265 requirements. Dates and procedures for submittal of necessary demonstrations, permit applications, and revised applications are detailed in 40 CFR 264.113(c) through (e) and 265.113(c) through (e).

VI. State Authority and Compliance

A. How Are States Authorized Under RCRA?

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the federal program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that State. The federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized State until the State adopted the federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. How Does This Rule Affect State Authorization?

We are finalizing today's rule pursuant to HSWA authority. The listing of the new K-waste is promulgated pursuant to RCRA section 3001(e)(2), a HSWA provision. Therefore, we are adding this rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. The land disposal restrictions for these wastes are promulgated pursuant to RCRA section 3004(g) and (m), also HSWA provisions. Table 2 in 40 CFR 271.1(j) is modified to indicate that these requirements are self-implementing.

States may apply for final authorization for the HSWA provisions in 40 CFR 271.1(j), as discussed below. Until the States receive authorization for these more stringent HSWA provisions, EPA would implement them. The procedures and schedule for final authorization of State program modifications are described in 40 CFR 271.21.

Section 271.21(e)(2) of EPA's State authorization regulations (40 CFR part 271) requires that States with final authorization modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States would need to modify their programs to adopt this regulation is determined by the date of promulgation of a final rule in accordance with

§ 271.21(e)(2). Once EPA approves the modification, the State requirements would become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in this final rule. These State regulations have not been assessed against the Federal regulations finalized today to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, States with existing regulations that are more stringent than or broader in scope than current Federal regulations may continue to administer and enforce their regulations as a matter of State law. In implementing the HSWA requirements, EPA will work with the States under agreements to avoid duplication of effort.

VII. CERCLA Designation and Reportable Quantities

CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980) defines the term ''hazardous substance'' to include RCRA listed and characteristic hazardous wastes. When EPA adds a hazardous waste under RCRA, the Agency also will add the waste to its list of CERCLA hazardous substances. EPA establishes a reportable quantity, or RQ, for each CERCLA hazardous substance. EPA provides a list of the CERCLA hazardous substances along with their RQs in Table 302.4 at 40 CFR 302.4. If you are the person in charge of a vessel or facility that releases a CERCLA hazardous substance in an amount that equals or exceeds its RQ, then you must report that release to the National Response Center (NRC) pursuant to CERCLA section 103. You also may have to notify State and local authorities.

A. How Does EPA Determine Reportable Quantities?

Under CERCLA section 102(b)(1), hazardous substances are assigned a reportable quantity of one pound, unless and until EPA changes the RQ by regulation. EPA has wide discretion to adjust the RQ of the hazardous substance(s). The Agency's methodology involves an evaluation of the intrinsic physical, chemical, and toxic properties. The intrinsic properties, called ''primary criteria,'' are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. EPA evaluates the data for a hazardous substance for each primary criterion. To adjust the RQs, EPA ranks each criterion on a scale that corresponds to an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. For hazardous substances evaluated for potential carcinogenicity, each substance is assigned a hazard ranking of ''high,'' ''medium,'' or ''low,'' corresponding to RQ levels of 1, 10, and 100 pounds, respectively. For each criterion, EPA establishes a tentative RQ. A hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the ''primary criteria RQ'' for that substance.

After the primary criteria RQs are assigned, EPA further evaluates substances for their susceptibility to certain degradative processes. These are secondary adjustment criteria. The natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades rapidly to a less hazardous form by one or more of the BHP processes, EPA generally raises its RQ (as determined by the primary RQ adjustment criteria) by one level. Conversely, if a hazardous substance degrades to a more hazardous product after its release, EPA assigns an RQ to the original substance equal to the RQ for the more hazardous substance.

The standard methodology used to adjust the RQs for RCRA hazardous waste streams differs from the methodology applied to individual hazardous substances. The procedure for assigning RQs to RCRA waste streams is based on the results of an analysis of the hazardous constituents of the waste streams. The constituents of each RCRA hazardous waste stream are identified in 40 CFR part 261, Appendix VII. EPA first determines an RQ for each hazardous constituent within the waste stream using the methodology described above. The lowest RQ value of these constituents becomes the adjusted RQ for the waste stream. When there are hazardous constituents of a RCRA hazardous waste stream that are not CERCLA hazardous substances, the Agency develops an RQ, called a ''reference RQ,'' for these constituents in order to assign an appropriate RQ to the waste stream (see 48 FR 23565, May 25, 1983). In other words, the Agency derives the RQ for waste streams based on the lowest RQ of all the hazardous constituents, regardless of whether they are CERCLA hazardous substances.

B. What Is the RQ for the K181 Waste?

In today's final rule, EPA is assigning a one-pound RQ to the K181 waste. The RQ for each constituent contained in the waste is presented in the table below.

TABLE VIII–1.—RQS FOR CONSTITUENTS IDENTIFIED IN K181 WASTE

Constituents in K181 waste stream	Constituent RQ (kg) (40 CFR 302.4)
Aniline	5000 (2270)
o-Anisidine	100 (45.4)
4-Chloroaniline	1000 (454)
p-Cresidine	1* (0.454)
2,4-Dimethylaniline	1* (0.454)
1,2-Phenylenediamine	1* (0.454)
1,3-Phenylenediamine	1* (0.454)

*RQ of 1 pound assigned to this constituent because we have not yet developed a ''waste constituent RQ'' for this substance.

As noted in the proposed rule (68 FR 66213), we are not adjusting the RQ for K181 at this time because we have not yet developed a ''reference RQ'' for the following CoCs in this waste: p-cresidine; 2,4-dimethylaniline; 1,2-phenylenediamine; and 1,3-phenylenediamine. Therefore, the RQ for K181 will be one pound. As noted elsewhere in this notice, we have dropped toluene-2,4-diamine as a constituent of concern for K181. While this chemical has an existing RQ, EPA does not expect that its RQ will be considered should the Agency decide to propose any further adjustment to the RQ for K181 wastes.

Note, however, that all quantities of wastes generated during a calendar year up to the mass loading limits are not listed K181 waste; only wastes subsequently generated that meet or exceed the annual limits would be hazardous waste. Wastes that are below the mass loading limits are excluded from the listing from their point of generation, and would not be subject to the CERCLA reporting requirements.

Commenters urged EPA not to adopt the statutory RQ, but rather to adjust the RQ for K181 waste. They noted that EPA's risk analysis for the proposal indicates that a higher RQ is warranted. Commenters stated that it is counterintuitive for a company to be able to dispose of tons of dyes and/or pigment production wastes as nonhazardous in a landfill, yet have to report a release of just one pound of K181 waste to the environment. They noted that EPA conceded that it would be unreasonable to expect the CoCs to be present at concentrations higher than 5,000 parts per million.

While we agree with the commenters that an adjustment of the RQ may be

warranted based on the mass loading limits and the landfill disposal exclusion established in the final rule, until we develop waste constituent RQs for p-cresidine; 2,4-dimethylaniline; 1,2-phenylenediamine; and 1,3-phenylenediamine the RQ for K181 will remain at the statutory one-pound level. We will consider adjusting the RQ for K181 after we develop these constituent RQs; however, the RQ for K181 will remain one pound until such an adjustment is made.

C. When Would I Need To Report a Release of These Wastes Under CERCLA?

Today's final hazardous waste listing is based on the mass loadings of the hazardous constituents in the wastes. An RQ of one-pound is assigned for the waste based on the lowest RQ of the hazardous constituents in the waste. Notification is required under CERCLA when a waste meeting the listing description and threshold for that hazardous waste is released into the environment in a quantity that equals or exceeds the RQ for the waste.

For CERCLA reporting purposes, the Clean Water Act mixture rule (40 CFR 302.6) may be adapted to apply to releases of this waste when the quantity (or mass limit) of all of the K181 hazardous constituents in the waste are known and the waste meets the K181 listing description (*i.e.*, any of the K181 mass loading levels are met or exceeded). In such a case, notification is required where an amount of waste is released that contains an RQ or more of any hazardous substance contained in the waste. When the quantity (or mass limit) of one or more of the K181 hazardous constituents is not known, notification is required when the quantity of K181 waste released equals or exceeds the RQ for the waste stream.

D. How Would I Report a Release?

To report a release of K181 (or any other CERCLA hazardous substance) that equals or exceeds its RQ, you must immediately notify the National Response Center (NRC) as soon as you have knowledge of that release. The toll-free telephone number of the NRC is 1–800–424–8802; in the Washington, DC, metropolitan area, the number is (202) 267–2675.

You may also need to notify State and local authorities. The Emergency Planning and Community Right-to-Know Act (EPCRA) requires that owners and operators of certain facilities report releases of CERCLA hazardous substances and EPCRA extremely hazardous substances (*see* the list in 40 CFR part 355, Appendix A) to State and local authorities. After the release of an RQ or more of any of those substances, you must report immediately to the community emergency coordinator of the local emergency planning committee for any area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of this Executive Order, we have found that this final action does not represent an economically significant regulatory action, as defined under point number one above. The total nationwide costs associated with this final action are estimated to be less than $3 million per year. Furthermore, this final rule is not expected to adversely effect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The annualized benefits associated with today's rule have not been monetized, but are believed to be less than $100 million. However, this final rule has been determined to potentially raise novel legal or policy issues due to the unique mass loading-based approach used in the risk assessment modeling. As a result, it has been determined that this rule is a ''significant regulatory action,'' as identified under point number four above. Therefore, this action was submitted to OMB for review. Any substantive changes made in response to OMB review have been documented in the public record. The following paragraphs briefly summarize findings presented in the Economic Assessment [34] conducted for the Proposed Rule, substantive economic related issues brought up in stakeholder comments and Agency responses, and revised findings in support of the final action.

1. Summary of Proposed Rule Findings: Costs, Economic Impacts, Benefits

The impacts of our proposed action were presented in two supporting documents: Economic Assessment for the Proposed Loadings-Based Listing of Non-Wastewaters from the Production of Selected Organic Dyes, Pigments, and Food, Drug, and Cosmetic Colorants, Final Report, November 2003, and Regulatory Flexibility Screening Analysis for the Proposed Loadings-Based Listing of Non-Wastewaters from the Production of Selected Organic Dyes, Pigments, and Food, Drug, and Cosmetic Colorants, Final Report, November 2003.

We identified a total of 37 facilities in the November 2003 Economic Assessment that were expected to be impacted by the proposed action. These facilities were found to be operated by 29 different companies. Of these companies, 15 were categorized as ''small businesses'' under the Small Business Administration size definition.[35] We estimated the total quantity of potentially affected waste to range from 44,215 to 68,368 metric tons per year. Aggregate nationwide compliance costs were estimated to range from $0.6 million/year to $4.3 million/year, depending upon assumptions regarding total waste quantity affected and presence of targeted constituents. Corporate level economic impacts were negligible, ranging from virtually zero to 0.52 percent of gross annual revenues. We determined that there were no significant economic impacts on any small entities.

Benefits of the proposed action were presented in a general qualitative assessment. Types of benefits included the potential for reduced or avoided human health damage cases, avoided or

[34] Economic Assessment for the Proposed Loadings-Based Listing of Non-wastewaters from the Production of Selected Organic Dyes, Pigments, and Food, Drug, and Cosmetic Colorants, Final Report, November 2003.

[35] Less than 750 total employees at the corporate level.

reduced acute events, avoided or reduced resource damage, and avoided or reduced response costs. Depending upon actual or future exposure patterns, the primary benefits identified in the preamble to the proposed rule were associated reductions in human health and environmental effects from targeted releases. Increased waste minimization practices were discussed as upstream benefits potentially stimulated by the proposed action.

2. Public Comments and Agency Responses

a. *Summary of Substantive Cost, Economic, and Benefits Issues, and Responses.* The Agency received 25 public comments on the proposed rule. Nearly all of these addressed some aspect related to cost of compliance, economic impacts, and/or benefit of the rule, as proposed. Related to these issues, there were four categories of crucial concern presented by the commenters: industry profile/characterization, waste quantities, analytical costs, and benefits (*i.e.*, need for the rule). A summary of these issues and the Agency's responses are presented below. Stakeholder comments are addressed in more detail in the Agency's response-to-comment document,[36] available in the docket established for today's action.

b. *Industry Profile/Characterization.* Numerous commenters indicated that the profiles presented in the Economic Assessment were overly optimistic concerning the projected growth and general health of the dyes and pigment industries. Additional plant closures were noted. In addition, several commenters noted that products affected by the proposed rulemaking, *e.g.*, azo dyes and pigments, tend to be experiencing lower growth rates and profitability margins than other product lines from the dyes and pigments industries.

Our determination of average annual growth and industry health, as presented in the November 2003 Economic Assessment, was based on the best publicly available information at the time. However, upon detailed review of the public comments, and review of public information sources available after proposal, we find that our assumption of revenues increasing by an average of 3 percent per year was overly optimistic. This may be especially true for dye manufacturers where production has been plagued by downward trends in the textile industry, coupled with pressure from inexpensive imports.[37] However, we have no reliable source of information that would indicate that product production quantities (as opposed to gross revenues) for affected dye manufacturers are substantially different from estimates presented in the Economic Assessment. Thus, we expect waste quantities generated from this production, and corresponding waste management costs to be relatively unaffected. As discussed in section VIII.A.2.c below (see also the July 21, 2004 Revised Impacts Assessment memo), we believe that our low-end estimate of waste quantity generated per year reflects a reasonable approximation of adjusted quantities based on comments. Thus, economic impacts estimated under this scenario may be considered a reasonable worst case estimate when unadjusted for revenue projections. We also developed economic impact estimates based on a linear reduction in compliance costs corresponding to adjusted waste quantities, and assuming gross revenues were 100 percent (2-fold) overstated. Economic impacts under this scenario were found to still be less than 1 percent of annual gross revenues (*see* section VIII.A.3; more details are provided in the July 21, 2004 Revised Impacts Assessment memo).

c. *Waste Quantities.* Commenters indicated that waste quantities presented in the November 2003 Economic Assessment were substantially overestimated. New information was provided regarding potentially affected quantities of nonwastewaters. Some of this information was facility-specific. Most information, however, was derived from association survey responses. These new survey data were linked to individual facilities by number only. None of the waste quantity information provided in comments was claimed as confidential business information.

The November 2003 Economic Assessment (EA) presented both high and low estimates for potentially affected nonwastewaters. We recognize that the total ''high estimate'' quantity, as presented in the EA represents an overestimation. However, our ''low estimate'' appears to represent a good approximation of total quantity, as compared to data presented by the commenters. This ''low estimate'' is approximately 22 percent greater than the total quantity derived from commenter data. The waste quantities presented in the EA were based only on information that was publically available at the time.

We accept, with modifications, the waste quantity information provided by the manufacturers/associations. Facility-specific quantities, where available by facility name, are generally accepted, as identified. For the other facilities, we have derived waste quantity estimates based on the survey response information correlated to facility revenue rankings. These derived waste quantities are based only on the publicly available data, and reflect our best attempt to assign the available quantity data from the comments with specific facilities (applying our revenue ranking estimates, as needed). Revised cost, economic impact, and benefit estimates have been developed based on this new waste quantity information (*see* below under Revised Findings).

d. *Analytical Costs.* Commenters expressed concern relating to some of our assumptions and determinations regarding analytical costs, especially as they related to waste characterization, process knowledge, and new method development. Commenters indicated a perceived need to take a large number of samples due to the batch operations. There was also concern that processor knowledge would have to be buttressed by at least limited sampling in order to have adequate proof that wastes generated were eligible for the exclusion. For wastes that are determined by the generator to be nonhazardous, commenters raised the concern that landfills may refuse the waste, or require certification to track the annual mass loadings. Commenters also raised technical issues relating to the development of analytical methods for sampling the CoCs to be added to 40 CFR Part 261 Appendix VIII. Specifically, there were concerns that the development of appropriate analytical methods would be more complex and costly than estimated in the proposal.

In the November 2003 Economic Assessment, we included sampling and analysis costs for facilities assumed to be generating greater than 1,000 metric tons of potentially impacted nonwastewaters per year. Facilities generating less than 1,000 metric tons/year were assumed to use operator knowledge. While the rule as proposed did not require any specific number of samples, sampling procedure, or analytical methods for waste characterization or determination of mass-loading limits, the Economic Assessment applied conservative assumptions for the development of cost estimates. We assumed 15 samples per

[36] Response to Comments Document: Hazardous Waste Listing Determination for Dyes and/or Pigments Manufacturing Wastes (Final Rule), February 2005.

[37] PR Newswire, 2004 (March 26), Synalloy Corporation Announces Fourth Quarter Results Financial Services News.

wastestream for initial characterization, and an additional five samples per year (including the first year) to assess stream fluctuations. Annual retesting is assumed to continue for three consecutive years to cover variations in processes and products. It was also assumed that the three-year time period would allow the generator to determine if any process fluctuations, waste changes, or minor process changes may alter the waste stream characterization from nonhazardous to hazardous.

We believe our assumptions for waste stream characterization and annual retesting reflect a very conservative cost scenario for facilities generating greater than 1,000 metric tons of potentially affected nonwastewaters per year. For facilities generating less than 1,000 metric tons, process knowledge may be used. Proper documentation of the process used to generate the waste (*e.g.*, raw materials, quantities, reactions, and typical constituent concentrations) is expected to be adequate to demonstrate full process knowledge. Facilities that are uncomfortable with this approach may choose to purchase insurance or implement a testing procedure. However, the Agency is not requiring such options.

We believe that the potential for landfills to require certification to track the annual mass loadings is highly unlikely (and was not raised in comments by any waste management firm), particularly in light of our modification of the proposal to remove the proposed (c)(2) requirements that would have prohibited subtitle D landfilling once a waste's mass loading of toluene-2,4-diamine exceeded the proposed (c)(2) limit. However, if for some reason a particular landfill were to reject the waste outright, other subtitle D landfills are prevalent. Additional costs from switching subtitle D landfills would be minimal due to the relatively high number of available subtitle D landfills within similar transportation distances.

For the development of analytical methods for sampling the CoCs to be added to 40 CFR part 261 Appendix VIII, we assumed that the industry would utilize common laboratories to share the costs for developing analytical procedures. All facilities are assumed to use one of three contracting analytical laboratories to perform the analyses. The development costs were spread across all dye and pigment manufactures generating more than 1,000 metric tons and selected ''expanded scope'' facilities known (at the time of the proposal) to generate waste with constituent(s) of concern. EPA identified three laboratories that would independently develop the analytical methods, for a total development cost of $61,171 ($20,390 per laboratory). A five-year capital recovery factor at 7 percent (0.24389) was applied to the development cost. Development costs were spread equally across all facilities generating waste with the CoCs.

The annual development cost per dye and pigment facility was estimated at $1,083 (assuming the waste must be sampled for all CoCs). In addition to this annual development cost, the analytical cost (assuming all eight proposed constituents) is estimated to be $1,089 per sample. Thus, assuming five samples per year, total annual costs would be $1,306 per sample [this is based on five samples at $1,089/sample, plus $1,083 passed through development costs, equals $6,530. Dividing this by five samples per year equals $1,306 per sample]. This total analytical cost per sample is within the range of $1,000 to $3,000 per sample, as identified by commenters. With the elimination of toluene-2,4-diamine from the list of CoCs, analytical method development costs will be lower because generators can avoid all testing requirements by certifying that their wastes are being managed in landfill units that meet the liner design requirements (or treated by combustion) as specified in the listing description. Furthermore, the method costs would also be reduced because we have modified the regulations to allow use of knowledge for the problematic analyte, 1,2-phenylenediamine.

Therefore, the Agency believes that the analytical costs and assumptions applied in our proposed action, as summarized above, represent a very conservative (high) cost estimate and will maintain these costs for estimating impacts associated with the final action. Today's final action does not require any specific number of samples, sampling type, or analytical methods. The actual number of samples necessary to appropriately represent the waste will be determined by the generator.

e. *Benefits.* Commenters expressed concern over the lack of concrete benefit estimates in support of the proposed rulemaking. Several commenters questioned the need for the regulation due to the lack of quantified and monetized benefits, resulting in a perceived unsubstantiated actual risk to humans or the environment from the existing management of these wastes. Commenters noted that the wastes of concern are currently managed in lined landfills with little or no risk documented by the risk assessment for this scenario. Commenters noted that there were few facilities that generate wastes with the CoCs, and that the only constituent of concern that resulted in substantial risk to human health and the environment under current management practices was toluene-2,4-diamine, which they argued should be (and has been) deleted. Furthermore, commenters believed that the overestimation of waste quantities, as discussed above, results in exaggerated benefits associated with compliance management.

The Agency believes that, to the extent that dye, pigment and FD&C colorant wastes are managed in landfills that do not meet the liner requirements in 40 CFR 258.40, 264.301, or 265.301, waste management practices have the potential to contaminate groundwater, resulting in greater risk to human health and the environment. To the extent that all wastes are managed in compliant landfills, there would be minimal benefit from the listing. However, the Agency is uncertain of industry claims that all wastes are so managed, nor is it clear that without the regulatory action, current waste management practices would not change to higher risk landfilling.

3. Revised Findings

We have revised our cost, economic impact, and benefits estimates for the final rule. These revisions are based on the new waste quantity information presented in public comments, and rule modifications. The scope and impacts of this final action do not warrant the completion of a full revised Economic Assessment and Regulatory Flexibility Screening Analysis (RFSA).

The total potentially affected nonwastewater quantity presented in the November 2003 Economic Assessment (EA) ranged from 44,215 metric tons/year to 68,368 metric tons/year. Aggregate annual compliance costs associated with these quantities ranged from $0.6 million/year to $4.3 million/year for the proposed regulatory approach (Economic Assessment, Table 5–1). Corresponding economic impacts were found to range from negligible to 0.52 percent, when measured as the ratio of compliance costs to gross corporate revenues (Economic Assessment, Table 5–7). Cost estimates associated only with the low waste quantity estimate (44,215 metric tons), ranged from $0.6 million/year to $2.9 million/year, with corresponding economic impacts ranging from negligible to 0.29 percent.

The revised total waste quantity, as derived from public comments, is estimated at 36,142 metric tons/year. The cost and economic impact findings

associated with our ''low estimate'' waste quantity (44,215 MT/yr), as presented above, may be considered a reasonable approximation of impacts associated with the final rule. However, more refined estimates may be developed assuming a linear relationship between total waste quantity and cost/economic impacts. Under this scenario, total costs and economic impacts would decline by approximately 18 percent, corresponding to the decline in total waste quantity (44,215 MT/yr to 36,142 MT/yr). Under this approach, the total compliance costs for the final rule would range from an estimated $0.49 million per year to $2.38 million/year, with economic impacts ranging from negligible to 0.238 percent of gross corporate revenues. These findings assume all other cost parameters are unchanged (*e.g.*, analytical assumptions, transportation costs, administrative). In reality, the more refined cost and economic impact estimates would be even lower due to the elimination of toluene-2,4-diamine as a CoC for the final rule and the likely use by industry of the conditional exemptions.

Some commenters have suggested that our estimated gross annual corporate revenue estimates may be overstated due to overly optimistic growth projections for the affected industries, as derived from some of our public sources. This issue pertains primarily to private or privately held companies where no independent revenue source was identified (see Economic Assessment, Table 5–3). An overestimate of gross revenues would be reflected in an artificially low economic impact estimate. We assessed this possibility and found that, even under the most highly impacted scenario, impacts would remain less than 1 percent (see July 21 memo, Revised Impacts Assessment).

Reduced waste quantities, as discussed above, would correspond to reduced benefits from compliant management. However, we continue to believe that, to the extent that affected dye, pigment and FD&C colorant wastes may be managed in landfills not compliant with 40 CFR section 258.40, 264.301 or 265.301, these wastes have the potential to contaminate groundwater, resulting in unacceptable risk to human health and the environment.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act* (PRA), 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) Supporting Statement prepared by EPA (available in the public docket for this final rule) has been assigned EPA ICR number 1189.13

The effect of listing the wastes described earlier is to subject certain wastes generated by the dyes and pigments industries to management and treatment standards under the Resource Conservation and Recovery Act (RCRA). This final rule represents an incremental increase in burden for generators and subsequent handlers of the newly listed wastes, and affects the existing RCRA information collection requirements for the Land Disposal Restrictions.

In addition to complying with the existing subtitle C recordkeeping and reporting requirements for the newly listed waste stream, EPA is requiring that facilities generating organic dyes and/or pigment nonwastewaters to be able to document their compliance with the new K181 demonstration (through use of knowledge or testing) and recordkeeping requirements, as well as the conditions provided for exemption from the scope of the conditional hazardous waste listing promulgated today. This requirement is necessary to ensure that in-scope nonwastewaters are managed in a manner that is safe for human health and the environment.

As a result of the final rule, EPA estimates that up to 33 facilities may be subject to an additional burden for existing and new RCRA information collection requirements for the newly listed wastes. We have estimated the annual hour and cost burden for these facilities to comply with the existing and new recordkeeping and reporting requirements associated with generating and managing K181 wastes. The hourly recordkeeping burden from the new requirements ranges between 6.5 and 20.40 hours per respondent per year. This burden includes time for reading the regulations, determining whether organic dyes and/or pigment production nonwastewaters exceed regulatory listing levels, and keeping documentation on site, as specified. We estimate that these facilities would incur an annual burden of approximately 563 hours and $123,776 in carrying out new information collection requirements. We also estimated that these facilities would incur an annual burden of approximately 2 hours and $86,102 in carrying out existing information collection requirements. See the ICR Supporting Statement for details.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq., generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute. This is required unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. The Agency has determined that no small organizations or small governmental jurisdictions are impacted by today's final rulemaking.

For purposes of assessing the impacts of today's final determination on businesses, a small business is defined either by the number of employees or by the annual dollar amount of sales/revenues. The level at which an entity is considered small is determined for each North American Industry Classification System (NAICS) code by the Small Business Administration (SBA). Organic dye and pigment manufacturers are classified under NAICS 325132. The SBA has

determined that manufacturers classified under this NAICS code are ''small businesses'' if their total corporate employment is less than 750 persons.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are organic dye and pigment manufacturers classified under NAICS 325132. We have determined that all potentially impacted small businesses are projected to experience compliance cost impacts of less than 1 percent of gross annual revenues. Based on the available information, there are ten potentially affected firms that constitute small entities under the size definition established by the SBA. Assuming all ten companies generate wastes containing any of the constituents of concern, no company would experience impacts greater than 0.29 percent of annual gross revenues (see July 21, 2004 memo: Revised Impacts Assessment).

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Today's final action was designed to mitigate economic impacts to small entities while, at the same time ensuring full protection of human health and the environment. This was accomplished through our innovative mass-based approach for the determination of regulatory levels. Our waste quantity-based implementation approach also helped mitigate potential impacts to small entities.

D. Unfunded Mandates Reform Act

Signed into law on March 22, 1995, the Unfunded Mandates Reform Act (UMRA) supersedes Executive Order 12875, reiterating the previously established directives while also imposing additional requirements for federal agencies issuing any regulation containing an unfunded mandate.

Today's final rule is not subject to the requirements of sections 202, 204 and 205 of UMRA. In general, a rule is subject to the requirements of these sections if it contains ''Federal mandates'' that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Today's final rule does not result in $100 million or more in expenditures. The aggregate annualized compliance costs for today's rule are projected to be less than $3 million.

Today's rule is not subject to the requirements of section 203 of UMRA. Section 203 requires agencies to develop a small government Agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. EPA has determined that this rule will not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are 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.''

Today's final rule does not have federalism implications. No State or local governments own or operate potentially impacted organic dye and/or pigment manufacturing facilities. Furthermore, this action will not impose excessive enforcement or review requirements. Thus, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Executive Order 13132 does not apply to this final rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's final rule does not have tribal implications. This rule will not significantly or uniquely affect the communities of Indian tribal governments, nor impose substantial direct compliance costs. No tribal governments own or operate potentially impacted organic dye and/or pigment manufacturing facilities. Furthermore, this action will not impose any enforcement or review requirements for tribal entities. Thus, 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 the Order.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's final rule is not subject to the Executive Order because it is not economically significant as defined under point one of the Order, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. However, the Agency is particularly concerned with environmental threats to children.

The topic of environmental threats to children's health is growing in importance as scientists, policy makers, and community leaders recognize the extent to which children are particularly vulnerable to environmental hazards. Recent EPA actions are in the forefront of addressing environmental threats to the health of children. Setting environmental standards that address combined exposures and that are protective of the heightened risks faced by children are both goals named within EPA's ''National Agenda to Protect Children's Health from Environmental Threats.'' Areas for potential reductions in risks and related health effects are all targeted as priority issues within EPA's

September 1996 report, Environmental Health Threats to Children.

A few significant physiological characteristics are largely responsible for children's increased susceptibility to environmental hazards. First, children eat proportionately more food, drink proportionately more fluids, and breathe more air per pound of body weight than do adults. As a result, children potentially experience greater levels of exposure to environmental threats than do adults. Second, because children's bodies are still in the process of development, their immune systems, neurological systems, and other immature organs can be more easily and considerably affected by environmental hazards. The connection between these physical characteristics and children's susceptibility to environmental threats was a consideration in developing the hazardous waste listing under today's final action.

H. Executive Order 12898: Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to environmental justice for all citizens and has assumed a leadership role in such initiatives. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and/or environmental impacts as a result of EPA's policies, programs, and activities. We have no data indicating that today's final rule would result in disproportionately negative impacts on minority or low income communities.

I. Executive Order 13211: Actions Affecting Energy Supply, Distribution, or Use

Executive Order 13211, ''Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use'' (May 18, 2001), addresses the need for regulatory actions to more fully consider the potential energy impacts of the proposed rule and resulting actions. Under the Order, agencies are required to prepare a Statement of Energy Effects when a regulatory action may have significant adverse effects on energy supply, distribution, or use, including impacts on price and foreign supplies. Additionally, the requirements obligate agencies to consider reasonable alternatives to regulatory actions with adverse effects and impacts the alternatives might have upon energy supply, distribution, or use.

This final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not an economically significant regulatory action under Executive Order 12866. Furthermore, it is not expected to have a significant adverse impact on the supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act

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

This final rule does not involve the establishment of voluntary technical standards; 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.

K. The Congressional Review Act (5 U.S.C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

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 submitted a report containing this final 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 in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and record keeping requirements, Water supply.

40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 268

Environmental protection, Hazardous materials, Waste management, Reporting and record keeping requirements, Land Disposal Restrictions, Treatment Standards.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Reporting and record keeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: February 15, 2005.

Stephen L. Johnson,

Acting Administrator.

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

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

■ 1. The authority citation for part 148 continues to read as follows:

Authority: Sec. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*

■ 2. Section 148.18 is amended by revising paragraph (l) and adding paragraph (m) to read as follows:

§ 148.18 Waste-specific prohibitions—newly listed and identified wastes.

* * * * *

(l) Effective August 23, 2005, the waste specified in 40 CFR 261.32 as

EPA Hazardous Waste Number K181 is prohibited from underground injection.

(m) The requirements of paragraphs (a) through (l) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of 40 CFR part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—[Amended]

■ 4. Section 261.4 is amended by revising paragraph (b)(15) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178 and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169–K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (*e.g.*, shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph (b)(15)(v) after the emergency ends.

* * * * *

Subpart D—[Amended]

■ 5. Section 261.32 is amended by:

■ a. Designating the existing text and table as paragraph (a),

■ b. In the table by adding a new entry in alphanumeric order (by first column) under the heading ''Organic Chemicals'',

■ c. Adding paragraphs (b), (c) and (d).

The revisions and additions read as follows:

§ 261.32 Hazardous wastes from specific sources.

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	* * * * *	*
	Organic Chemicals	
*	* * * * *	*
K181	Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in paragraph (c) of this section that are equal to or greater than the corresponding paragraph (c) levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are: (i) disposed in a Subtitle D landfill unit subject to the design criteria in § 258.40, (ii) disposed in a Subtitle C landfill unit subject to either § 264.301 or § 265.301, (iii) disposed in other Subtitle D landfill units that meet the design criteria in § 258.40, § 264.301, or § 265.301, or (iv) treated in a combustion unit that is permitted under Subtitle C, or an on-site combustion unit that is permitted under the Clean Air Act. For the purposes of this listing, dyes and/or pigments production is defined in paragraph (b)(1) of this section. Paragraph (d) of this section describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous under §§ 261.21–261.24 and 261.31–261.33 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met.	(T)
*	* * * * *	*

* * * * *

(b) *Listing Specific Definitions:* (1) For the purposes of the K181 listing, dyes and/or pigments production is defined to include manufacture of the following product classes: dyes, pigments, or FDA certified colors that are classified as azo, triarylmethane, perylene or anthraquinone classes. Azo products include azo, monoazo, diazo, triazo, polyazo, azoic, benzidine, and pyrazolone products. Triarylmethane products include both triarylmethane and triphenylmethane products. Wastes that are not generated at a dyes and/or pigments manufacturing site, such as wastes from the offsite use, formulation, and packaging of dyes and/or pigments, are not included in the K181 listing.

(c) *K181 Listing Levels.* Nonwastewaters containing constituents in amounts equal to or exceeding the following levels during any calendar year are subject to the K181 listing, unless the conditions in the K181 listing are met.

Constituent	Chemical abstracts No.	Mass levels (kg/yr)
Aniline	62–53–3	9,300
o-Anisidine	90–04–0	110
4-Chloroaniline	106–47–8	4,800
p-Cresidine	120–71–8	660
2,4-Dimethylaniline	95–68–1	100
1,2-Phenylenediamine	95–54–5	710
1,3-Phenylenediamine	108–45–2	1,200

(d) *Procedures for demonstrating that dyes and/or pigment nonwastewaters are not K181.* The procedures described in paragraphs (d)(1)–(d)(3) and (d)(5) of this section establish when nonwastewaters from the production of dyes/pigments would not be hazardous (these procedures apply to wastes that are not disposed in landfill units or treated in combustion units as specified in paragraph (a) of this section). If the nonwastewaters are disposed in landfill units or treated in combustion units as described in paragraph (a) of this section, then the nonwastewaters are not hazardous. In order to demonstrate that it is meeting the landfill disposal or combustion conditions contained in the K181 listing description, the generator must maintain documentation as described in paragraph (d)(4) of this section.

(1) *Determination based on no K181 constituents.* Generators that have knowledge (*e.g.*, knowledge of constituents in wastes based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed) that their wastes contain none of the K181 constituents (*see* paragraph (c) of this section) can use their knowledge to determine that their waste is not K181. The generator must document the basis for all such determinations on an annual basis and keep each annual documentation for three years.

(2) *Determination for generated quantities of 1,000 MT/yr or less for wastes that contain K181 constituents.* If the total annual quantity of dyes and/or pigment nonwastewaters generated is 1,000 metric tons or less, the generator can use knowledge of the wastes (*e.g.*, knowledge of constituents in wastes based on prior analytical data and/or information about raw materials used, production processes used, and reaction and degradation products formed) to conclude that annual mass loadings for the K181 constituents are below the paragraph (c) of this section listing levels of this section. To make this determination, the generator must:

(i) Each year document the basis for determining that the annual quantity of nonwastewaters expected to be generated will be less than 1,000 metric tons.

(ii) Track the actual quantity of nonwastewaters generated from January 1 through December 31 of each year. If, at any time within the year, the actual waste quantity exceeds 1,000 metric tons, the generator must comply with the requirements of paragraph (d)(3) of this section for the remainder of the year.

(iii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(iv) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The quantity of dyes and/or pigment nonwastewaters generated.

(B) The relevant process information used.

(C) The calculations performed to determine annual total mass loadings for each K181 constituent in the nonwastewaters during the year.

(3) *Determination for generated quantities greater than 1,000 MT/yr for wastes that contain K181 constituents.* If the total annual quantity of dyes and/or pigment nonwastewaters generated is greater than 1,000 metric tons, the generator must perform all of the steps described in paragraphs ((d)(3)(i)–(d)(3)(xi) of this section) in order to make a determination that its waste is not K181.

(i) Determine which K181 constituents (see paragraph (c) of this section) are reasonably expected to be present in the wastes based on knowledge of the wastes (*e.g.*, based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed).

(ii) If 1,2-phenylenediamine is present in the wastes, the generator can use either knowledge or sampling and analysis procedures to determine the level of this constituent in the wastes. For determinations based on use of knowledge, the generator must comply with the procedures for using knowledge described in paragraph (d)(2) of this section and keep the records described in paragraph (d)(2)(iv) of this section. For determinations based on sampling and analysis, the generator must comply with the sampling and analysis and recordkeeping requirements described below in this section.

(iii) Develop a waste sampling and analysis plan (or modify an existing plan) to collect and analyze representative waste samples for the K181 constituents reasonably expected to be present in the wastes. At a minimum, the plan must include:

(A) A discussion of the number of samples needed to characterize the wastes fully;

(B) The planned sample collection method to obtain representative waste samples;

(C) A discussion of how the sampling plan accounts for potential temporal and spatial variability of the wastes.

(D) A detailed description of the test methods to be used, including sample preparation, clean up (if necessary), and determinative methods.

(iv) Collect and analyze samples in accordance with the waste sampling and analysis plan.

(A) The sampling and analysis must be unbiased, precise, and representative of the wastes.

(B) The analytical measurements must be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the paragraph (c) of this section listing levels of this section.

(v) Record the analytical results.

(vi) Record the waste quantity represented by the sampling and analysis results.

(vii) Calculate constituent-specific mass loadings (product of concentrations and waste quantity).

(viii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(ix) Determine whether the mass of any of the K181 constituents listed in paragraph (c) of this section generated between January 1 and December 31 of any year is below the K181 listing levels.

(x) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The sampling and analysis plan.

(B) The sampling and analysis results (including QA/QC data)

(C) The quantity of dyes and/or pigment nonwastewaters generated.

(D) The calculations performed to determine annual mass loadings.

(xi) Nonhazardous waste determinations must be conducted annually to verify that the wastes remain nonhazardous.

(A) The annual testing requirements are suspended after three consecutive successful annual demonstrations that the wastes are nonhazardous. The generator can then use knowledge of the wastes to support subsequent annual determinations.

(B) The annual testing requirements are reinstated if the manufacturing or

waste treatment processes generating the wastes are significantly altered, resulting in an increase of the potential for the wastes to exceed the listing levels.

(C) If the annual testing requirements are suspended, the generator must keep records of the process knowledge information used to support a nonhazardous determination. If testing is reinstated, a description of the process change must be retained.

(4) *Recordkeeping for the landfill disposal and combustion exemptions.* For the purposes of meeting the landfill disposal and combustion condition set out in the K181 listing description, the generator must maintain on site for three years documentation demonstrating that each shipment of waste was received by a landfill unit that is subject to or meets the landfill design standards set out in the listing description, or was treated in combustion units as specified in the listing description.

(5) *Waste holding and handling.* During the interim period, from the point of generation to completion of the hazardous waste determination, the generator is responsible for storing the wastes appropriately. If the wastes are determined to be hazardous and the generator has not complied with the subtitle C requirements during the interim period, the generator could be subject to an enforcement action for improper management.

■ 6. Appendix VII to part 261 is amended by adding the following entry in alphanumeric order (by the first column) to read as follows.

Appendix VII to Part 261—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
*	* * *
K181	Aniline, o-anisidine, 4-chloroaniline, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, 1,3-phenylenediamine.
*	* * *

* * * * *

Appendix VIII to Part 261—Hazardous Constituents

■ 7. Appendix VIII to part 261 is amended by adding in alphabetical sequence of common name the following entries:

* * * * *

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* * *	* * *		*
o-Anisidine (2-methoxyaniline)	Benzenamine, 2-Methoxy-	90–04–0	.....
* * *	* * *		*
p-Cresidine	2-Methoxy-5-methylbenzenamine	120–71–8	.....
* * *	* * *		*
2,4-Dimethylaniline (2,4-xylidine)	Benzenamine, 2,4-dimethyl-	95–68–1	.....
* * *	* * *		*
1,2-Phenylenediamine	1,2-Benzenediamine	95–54–5	.....
* * *	* * *		*
1,3-Phenylenediamine	1,3-Benzenediamine	108–45–2	.....
* * *	* * *		*

PART 268—LAND DISPOSAL RESTRICTIONS

■ 8. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart C—Prohibitions on Land Disposal

■ 9. Subpart C is amended by adding § 268.20 and adding and reserving §§ 268.21 through 268.29 to read as follows:

§ 268.20 Waste specific prohibitions—Dyes and/or pigments production wastes.

(a) Effective August 23, 2005, the waste specified in 40 CFR part 261 as EPA Hazardous Waste Number K181, and soil and debris contaminated with this waste, radioactive wastes mixed with this waste, and soil and debris contaminated with radioactive wastes mixed with this waste are prohibited from land disposal.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in subpart D of this Part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under § 268.44;

(4) Hazardous debris has met the treatment standards in § 268.40 or the alternative treatment standards in § 268.45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(c) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract of the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable subpart D levels, the waste is prohibited from land

disposal, and all requirements of part 268 are applicable, except as otherwise specified.

■ 10. In § 268.40, the Table of Treatment Standards is amended by revising the entry for F039 to add constituents in alphabetical sequence, and by adding in alphanumeric order the new entry for K181 to read as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[**Note:** NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters Concentration in mg/L [3], or technology code [4]	Nonwastewater Concentration in mg/kg [5] unless noted as "mg/L TCLP", or technology code
		Common name	CAS [2] No.		
*	*	*	*	*	*
F039 ...	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Waste retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028).	* * * * *			
		o-Anisidine (2-methoxyaniline)	90-04-0	0.010	0.66
		* * * * *			
		p-Cresidine	120-71-8	0.010	0.66
		* * * * *			
		2,4-Dimethylaniline (2,4-xylidine)	95-68-1	0.010	0.66
		* * * * *			
		1,3-Phenylenediamine	108-45-2	0.010	0.66
		* * * * *			
*	*	*	*	*	*
K181 ...	Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in paragraph (c) of section 261.32 that are equal to or greater than the corresponding paragraph (c) levels, as determined on a calendar year basis.	Aniline	62-53-3	0.81	14
		o-Anisidine (2-methoxyaniline)	90-04-0	0.010	0.66
		4-Chloroaniline	106-47-8	0.46	16
		p-Cresidine	120-71-8	0.010	0.66
		2,4-Dimethylaniline (2,4-xylidine)	95-68-1	0.010	0.66
		1,2-Phenylenediamine	95-54-5	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN
		1,3-Phenylenediamine	108-45-2	0.010	0.66
*	*	*	*	*	*

* * * * *

Footnotes to Treatment Standard Table 268.40

1 The waste descriptions provided in this table do not replace waste descriptions in 40 CFR Part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

2 CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

3 Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

4 All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1– Technology Codes and Descriptions of Technology-Based Standards.

5 Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, Subpart O or 40 CFR part 265, Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

■ 11. The Table—Universal Treatment Standards in § 268.48 is amended by adding in alphabetical sequence the following entries under the heading organic constituents:

§ 268.48 Universal treatment standards.

(a) * * *

UNIVERSAL TREATMENT STANDARDS

[**Note:** NA means not applicable]

Regulated constituent common name	CAS [1] number	Wastewater standard Concentration in mg/L [2]	Nonwastewater standard Concentration in mg/kg [3] unless noted as "mg/L TCLP"
* * * * *		*	*
o-Anisidine (2-methoxyaniline)	90–04–0	0.010	0.66
* * * * *		*	*
p-Cresidine	120–71–8	0.010	0.66
* * * * *		*	*
2,4-Dimethylaniline (2,4-xylidine)	95–68–1	0.010	0.66
* * * * *		*	*
1,3-Phenylenediamine	108–45–2	0.010	0.66
* * * * *		*	*

* * * * *

1 CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

2 Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

3 Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264, Subpart O, or Part 265, Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 12. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

■ 13. Section 271.1(j) is amended by adding the following entries to Table 1 and Table 2 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	* * *	* *	* *
Feb. 15, 2005	Listing of Hazards Waste K181	[INSERT FEDERAL REGISTER PAGE NUMBERS FOR FINAL RULE].	Aug. 23, 2005
*	* * *	* *	* *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
*	* * *	* *	* *
Aug. 23, 2005	Prohibition on land disposal of K181 waste, and prohibition on land disposal of radioactive waste mixed with K181 wastes, including soil and debris.	3004(g)(4)(C) and 3004(m)	Feb. 24, 2005, (INSERT FEDERAL REGISTER PAGE NUMBERS).
*	* * *	* *	* *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

■ 14. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

■ 15. In § 302.4, Table 302.4 is amended by adding the following new entry in alphanumeric order at the end of the table to read as follows:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[**Note:** All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Statutory code ‡	RCRA waste number	Final RQ pounds (Kg)
* * * *	*	*		*
K181 ..... Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in paragraph (c) of section 261.32 that are equal to or greater than the corresponding paragraph (c) levels, as determined on a calendar year basis.	.....	4	K181	##

‡ Indicates the statutory source defined by 1, 2, 3, and 4, as described in the note preceding Table 302.4.

* * * * *

The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

* * * * *

[FR Doc. 05–3454 Filed 2–23–05; 8:45 am]

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Federal Register

Thursday,
February 24, 2005

Part III

Department of Homeland Security

Federal Emergency Management Agency

44 CFR Part 208

National Urban Search and Rescue Response System; Maximum Pay Rate Table, National Urban Search and Rescue Response System (US&R); Interim Final Rule and Notice

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 208

RIN 1660–AA07 (formerly RIN 3067–AC93)

National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate (EP&R), Department of Homeland Security (DHS).

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule standardizes the financing, administration and operation of the National Urban Search and Rescue Response System, a cooperative effort of the Department of Homeland Security, participating State emergency management agencies and local public safety agencies across the country. This rule addresses the relationship between Sponsoring Agencies [1] of Urban Search & Rescue (US&R) Task Forces and DHS and also funding for preparedness and response activities, including the acquisition of equipment and supplies and training.

Concurrently we [2] are publishing as a Notice in this issue of the **Federal Register** a Maximum Pay Rate Table on which we also request comments.

DATES: This interim rule is effective February 24, 2005. We invite comments on this interim rule and the Maximum Pay Rate Table published separately today as a Notice in this issue of the **Federal Register**. We will accept comments on both until April 11, 2005.

ADDRESSES: *Mail:* When submitting comments by mail, please send the comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472. To ensure proper handling, please reference RIN 1660–AA07 and Docket No. DHS–2004–0010 on your correspondence. This mailing address may also be used for submitting comments on paper, disk, or CD-ROM.

Hand Delivery/Courier: The address for submitting comments by hand delivery or courier is the same as that for submitting comments by mail.

Viewing Comments: You may view comments and background material at: *http://www.epa.gov/feddocket* or *http://www.regulations.gov*. You may also inspect comments in person at the Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Michael Tamillow, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., room 326, Washington, DC 20472, (202) 646–2549, or (e-mail) *mike.tamillow@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Federal Emergency Management Agency (FEMA) published a proposed rule, National Urban Search and Rescue Response System, on December 18, 2002, 67 FR 77627–77640 (Proposed Rule). On March 1, 2003, FEMA became a part of the Emergency Preparedness and Response Directorate (EP&R), Department of Homeland Security (DHS). The National Urban Search and Rescue Response System is now a program in FEMA under the EP&R Directorate.

This preamble and Interim Rule reflect certain decisions made regarding comments that FEMA received on the Proposed Rule, and changes resulting from FEMA's integration into the Department of Homeland Security. The process for creating and updating the Maximum Pay Rate Table (Table), which establishes the maximum rates that DHS will pay for certain medical, engineering, canine handling and backfill services, is described in § 208.12. The Maximum Pay Rate Table, which was mentioned but not published in the Proposed Rule, is incorporated in the Interim Rule, and published concurrently with this Interim Rule as a Notice. Because the Maximum Pay Rate Table was not published previously and will become a part of the National Urban Search and Rescue Response System final rule, we are asking for public comment both on the Table and the Interim Rule.

Section 303 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5144, authorizes the President of the United States to form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. The President delegated this function to the Director of the FEMA under Executive Order (E.O.) 12148. Under E.O. 13286 of February 28, 2003, the President amended E.O. 12148 to transfer the FEMA Director's delegated authority to the Secretary of Homeland Security, and under Homeland Security Delegation No. 9100, delegated the Secretary's authority under Title V of the Homeland Security Act of 2002, which includes the Stafford Act, to the Under Secretary for Emergency Preparedness and Response (EP&R).

Section 306(a) of the Stafford Act authorizes the President (as delegated to the Under Secretary for EP&R) to accept and use the services or facilities of any State or local government, or of any agency, officer or employee thereof, with the consent of such government, in the performance of his responsibilities under the Stafford Act. Section 306(b) of the Stafford Act authorizes the President to appoint and fix the compensation of temporary personnel without regard to U.S. Code provisions governing appointments in the competitive service. Section 403(a)(3)(B) of the Stafford Act provides further that the President may authorize Federal agencies to perform work on public or private lands essential to save lives and protect property, including search and rescue and emergency medical care, and other essential needs. Under section 621(c) of the Stafford Act, the Secretary may accept and use the services of State or local governments, and use voluntary services by individuals or organizations as needed.

FEMA established the National Urban Search & Rescue Response System (System or US&R) under the authorities cited. The System provides specialized lifesaving assistance during major disasters or emergencies that the President declares under the Stafford Act. US&R operational activities include locating, extricating and providing on-site medical treatment to victims trapped in collapsed structures, victims of weapons of mass destruction events, and when assigned, performing incident command or other operational activities.

Created in consultation with State emergency management agencies and local public safety agencies, the System is built around a core of Sponsoring Agencies prepared to deploy US&R Task Forces [3] immediately and initiate US&R operations at DHS's direction. Members of the Task Forces, also referred to as ''System Members,'' may respond as

[1] Sponsoring Agencies are State or local government agencies that have signed Memoranda of Agreement with DHS to organize and manage US&R Task Forces.

[2] Throughout the preamble to this rule the terms ''we'' and ''our'' refer to and mean the Department of Homeland Security. ''You'' refers to the reader.

[3] The US&R System comprises 28 Task Forces in 19 States. A full Task Force consists of 70 System Members, three deep (designed for 210 members) specially trained and equipped to find, extricate, and provide initial medical care to victims of collapsed buildings, weapons of mass destruction, as well as to perform other assigned duties.

part of Joint Management Teams (JMT)[4] or other overhead or technical teams, or as individual resources.

The Task Forces are staffed primarily by local fire department and emergency services personnel specially trained and experienced in collapsed structure search and rescue operations, incident management, and other emergency operational activities. On activation by DHS, members of the US&R Task Forces, US&R System Members of Joint Management Teams, and other overhead or technical teams, operate as Temporary Excepted Federal Volunteers.[5]

The National Urban Search and Rescue Response System presently comprises 28 US&R Task Forces in 19 States. Typically, a State agency or local public safety agency (Sponsoring Agency) sponsors each of the Task Forces. While the Sponsoring Agencies are solely responsible for the administrative management of their respective Task Forces, many Sponsoring Agencies invite other public safety agencies and other entities in their vicinity to contribute personnel and other resources to the Task Force. These public safety agencies and other entities that enter into agreements with the Sponsoring Agency to contribute personnel and other resources are Participating Agencies. In certain cases, individuals who are not employed by a Sponsoring Agency or Participating Agency[6] become members of a Task Force as Affiliated Personnel.[7]

DHS provides financial support in the form of grants or Cooperative Agreements[8] (Grants) to each of the Sponsoring Agencies under the disaster preparedness and training authorities of the Stafford Act. The Sponsoring Agencies use these Grants to train Task Force personnel, maintain a state of readiness and to acquire necessary equipment and supplies. DHS awards and administers Grants under 44 CFR 13. In return for this financial support, each Task Force must be available for deployment as a Federal resource when DHS activates it.[9] Task Forces also must maintain minimum training requirements that DHS prescribes.[10]

Separate non-standardized memoranda of agreement (MOA), which were individually negotiated at different stages in the System's development, currently govern the relationship between DHS and each of the Sponsoring Agencies. In addition, we require the Sponsoring Agencies to enter into separate Cooperative Agreements on forms that our Office of Financial Management prescribes. As the System has matured, the participants have concluded that it is desirable to standardize these relationships through a set of comprehensive regulations. We developed the Interim Rule with the assistance of the National Urban Search and Rescue Advisory Committee and its Legal Issues Working Group.

Adoption of the Interim Rule enables DHS to standardize our agreements with the Sponsoring Agencies. Following adoption of the final rule, we will ask each of the Sponsoring Agencies to enter into a new, streamlined MOA as well as a Preparedness Cooperative Agreement,[11] as described in subpart B of the rule, and a Response Cooperative Agreement,[12] as described in subpart C of this rule. These new, standardized agreements will document our relationship with the Sponsoring Agencies.[13] Upon the effective date of the Interim Rule, if a conflict exists between a provision of the rule and an existing MOA, the provision of the rule will control.

References in the Preamble to Parts, Subparts or Sections

Throughout the preamble and rule, references to part, subpart, or sections (as ''section'' or ''§ '') are to parts, subparts or sections of this rule unless specifically cited as a section of an Act, *e.g.*, section 306 of the Stafford Act, or document other than this rule.

Organization of the Interim Rule

The Interim Rule is divided into four subparts. Subpart A addresses the organization of the National US&R Response System, explains the relationship among the various components of the system, incorporates certain provisions of other regulations and provides for sanctions if US&R regulations and directives are violated.

Subpart B describes the process through which we provide grant funds to the Sponsoring Agencies to maintain Task Force readiness. Sponsoring Agencies use these grant funds to administer the Task Forces, provide initial and recurrent training,[14] and acquire and maintain a uniform cache of equipment and supplies.

Following adoption of the final rule, we will ask each Sponsoring Agency to enter into a Preparedness Cooperative Agreement with us. In addition, from time to time, DHS will purchase and distribute equipment and supplies directly to each Task Force.

[4] A Joint Management Team is a multi-disciplinary group of National Disaster Medical System (NDMS), Urban Search and Rescue (US&R) and other specialists combined to provide operational, planning, logistics, finance and administrative support for US&R and NDMS resources, and to provide technical advice and assistance to State and local governments.

[5] The term ''Temporary Excepted Federal Volunteer'' means that a System member's status is *temporary* for the period of Federal activation, *excepted* from Civil Service rules regarding Federal employment, *Federal* for purposes of tort claim protection and Federal ''workers' compensation'', and a *volunteer* in that DHS does not pay the individual directly, but reimburses the Sponsoring Agency for the System Member's services.

[6] A Participating Agency is a State or Local Government, non-profit organization, or private organization that has executed an agreement with a Sponsoring Agency to participate in the National US&R Response System.

[7] Affiliated Personnel are individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers.

[8] Cooperative Agreements are similar to grants, but differ from grants in the amount of government cooperation and involvement in the implementation of the agreement.

[9] The Task Forces also respond to disasters and emergencies in their home states as State resources. DHS does not normally and directly reimburse Sponsoring Agencies of the Task Forces for the costs that Task Forces incur when deploying in their home states, although in a State deployment, Task Forces may use equipment that they have purchased with DHS grant funds and Federal property that is in their custody. Subpart C of this rule does not cover in-state deployment of US&R resources. However, Federal reimbursement for the cost of an in-state deployment may be available through DHS's Public Assistance Program under regulations published at 44 CFR part 206. In addition, the Office of Foreign Disaster Assistance of the U.S. Agency for International Development (USAID) often uses the services of certain Task Forces to deliver humanitarian assistance abroad under agreements to which DHS is not a party. The rule does not affect the relationships between USAID and the Sponsoring Agencies of the Task Forces.

[10] In addition to participation on Task Forces, participants in the System (referred to as System Members) may also be called upon to serve as members of Joint Management Teams or other overhead or technical teams.

[11] DHS enters into a Preparedness Cooperative Agreement with each Sponsoring Agency to provide Federal funding to develop and maintain System resource (personnel, equipment and supplies) capabilities and readiness for operations, including training.

[12] When DHS activates a Task Force it provides Federal funding for the Task Force's response under the terms of the Response Cooperative Agreement.

[13] Following adoption of the final rule, DHS expects to develop a National US&R Response System Directive Manual, which will contain system policies and explain other Federal regulations, and will govern the operation of the National US&R Response System. The Directive Manual will be updated periodically as needed.

[14] Sections 306(a) and 621(c) of the Stafford Act, 42 U.S.C. 5149(a), 5197(c), authorize DHS to federalize members of US&R Task Forces to participate in preparedness activities. We periodically federalize US&R teams to participate in DHS-sanctioned training exercises, also known as mobilization exercises. During these periods, they are not ''Activated'' within the meaning of § 208.2 of the rule and, therefore, the provisions of subpart C do not apply to DHS-sanctioned training exercises. Funding for participation in DHS-sanctioned training exercises may be available under § 208.24(b) of the rule.

Subpart C addresses the deployment of System Members, either as part of a Task Force, a Joint Management Team, or another overhead or technical team, as a Federal resource, and the reimbursement of the Sponsoring Agencies for the costs that they incur as a result of these deployments. This subpart also explains the Response Cooperative Agreement that we will ask each Sponsoring Agency to sign following adoption of the final rule.

Subpart D establishes the procedures by which Sponsoring Agencies may present claims to DHS for reimbursement of costs incurred when we use System Members as Federal resources, including the timeframes in which the Sponsoring Agencies must present such claims, and procedures for appeals, in writing and submitted within 60 days after receipt of written notice of DHS's determination of the initial appeal. The timeframes and procedures for appeals are set out in § 208.62, Appeals.

A glossary of defined terms that we use throughout the Interim Rule and in subpart A appears in § 208.2. A sub-glossary of defined terms used 208.32 (subpart C) appears in that subpart.

Sectional Analysis

Section 208.33 sets forth the principles under which we will reimburse Sponsoring Agencies for participating in Alerts [15] and Activations.[16] Subsection (a) expresses our policy that participation in Alerts and Activations be as cost neutral as possible to Sponsoring Agencies and Participating Agencies. This commitment is critical to avoid putting local fire departments, which are the predominant sponsors of the Task Forces, at risk for the cost of providing emergency services outside of their respective jurisdictions. Payments are subject to 44 CFR part 13, particularly §§ 13.21 (payment) and 13.22 (allowable cost). 44 CFR 13.22 incorporates various Office of Management and Budget (OMB) circulars that address allowable cost. However, if there is a conflict between this rule and 44 CFR part 13 or the OMB Circulars, this rule controls.

Section 208.39 explains how we will compensate Sponsoring Agencies for personnel costs during Activations. When we deploy System Members, either as part of a Task Force, or as part of a Joint Management Team or other overhead or technical team, we appoint them into Federal service as Excepted Temporary Federal Volunteers and they work under our direction and control for the duration of the deployment. However, System Members who are regularly employed by a Sponsoring Agency or Participating Agency retain their concurrent employment relationship with their usual employers.[17] The maintenance of this concurrent employment relationship is a fundamental principle of the National US&R Response System, and dates from the inception of the System. We adopted the principle after consultations with the States, local governments and public safety employee organizations and we intend it to prevent System Members from suffering a break in their service to the usual employer while away on the Federal deployment. While on a Federal deployment, these System Members receive pay and benefits from their usual employers during the Federal deployment just as they would if they were not Activated.

Section 208.39(a) of this part provides that we will reimburse the Sponsoring Agency for personnel costs that result from the Activation and are consistent with this rule. The Sponsoring Agency is responsible for reimbursing the personnel costs of its Participating Agencies under the provisions of § 208.39.

Section 208.39(b) of this part speaks to how we compensate Sponsoring Agencies for overtime costs that might not have been incurred but for the Federal deployment. Section 7(k) of the Fair Labor Standards Act (section 7(k)) exempts public safety organizations from paying their employees overtime under certain circumstances. As interpreted by Department of Labor regulations and court decisions, the section 7(k) exemption does not apply unless the employee in question is trained in fire protection, has the legal authority and responsibility to engage in fire suppression, is employed by a public safety agency engaged in fire suppression and actually engages in fire suppression at least 80 percent of the time.

After reviewing Department of Labor regulations relating to section 7(k) and relevant court decisions, we are uncertain whether the rescue activities undertaken by Sponsoring Agencies of the US&R Task Forces are analogous to fire suppression. We also note that some System Members will not fall within the section 7(k) exemption because they are not regularly employed in fire suppression. It would be unfair to compensate these individuals at one overtime rate, when fellow System Members, who may be volunteers or part-time fire service employees, are compensated at another overtime rate. For these reasons, DHS instructs the Sponsoring Agencies to disregard the section 7(k) exemption when calculating its reimbursement for personnel costs, and reimburses Sponsoring Agencies for regular wages and overtime wages as described in § 208.39(d), (e) and (f).[18] This instruction will not create a windfall for Sponsoring Agencies and Participating Agencies because they cannot charge DHS for personnel costs in excess of those that they actually and normally incur.

Section 208.39(c) of this part establishes a uniform 24-hour tour of duty during the Federal deployment. DHS will reimburse the Sponsoring Agencies for 24 hours of pay for each day that a System Member is deployed, from his or her arrival at the Point of Assembly [19] until his or her release from duty, which may be the airport or Air Force Base to which the Task Force returns, or at the Task Force's original Point of Assembly,[20] or some other point. This reimbursement procedure is known as ''portal to portal'' pay.

We are not establishing a different rate of reimbursement for meal periods or scheduled sleep periods. Once deployed, all System Members must be available for immediate response twenty-four hours a day during the entire deployment period. Meal periods and sleep periods will be interrupted if System Members are needed to engage in vital lifesaving activities, just as they are in the firehouse.

Search and rescue professionals whom we expect to respond on a moment's notice at any time during a 24-hour period should be compensated for 24 hours of work. Activated System Members often work the first 24 to 48 hours of the Activation continuously, as

[15] *Alert* means the status of a System resource's readiness when triggered by an Alert Order indicating that DHS may Activate the System resource.

[16] *Activation* means the status of a System resource placed at the direction, control and funding of DHS in response to, or in anticipation of, a presidential declaration of a major disaster or emergency under the Stafford Act.

[17] In some cases, the relationship between the individual and the Sponsoring Agency or Participating Agency is a contractual relationship or a volunteer relationship. These regulations do not create a common law employment relationship between an individual and a Sponsoring Agency or Participating Agency where none otherwise exists.

[18] Section 208.40(b) addresses reimbursement for various differentials paid by Sponsoring Agencies.

[19] Certain activated System Members will not report to a Point of Assembly, but rather will be instructed to travel to the incident location directly from their home or regular place of work. These individuals are Activated when they leave their home or regular place of business and we will adjust the ''portal to portal'' pay of these individuals accordingly.

[20] The Point of Assembly is the location where a Task Force assembles before departure in response to an activation order.

this initial period involves packaging the Task Force for transport, loading and unloading equipment, attending briefings, receiving and adjusting to changes in operational objectives, establishing the base of operations and initiating the search for live victims. Once the search begins, we control Task Force activities during the entire 24-hour period and Task Forces must be available for immediate response at any time.

Section 208.39(g) provides for the reimbursement of Backfill [21] expenses. The National US&R Response System depends upon the voluntary participation of public safety agencies. We recognize that these public safety agencies may be short-handed when some of their personnel are away on a Federal deployment. If a public safety agency ordinarily Backfills a position in situations where a regular employee is unavailable for a period of time similar to that spent on a US&R deployment (*e.g.*, Family and Medical Leave, participation in an extended mutual aid assignment, injury or disability), then the public safety agency may bill DHS for the cost of Backfilling the position for the period that the regular employee is away on a Federal deployment. However, we will only reimburse for the incremental overtime salary and benefit expenses associated with the replacement employee. We will not reimburse the Backfilling agency for the regular salary and overtime cost of the replacement employee because the public safety agency would have to pay this cost if the Federal deployment had not occurred.

Public Comments on the Proposed Rule

During the comment period on the Proposed Rule, which closed on February 3, 2003, we received a number of comments. We summarize the comments and our response to them in the materials that follow.

Usage of Terms in the **SUPPLEMENTARY INFORMATION**. We received comments concerning the use of the terms ''Task Force Member'' and ''System Member'' in the **SUPPLEMENTARY INFORMATION** to the Proposed Rule. In the **SUPPLEMENTARY INFORMATION** to the Proposed Rule, we used the term ''Task Force Member'' to denote individuals who respond as part of the National US&R Response System. However, while most participants in the System respond as part of a US&R Task Force, participants in the System may also be called upon to serve on Joint Management Teams and other overhead or technical teams. As a result, the term ''System Member'' is a more accurate and comprehensive term to describe individuals who participate in System activities, and the term ''Task Force Member'' is best used to describe a System Member who is Activated as part of a Task Force. We have corrected the usage of these terms in the **SUPPLEMENTARY INFORMATION** to the Interim Rule.

In certain parts of the **SUPPLEMENTARY INFORMATION** to the Proposed Rule, we also used the term ''US&R Task Force,'' rather than ''Sponsoring Agency,'' to denote the agency or entity with which DHS has entered into legal and financial agreements with respect to the US&R Task Forces. We have corrected the usage of these terms in the **SUPPLEMENTARY INFORMATION** to the Interim Rule.

Finally, in the **SUPPLEMENTARY INFORMATION** to the Proposed Rule, we described the reimbursable period during an Activation as ending when a System Member returns to the pre-deployment staging area. This description conflicts both with standard terminology and the reality of System deployments. A more accurate description of the duration of the reimbursable period during an Activation is set forth in the Interim Rule.

Eligibility for Reimbursement and Coverage Under Federal Statutes While Traveling to and from the Point of Assembly. One Task Force commented on the time period that we propose to pay System Members, namely from arrival at the Point of Assembly until his or her release from duty, which may be the airport or Air Force Base to which the Task Force returns, or at the Task Force's original Point of Assembly, or some other point. Noting that some of its members live 2 or more hours away from the Point of Assembly, the Sponsoring Agency reimburses members from the time that they are alerted to the time that they return home (including travel mileage).

Response: This question has two aspects: (1) Reimbursement for time spent traveling to and from the Point of Assembly, and reimbursement for travel mileage while traveling to and from the Point of Assembly; and (2) consideration of time spent traveling to and from the Point of Assembly as ''in the course of employment'' for the purposes of workers' compensation (for injuries sustained) and tort liability (for civil wrongs or harms caused) during that travel.

Reimbursement: This issue is related to the Fair Labor Standards Act (FLSA), which establishes a minimum hourly wage for employees and requires employers to pay overtime wages for hours worked above the statutory maximum. It is also related to the Portal-to-Portal Act of 1947, which requires that time spent ''walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform'' is not compensable time under the FLSA unless it is compensable by contract, custom, or practice. The general Federal rule regarding travel mileage is: commuting to and from work, that is, between permanent residence and permanent duty station, is a personal expense. The employee is expected to be at work; how the employee chooses to get there is entirely his or her own business. 27 Comp. Gen. 1 (1947).

There are exceptions to the general rule if the travel is not ordinary and is spent outside the workday to and from job assignments. Examples include substantial travel to an emergency job assignment at a location outside the normal workplace, or the employer requires the employee to be ''on call'' to respond to emergency job assignments. A corollary of the ''substantial travel'' exception is that the travel is noncompensable if the amount of time spent traveling is minimal.

On reconsideration of our position, we will reimburse certain travel costs and time spent traveling to the Point of Assembly when a System Member responds to an Activation and must travel a considerable distance or time, as determined by DHS on a case by case basis, to reach the Point of Assembly. Otherwise, we will follow the general rule regarding noncompensable travel, including minimal travel. When we activate a Task Force or other System resource, timely assembly of the System Members is critical, and under those circumstances warrants our exception to the general rule. This exception will apply only to Activations, and will not apply, for instance, to Alerts, to travel home after return to the Point of Assembly, or to travel required for training, which we consider to be ordinary noncompensable travel.

In the Course of Employment: Ordinary travel to and from a fixed workplace is generally not within the scope of employment for workers' compensation purposes, under the ''going and coming'' rule. Under the rule, employees with a fixed workplace are covered by workers' compensation only when they are on their employer's premises, or performing an assignment required by the employer. One of the

[21] *Backfill* means the personnel practice of temporarily replacing a person in his or her usual position with another person.

exceptions to the general rule of going and coming is travel to and from job assignments, where the employer compensates the employee for the time or expense of the travel. Consistent with that exception and our intent to reimburse travel costs and time spent traveling to the Point of Assembly in response to an Activation, on a case-by-case basis we will meet our obligations regarding workers' compensation claims that arise out of injuries that System Members incur while traveling to a Point of Assembly in response to an Activation, but for no other purpose.

Definitions. We received several comments on the definitions in § 208.2, and made the following changes:

We changed the term ''Memorandum of Understanding'' to ''Memorandum of Agreement.''

The definition for ''Equipment Cache List'' now reads: ''The DHS-issued list that defines:

''(1) The equipment and supplies that US&R will furnish to Sponsoring Agencies; and

''(2) the maximum quantities and types of equipment and supplies that a Sponsoring Agency may purchase and maintain with FEMA funds.''

The definition for ''Participating Agency'' reads: ''A State or Local Government, non-profit organization, or private organization that has executed an agreement with the Sponsoring Agency to participate in the National US&R Response System.''

One Task Force expressed concern regarding the definitions of ''Program Manager,'' ''Program Office,'' and ''Project Manager.'' We have decided to retain the definitions of ''Program Manager'' and ''Program Office'' as they are. Currently, the Program Manager is the Chief of the US&R Section, which is part of the Response Division of FEMA, under the Emergency Preparedness and Response Directorate of DHS, and the Program Office is the US&R Section. However, these entities may change as the organizational structure of DHS evolves. We will notify the Sponsoring Agencies if we designate a different Program Manager or Program Office. We have deleted the definition of ''Project Manager'' from the definitions set forth in § 208.22, since that terms appears nowhere else in the Interim Rule.

We have added the following definition: ''*Program Directive* means guidance and direction for action to ensure consistency and standardization across the National US&R Response System.'' This replaces the term ''System Order'' in the proposed rule with ''Program Directive'' in the interim rule.

One commenter recommended that DHS include a definition of ''Affiliated Member.'' The equivalent term is defined at § 208.32 as ''Affiliated Personnel.''

Section 208.6, System Resource Reports. One commenter noted that Sponsoring Agency, Participating Agencies and System Members are to cooperate fully in audits, investigations, studies and evaluation, and asked, ''who pays for salary cost associated with gathering and processing the information?''

DHS provides funding for program management in the Preparedness Cooperative Agreement to support administrative activities, including the salary costs for gathering and processing System resource reports.

Workers' Compensation and Other Benefit Costs. Several Sponsoring Agencies commented that workers' compensation and other benefit costs incurred by Sponsoring Agencies as the result of an injury or death to a System Member are not reimbursable costs. As set forth in § 208.11 and explained in the Supplementary Information, DHS will appoint System Members into Federal service, concurrent with those individuals' local employment, to secure protection for such employees under the Federal Employees' Compensation Act and the Federal Tort Claims Act. If a System Member sustains an injury, that System Member may file a claim for compensation under the Federal Employees' Compensation Act. Because the System Member's Federal appointment is concurrent with his or her local employment, the System Member may also be eligible for compensation under his or her local workers' compensation system. In that case, the System Member may collect either the incremental difference between Federal benefits and local benefits, or may collect local benefits in full, depending on whether the local benefits may be offset by the Federal payment to the System Member.

As explained in § 208.40, DHS will reimburse the Sponsoring Agency for the workers' compensation insurance premium costs associated with the time during Activation. However, any local benefit payment is not a reimbursable expense, because DHS (through the U.S. Department of Labor) provides coverage under the Federal Employees Compensation Act, and because we are prohibited under our current statutory authority from reimbursing Sponsoring Agencies for the costs of benefit payments.

Death or Disability in Line of Duty. One Participating Agency asked whether a System Member killed or disabled while Activated would be entitled to benefits through the agency's municipal pension program, and whether the death or injury would be considered in the line of duty. We intend that System Members remain fully eligible for local benefits during Federal Activation, and that, as a result, any death or injury during Activation should be considered to have occurred while the System Member was acting in the scope of employment.

Federal Death Benefits. One Sponsoring Agency asked how a ''Federal death benefit,'' if incurred, would be calculated. The ''Federal death benefit'' for System Members comprises two separate components: (1) A benefit payment under the Federal Employees Compensation Act; and (2) a payment under the Public Safety Officers' Benefit Act. The death and injury benefits available under each of those statutes are determined using formulas set forth in those statutes.

Voluntary Contribution to Municipal Pension Plans. One Sponsoring Agency asked whether contributions to a municipal pension plan made voluntarily by System Members during an Activation, rather than contributions made by the System Member's employer under the terms of a collective bargaining agreement or other arrangement, are reimbursable by DHS. Voluntary employee contributions, as opposed to mandatory employer contributions, are not reimbursable expenses.

Contributions to the Pension Plan Based on Overtime. One Sponsoring Agency commented that under its benefits plan, salary is defined as the total actual fixed cash compensation, including overtime, and contributions to its pension plan are based on this total salary, including overtime. The Sponsoring Agency asked whether contributions to the pension plan based on overtime pay received during Activation reimbursable under this rule. Under § 208.40(a)(2), these contributions are reimbursable.

Cost Sharing. One Task Force commented that § 208.23(f) refers to ''Cost Sharing'' but makes no distinction between ''hard share,'' *i.e.*, cash contributions, and ''soft share,'' *i.e.*, other value-added benefits provided by the Sponsoring Agency. We do not presently require Sponsoring Agencies to provide a cost share, either hard or soft, for preparedness or response funding. Please note that section 208.22(f) provides for cost sharing if it were required in the future. If we were to institute a cost-sharing requirement in the future, we would clearly indicate in the Cooperative Agreement whether

such cost share would be ''hard'' or ''soft.''

Equipment Ownership. Several Sponsoring Agencies commented that the Proposed Rule does not address ownership or disposition of equipment purchased under this program.

OMB Circulars A–87 and A–110 specify that equipment purchased with Federal Grant funds is the property of the grantee. However, title, use, management and disposition of equipment purchased under a grant or Cooperative Agreement is set out in 44 CFR 13.32, a government-wide rule to which DHS adheres. While the Sponsoring Agency has title to any equipment purchased with Federal preparedness and response Cooperative Agreement funds, DHS reserves the right to transfer title to the Federal Government or a third party that we may name, under 44 CFR 13.32(g). DHS would generally expect to limit its exercise of this right to instances when a Sponsoring Agency indicates or demonstrates that the Sponsoring Agency cannot fulfill its obligations under the Memorandum of Agreement.

Maximum Pay Rate Table. We received the most number of comments concerning the Maximum Pay Rate Table (Table) identified in the Proposed Rule. For clarity, we set forth here the applicability of the Table and the process we will follow for creating and updating the Table.

Section 208.32 defines the ''Maximum Pay Rate Table'' as ''the DHS-issued table that identifies the maximum pay rates for selected System positions that may be used for reimbursement of Affiliated Personnel compensation and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.'' In that same section, ''Affiliated Personnel'' are defined as ''individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers.''

One Sponsoring Agency commented that the Table seemed to contradict the principle of cost neutrality set forth prominently in the Proposed Rule. However, as defined, the Table applies only to those individuals who are not normally employed by a Sponsoring Agency or Participating Agency, or whose affiliation with a Sponsoring Agency or Participating Agency is as a volunteer; that is, an individual whom the Sponsoring Agency or Participating Agency does not normally compensate in any way, at any rate.

The Table sets forth maximum rates for which we will reimburse the Sponsoring Agency for compensation paid to those individuals while Activated. The Sponsoring Agency may choose to compensate these individuals at a higher rate, but we will not reimburse the increment above the maximum rate specified in the Table. Likewise, the Sponsoring Agency may choose to enter into a Participating Agency agreement with the individual's employer, rather than use the individual as an Affiliated Personnel, in which case the Table would not apply. Consequently, only a Sponsoring Agency's choice to exceed the maximum rates set forth in the Maximum Pay Rate Table would result in an uncompensated expenditure, and the Table would not violate the principle of cost neutrality.

A number of parties expressed concern that the Table was not provided concurrently with the publishing of the Proposed Rule. We chose not to delay the Proposed Rule until the Table could be developed. We have inserted a new section 208.12, Maximum Pay Rate Table, to establish the process for creating, updating and using the Table. We are also publishing the Table as a Notice in the **Federal Register** and are asking for comments on both the Interim Rule and the Table before publishing the final rule.

One Sponsoring Agency expressed concern that the rates set forth in the Table could not be used with respect to individuals employed by the Sponsoring Agency, and not when the individual would serve on the Task Force as Affiliated Personnel (*e.g.*, a Sponsoring Agency fire department dispatcher affiliated with the US&R Task Force in a non-dispatcher role as a canine search specialist). Although the Table would not necessarily apply to reimbursement for salary and benefits for that individual, Sponsoring Agencies may use the rates in the Table as a guide for establishing compensation levels for Affiliated Personnel.

Affiliated Personnel. Several commenters noted that the rule can be interpreted to preclude the reimbursement of Backfill expenses for Affiliated Personnel under § 208.39(g). Those commenters expressed concern that, since the highly-trained civilians such as physicians, structural engineers and canine handlers are typically Affiliated Personnel, reimbursement for Backfill expenses is important to securing the participation of these individuals in the System. The restriction on Backfill costs for Affiliated Personnel could limit the ability of Sponsoring Agencies to recruit and retain these highly trained civilians.

However, the only permissible way to reimburse Affiliated Personnel for Backfill costs is through Participating Agencies—neither we nor the Sponsoring Agencies have contractual or employment relationships with the individuals Backfilling the jobs of Affiliated Personnel. If reimbursement for Backfill expenses is a problem for Affiliated Personnel, we encourage them to have their employers or professional association seek Participating Agency status. Participating Agency status is available to private, for-profit organizations under the revised definition of ''Participating Agency'' set forth in this Interim Rule. (See Definitions, § 208.2, *Participating Agency*, and § 208.12, *Maximum Pay Rate Table.*) Note, however, that compensation costs, for the purposes of reimbursement and Backfill, refer to the System Member's actual compensation, or the compensation of the individual who Backfills a position (which includes salary and benefits, as described in §§ 208.39 and 208.40), rather than billable or other rates that might be charged for services rendered to commercial clients or patients.

Creating, Updating and Using the Maximum Pay Rate Table. We have inserted a new section 208.12 in this rule to establish how we will create, update and use the Table to reimburse Affiliated Personnel (Task Force Physicians, Task Force Engineers, and Canine Handlers) and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency; the Table applies only to these named categories. Section 208.12 describes the method for determining maximum pay rates using United States Office of Personnel Management's (OPM) salary rates, and provides links to OPM's applicable salary rate tables and locality pay tables.

The section provides that DHS will review and update the Table periodically (at least annually). DHS is publishing the initial Table in the **Federal Register** as a Notice with request for comments. DHS will publish subsequent revisions to the Table as Notices in the **Federal Register**.

The section further states that a Sponsoring Agency may choose to pay Affiliated Personnel at a higher rate, but DHS will not reimburse the increment above the maximum rate specified in the Table.

Resupply and Logistics Costs During a Federal Activation. One Sponsoring Agency noted that, under § 208.38, we will not reimburse costs incurred for resupply and logistical support during Activation. That section states that resupply and logistical support needed

during Activation are the responsibility of the Joint Management Team (JMT). The Sponsoring Agency asked, ''What happens if the Incident Management Team [now the JMT] cannot be established?'

During Activation, we are responsible for resupply and logistics. Currently, we accomplish this responsibility through either the JMT, which operates in the field, or the Emergency Support Function 9 (ESF–9),[22] which operates from the National Emergency Operations Center, an emergency coordinating center located at FEMA headquarters. As DHS develops and evolves, we may change the names or functions of these teams; however, the responsibility for resupply and logistics will remain with us. Task Forces should not engage in resupply or logistical support during Activation unless coordinated through one of these teams. In extraordinary circumstances, *e.g.*, if the Task Force cannot make contact with either the JMT or the EST, the Task Force should follow the instructions in § 208.44, Reimbursement for other costs. Absent such circumstances, we will not reimburse costs incurred for resupply and logistical support during Activation.

Compensation for Exempt System Members. Several agencies commented on the proposed reimbursement for compensation paid to Exempt System Members, *i.e.*, System Members who are paid a salary, rather than an hourly wage, and are otherwise exempt from the Fair Labor Standards Act. One agency commented that reimbursement for Exempt System Members should be based on the employees' salary, converted to a 40-hour workweek and then paid at that rate on an hourly basis during Activation. Another agency commented that the different methods of compensation calculation for Exempt and non-exempt System Members will result in non-exempt System Members receiving a greater amount of compensation during Activation than Exempt System Members, who are typically more experienced firefighters holding higher ranks in the Sponsoring Agency or Participating Agency. This agency speculated that the method of compensation calculation used in the Proposed Rule would result in fewer chief officers (who are typically classified as Exempt System Members) participating as System Members.

There are two guiding principles underlying our compensation calculation rules: (1) Cost neutrality; and (2) customary and usual practice. The compensation calculation system for Exempt System Members complies with both of these principles. If an individual is classified as an Exempt System Member in his or her regular position with the Sponsoring Agency or Participating Agency, then this individual will receive compensation on a daily basis, rather than an hourly basis, regardless of the number of hours the individual works in a day. The rule provides reimbursement to the Sponsoring Agency or Participant Agency on this basis—that is, for the amount that the individual would have customarily and usually received. If the Sponsoring Agency or Participating Agency customarily and usually compensates Exempt System Members by paying a salary and overtime, or customarily and usually awards compensatory time or another overtime substitute for hours worked above a predetermined threshold, then the Sponsoring Agency may request reimbursement for the overtime amount, or the liquidated value of the compensatory time or other overtime substitute, in accordance with §§ 208.39(e)(5)(ii) and (iii). In this way, this rule abides by the principle of cost neutrality.

One Sponsoring Agency asked that we examine the feasibility of giving Sponsoring Agencies the option of having chief officers appointed as Disaster Assistance Employees (DAE) (temporary DHS employees) during Activation. In that case, those officers would be temporary Federal employees, would probably take a reduction in pay, and would take vacation or administrative leave from the Sponsoring Agency or Participating Agency for the period of Activation. In turn, a DAE appointment might affect their pension and seniority rights. We believe that disadvantages of DAE appointments outweigh any benefits that chief officers might derive, and that the current language of this rule concerning Exempt System Members represents the best general practice.

One Sponsoring Agency asked whether, under § 208.39(e)(3), chiefs compensated based on a 56-hour workweek should be converted to a 40-hour workweek for purposes of calculating reimbursable compensation under the rule. This Sponsoring Agency also noted that compensating individuals who customarily and usually work a 56-hour workweek, by converting their hourly wage rate to a 40-hour workweek, results in approximately 40 percent higher costs during Activation. Sponsoring Agencies and Participating Agencies that compensate employees based on a 56-hour workweek take advantage of the partial overtime exemption set forth in section 7(k) of the Fair Labor Standards Act. As explained herein, we require that Sponsoring Agencies and Participating Agencies disregard the section 7(k) partial exemption in calculating personnel costs, and we will reimburse personnel costs based on a 40-hour work week, as described in § 208.39 of this rule.

One Sponsoring Agency notes that the calculation of reimbursable personnel costs will place an extra burden on payroll staff, and there will most likely be personnel who will be eligible for overtime compensation immediately upon Activation since they have already exceeded the overtime threshold for that week. We have included an administrative allowance in the reimbursement for response costs, found at § 208.41, to compensate the Sponsoring Agency for this increased burden on payroll staff. We also provide for reimbursement of any additional salary and overtime costs in § 208.39(f), *e.g.*, those incurred because a System Member is eligible for overtime compensation immediately upon Activation.

Reimbursement for Personnel Costs for Equipment Cache Rehabilitation. Under § 208.43, we will reimburse Sponsoring Agencies for personnel costs associated with equipment cache rehabilitation up to the number of hours specified in the Demobilization Order.[23] One Sponsoring Agency stated that the number of hours specified in the Demobilization Order should be an estimate only, rather than a fixed limit, and asked whether there is an appeal process for the number of hours specified in the Demobilization Order, or another mechanism for requesting additional hours based on unforeseen circumstances. There is no appeal process for the number of hours specified in the Demobilization Order. However, if the Sponsoring Agency feels that unforeseen circumstances will prevent it from completing its equipment cache rehabilitation within the specified number of hours, the Sponsoring Agency should follow the

[22] ESF–9, or Emergency Support Function 9, Urban Search and Rescue, is responsible to plan and coordinate the use of Urban Search and Rescue assets following an event that requires locating, extricating and providing immediate medical treatment of victims trapped in collapsed structures. ESF–9 also provides planning and coordination of US&R assets when they engage in other disaster-related assignments.

[23] A Demobilization Order is a DHS communication that terminates an Alert or Activation and identifies cost and time allowances for rehabilitation.

procedures in § 208.44 for reimbursement of other costs.

Reimbursement for Other Costs. Section 208.44 sets a procedure for Sponsoring Agencies to follow if the Sponsoring Agency or the Task Force believes that it must incur an expense not included in subpart C for which it expects to request reimbursement. Section 208.44 requires that the Sponsoring Agency request in writing permission from DHS to make the expenditure or, if advance permission in writing is not possible to obtain, to meet three criteria before making the expenditure, including requesting and receiving advance verbal approval.

One agency commented that during an extreme emergency, in particular during the initial 24- to 48-hours of an Activation, it can be difficult to obtain written or verbal approvals, and that personnel authorized to approve expenditures are not available 24 hours a day during this period. Moreover, this agency commented that Joint Management Teams, in the past, have left requests for resupply unanswered for extended periods of time. The agency recommended that we empower Task Force Leaders to make procurement decisions.

We feel that this comment addresses operational problems rather than regulatory issues. Many of these problems will be alleviated by the construction of the new DHS operations center that will be staffed 24 hours a day during an Activation, and by assuring that there is at least one person on duty in the operations center who holds delegated authority to authorize procurements. Moreover, the revised Equipment Cache List [24] provides for the purchase of multiple, back-up methods of communication to assure that Task Forces can communicate with the operations center under any circumstances. We believe that the rule controls the costs associated with Activation and limits duplicative procurement without compromising responder safety.

Advance of Funds. Section 208.45 states that we will provide the Sponsoring Agency with an advance of funds up to 75 percent of the estimated personnel costs of the Activation. Several agencies commented that we should increase this amount to 90 percent of the estimated personnel costs. These agencies commented that since personnel costs of an Activation can exceed $1 million, an advance up to 75 percent of that amount still leaves the Sponsoring Agency with approximately $250,000 in outlays for personnel costs for which it must wait for up to 120 days or more for reimbursement. The financial burden of these outlays would be compounded in the event of multiple Activations within a relatively short time period.

We believe that up to 75 percent is the optimal amount for an advance of funds because it balances the need for funds against the possibility of overestimated funds. As one commenter pointed out, for many years we did not provide any advance of funds, and for more recent Activations we provided an advance equal to 25 percent of estimated personnel costs. The amount ''up to 75 percent'' is a result of our examination of personnel cost data from a number of previous Activations. It also recognizes the financial burden borne by the Sponsoring Agencies in carrying, even temporarily, these additional salary costs. However, Activations often last for a shorter period of time than we use to calculate the estimated personnel costs for the Activation, as was the case recently with Hurricane Isabel when teams were activated for fewer than 7 days. As one commenter pointed out, some percentage of personnel costs may be questioned and ultimately disallowed as a result of the reimbursement review process. For these reasons, at this time, we believe that up to 75 percent of estimated personnel costs is the best amount for an advance of funds. We expect to review Sponsoring Agencies' experience periodically under this provision, and will make revisions as warranted.

Deadline for Submission of Claims. One agency commented that the deadline for submission of claims comes too soon after an Activation has ended. Currently, § 208.52 specifies that Sponsoring Agencies must submit claims for reimbursement within 90 days of the conclusion of the Activation. Section 208.52 also states that DHS may extend and specify the time limitation upon a written request and justification from the Sponsoring Agency. The commenting agency noted that it could take many weeks to obtain certain items, often because of manufacturers' inventory status. The agency stated that setting a deadline of 120 days would obviate the need for a Sponsoring Agency to apply for repeated extensions.

We believe that the 90-day timeframe for submission, with the opportunity for Sponsoring Agencies to apply for 30-day extensions, is the better policy. In the past, we found that Sponsoring Agencies often do not submit claims for reimbursement in a timely manner. This tendency interferes with our ability administratively to ''close out'' the accounts we set up for each major disaster or emergency, and also results in Sponsoring Agencies carrying unreimbursed costs for longer periods of time. We believe that it is better to require submission of claims for reimbursement within 90 days of the conclusion of the Activation, while permitting Sponsoring Agencies to apply for 30-day extensions at their option.

Reevaluation and Potential Revision of the Rule. One agency commented that we should provide a date certain for reevaluation and potential revision of this rule. The agency believed that providing this date certain was important because some provisions of the rule will require additional discussion and development, and other issues may arise after the rule is implemented. We do not believe that there is a need to provide a date certain by which we will reevaluate and, if necessary, revise the rule. However, we will work with our State and Local Government partners through the National Urban Search and Rescue System Advisory Committee and its Legal Issues Working Group to evaluate this rule, measure its efficacy, and develop revisions as necessary.

Task Force Leader. One Sponsoring Agency commented that this rule should include a definition of the role and responsibilities of the Task Force Leader, the highest leadership position on a US&R Task Force. The commenting agency stated that ''[t]he Task Force Leader is the individual during a deployment who is in control and responsible for the entire Task Force, in addition to reporting to FEMA (whether the FEMA Emergency Support Team (EST) or the IST [now JMT] the Task Force Leader is the individual that the Sponsoring Agency designates to represent the Sponsoring Agency both financially and legally while the Task Force is deployed.''

We feel that the roles and responsibilities of the Task Force Leader should not be included in the rule. We have developed and published a Position Description for the Task Force Leader, and have described the roles and responsibilities of the Task Force Leader in several operational documents. These descriptions may change over time, and we want to retain flexibility by including these descriptions in operational documents rather than in the rule. Moreover, different Sponsoring Agencies have vested their Task Force Leaders with

[24] The *Equipment Cache List* is the DHS-issued list that defines: (a) The equipment and supplies that US&R will furnish to Sponsoring Agencies; and (b) the maximum quantities and types of equipment and supplies that a Sponsoring Agency may purchase and maintain with DHS funds.

different levels of authority. For these reasons, we have not defined the roles and responsibilities of the Task Force Leader in the rule.

Use of Federally Purchased Equipment for Local Use in Daily Operations. One commenter noted that, in the Federalism Summary Impact Statement included with the Proposed Rule, we stated that ''Equipment and supplies purchased with Federal funds may be used to respond to state disasters or emergencies.'' The commenter asked whether the intent of the rule was to prevent the use of federally purchased equipment for daily operations.

We intend the System to provide a Federal capability to respond to major disasters or emergencies involving structural collapse, weapons of mass destruction, or other incidents that the President declares. A Sponsoring Agency may use equipment and supplies purchased with Federal funds to respond to disasters or emergencies requiring urban search and rescue response at the state and local level, and if necessary, to repair or replace equipment so used at the Sponsoring Agency's expense. However, we do not intend that Sponsoring Agencies use federally purchased equipment in routine, day-to-day operations.

Indirect Costs. One Sponsoring Agency commented on our prohibition of reimbursement for indirect costs related to response, and our 7.5 percent limitation on indirect costs related to preparedness. The commenting agency noted that this limitation on indirect costs is inconsistent with other FEMA programs and diverges from standard Federal indirect cost percentages. The commenting agency stated that this limitation could threaten the ability of that Sponsoring Agency to remain in the System, stating that the ''work burden formulas presuppose economies of scale for a larger, pre-existing agency.''

We brought this issue to the National US&R Advisory Committee, which recommended retention of the indirect costs policy as in the proposed rule. We agree. This limitation is not inconsistent with other limitations applicable to FEMA programs. Accordingly, we have not changed this section. Note that this limitation applies only to Preparedness Cooperative Agreements, which apply over the course of at least one year and to which indirect cost principles can be applied readily. Except as provided in § 208.41, we allow no indirect costs under Response Cooperative Agreements. US&R deployments are most often short-term, on the order of 10–14 days. Consistent with section 407 of the Stafford Act, we will allow the administrative allowance listed in § 208.41 of this part in lieu of attempting to establish indirect cost rates for short-term deployments.

Administrative Procedure Act Determination

We are publishing this Interim Rule under the Administrative Procedure Act, 5 U.S.C. 553, with our request for public comments. Concurrently with publication of the Interim Rule, we are publishing the Maximum Pay Rate Table (Table) in the **Federal Register** as a Notice. We published a Proposed Rule, National Urban Search and Rescue Response System, on December 18, 2002, 67 FR 77627–77640, and received over 30 comments from various Task Forces in the National US&R Response System. We discuss the comments in the preamble of the Interim Rule, indicating where we agree with the comments and have made changes, and also where we do not agree with the comments.

We did not have the Table prepared at the time we published the Proposed Rule but received a large number of comments and questions about the Table. To provide an opportunity for comment before publishing the final rule, and because of the delay between the date of the Proposed Rule and the Interim Rule, we request that interested parties comment within 45 days of today's publication.

The National US&R Response System provides a number of public services that are unique within the Federal Government. Members are experienced and trained professionals highly skilled in the often dangerous roles of searching for, extricating and providing initial medical care for victims from collapsed buildings, whether collapsed by natural or manmade causes. The searching is important to the public to ensure that every effort has been made to rescue people still alive within a collapsed structure. Members also have an important role in finding the bodies of those killed in the collapse, so that victims might be identified and returned to grieving families. The tasks performed and the dangers inherent in the work benefit other firefighters and disaster responders who do not have the specialized training and experience of the National US&R Response System Members and who are not put at risk by entering the collapsed structures when US&R teams are present.

The Interim Rule is effective today, the date of publication. There is an urgent need within the National US&R Response System to standardize financial, administrative and operational functions among the 28 Task Forces located in 19 States. These needs include codifying the relationship between the Department of Homeland Security (DHS) and the Sponsoring Agencies of the 28 Task Forces, and standardizing the relationships of Sponsoring Agencies with their Participating Agencies and Affiliated Personnel. Efforts to standardize the Memoranda of Agreement between DHS and the Sponsoring Agencies, and in turn, the agreements between the Sponsoring Agencies and Participating Agencies and Affiliated Personnel, are essential to the effective functioning of the System and must be completed soon to inform, guide and govern all System participants uniformly in their respective roles, responsibilities and activities.

In the years since September 11, 2001, Congress has appropriated increased funds to US&R for equipment, training, and other measures to ensure that each Task Force is fully staffed, trained and available for whatever disaster they may be called upon for help. It is imperative and urgent that there be full accountability for the funds granted to the Sponsoring Agencies, and that there be uniform standards that the Sponsoring Agencies can apply in the performance of their US&R responsibilities. This rule provides those standards; it is urgent that they be in effect as soon as possible.

The direct effect of this rule is on the 28 Sponsoring Agencies, their Participating Agencies, and Affiliated Personnel—a relatively small, well-defined universe. The Sponsoring Agencies, the Advisory Committee of the National US&R Response System (Advisory Committee),[25] the Working Groups[26] under the Advisory Committee, and others associated with the National US&R Response System have frequently and repeatedly requested publication and implementation of this rule, which they urgently need to fulfill their obligations to the System, themselves and their organizations. As matters of sound policy, planning and management for the entire System, it is important to make the rule effective upon publication.

Good cause exists and it is in the public interest to make this Interim Rule

[25] The Advisory Committee of the National US&R Response System provides advice, recommendations, and counsel on the continuing development and maintenance of a National US&R Response System to the Under Secretary for Emergency Preparedness and Response.

[26] The System has several specialized Working Groups, *e.g.,* command and general staff, medical, legal issues, training, etc., that provide professional and technical advice on US&R issues to DHS through the National Advisory Committee.

effective upon publication (and to request comments on the Interim Rule and on the Table as published separately today as a Notice). DHS will review and evaluate any comments that it receives and will publish the final rule at a later date.

National Environmental Policy Act

44 CFR 10.8(d)(2)(ii) categorically excludes from actions such as the preparation, revision, and adoption of regulations, and specifically 44 CFR 10.8(d)(2)(xviii)(C), which relates to planning and administrative activities in support of emergency and disaster response and recovery, including deployment of urban search and rescue teams. Accordingly, we have not prepared an environmental assessment or environmental impact statement for this rule.

Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735, October 4, 1993, a ''significant regulatory action'' is subject to OMB review and the requirements of Executive Order 12866. Section 3(f) of the Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

In determining whether to proceed with the formulation and publication of this rule, we considered three alternatives: maintain the status quo ante; manage the program through administrative directives; and cancel the program.

Maintain the Status Quo Ante. The National US&R Response System has operated since the early 1990s without formal regulations. The first ten years or so were formative years with a great deal of flux. Federal appropriations were minimal until the events following September 11, 2001, which led to major changes in planning, operations, management, training and funding. Twenty US&R teams responded to the World Trade Center and five responded to the Pentagon. After-action evaluations showed the need for greater interoperability of equipment, consistency in training and operating across the 28 teams, and many other factors to permit 28 disparate units in 19 States to perform as a cohesive whole. Congress appropriated larger sums to support the program, mandating that the program not add new task forces until existing task forces were fully equipped and trained. Spurred by the response of Congress and the Administration, we redoubled efforts to standardize the financing, administration and operation of the National US&R Response System.

Under the *status quo ante* and the low level of Federal funding, we had little leverage to standardize the program. With increased appropriations and expanding mission that followed September 11, 2001 (*e.g.*, response to acts of terrorism and weapons of mass destruction events, response to hurricanes), operating without formal regulations was no longer tenable. Sound management and responsible stewardship of the program demand formal regulations. For these reasons, we rejected the *status quo ante.*

Management by Administrative Directives. We rejected this alternative on grounds that administrative directives do not have the force of law, tend to be piecemeal, and do not adequately support our need for standardized practices within the US&R program. In contrast, the rule will have the force of law and will concisely support our need to standardize the financing, administration and operation of the US&R program.

Cancel the Program. The US&R program grew out of the evident need to have highly skilled, specially trained and equipped personnel swiftly available to search for and extricate victims from collapsed buildings, whether from earthquakes and other natural causes, acts of terrorism, accidents or other human causes. The need is greater today than perceived in the late 1980s and early 1990s. The program has garnered a well- and hard-earned recognition of its effectiveness, with strong support from Congress, the Administration, and its Sponsoring and Participating Agencies. With that continuing support, cancellation of the program is not a feasible alternative.

Interim Rule. We (FEMA) published a Proposed Rule, National Urban Search and Rescue Response System, on December 18, 2002, 67 FR 77627–77640. During the 45-day comment period, we received about 30 comments from Sponsoring Agencies, one from a Participating Agency, one from a Member of Congress, and none from the public at large. We reviewed the comments, accepting some, rejecting some. This preamble and Interim Rule reflect the decisions made regarding the comments that we received.

When we published the Proposed Rule, we mentioned, but had not yet prepared, the Maximum Pay Rate Table (Table). In order to have that part of the rule on which we had received comments go into effect, and to obtain public comments on the Table, we elected to publish the rule as an Interim Rule, and, concurrently to publish the Table as a Notice, with request for comments.

Economic Significance of the Rule. This rule will not have an annual effect on the economy of $100 million or more and is not an economically significant rule under Executive Order 12866. The rule establishes the relationship between the Sponsoring Agencies of the Urban Search & Rescue (US&R) Task Forces and DHS, funding for preparedness and response activities, including the acquisition of equipment and supplies and training, and the eligibility of Task Forces to receive and maintain Federal excess property.

This interim rule impacts 28 Sponsoring Agencies, 26 of which are from local communities, 2 are associated with state universities. All of the communities have populations greater than 50,000. Most of the Sponsoring Agencies have agreements with Participating Agencies for additional support to meet the staffing, equipment and training requirements of the National US&R Response System. US&R-related costs of Participating Agencies are paid by DHS through the Sponsoring Agencies. Similarly, expenses of Affiliated Personnel are reimbursed through the Sponsoring Agencies.

DHS has designed the National US&R Response System to be as cost neutral to Sponsoring Agencies as Federal law authorizes. DHS acquires equipment and supplies, pays for training, meetings and related travel, lodging, and per diem expenses, and attempts to cover Sponsoring Agencies' preparedness costs through preparedness Cooperative Agreements. When DHS activates a US&R Task Force we reimburse the Sponsoring Agency for 100 per cent of its direct eligible costs incurred, including overtime and Backfill costs, and indirect costs capped at 7.5 percent of direct costs, under the terms of the response Cooperative Agreements. Sponsoring Agencies will incur certain paperwork burdens and expenses, which are described and quantified

below in the materials on the Paperwork Reduction Act. We expect that our Cooperative Agreements and their associated indirect cost rates will cover the eligible costs that the Sponsoring Agencies incur to participate in the National US&R Response System.

Costs to DHS to administer the National US&R Response System include the salaries and expenses of an 8-person staff, and the indirect staff costs for financial, acquisition, logistics and other administrative services provided by DHS and FEMA. Current appropriations limit administrative costs to 3 percent of the total amount appropriated for US&R.

FEMA's planning and program guidance for fiscal years 2005 through 2009 set funding levels of $6.438 million for the National US&R Response System, representing the baseline nondisaster-specific budget for operating expenses. In the past two years, congressional annual appropriations for US&R were $60 million, most of which US&R passed to the Sponsoring Agencies pursuant to Cooperative Agreements. FEMA passes the amounts appropriated to the Sponsoring Agencies in preparedness Cooperative Agreements funded 100 percent by the Federal Government to cover planning, training, equipment or other essentials to fulfill the US&R mission, which do not impose conditions on the Sponsoring Agencies making them economically significant. Nor would Cooperative Agreement funding adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

This rule is a significant regulatory action, but not an economically significant regulatory action within the definition of section 3(f) of Executive Order 12866, and it adheres to the principles of regulation of the Executive Order. The Office of Management and Budget has reviewed this rule under the provisions of the Executive Order.

Regulatory Flexibility Act, 5 U.S.C. 601

Under the Regulatory Flexibility Act, agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations and local governments). The Act also provides that, if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not ''have a significant economic impact on a substantial number of small entities.''

This rule standardizes the financing, administration and operation of the National Urban Search and Rescue Response System (System or US&R), which FEMA established under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The System currently comprises 28 US&R Task Forces in 19 States. A State agency or local public safety agency (Sponsoring Agency) typically sponsors a Task Force,[27] staffed primarily by local fire department and emergency services personnel, and include Joint Management Teams (JMT) and other overhead or technical teams. None of the Sponsoring Agencies are in communities with populations fewer than 50,000. The governments of the Sponsoring Agencies are urban or State instrumentalities and none qualify as a ''small governmental jurisdiction'' within the meaning of 5 U.S.C. 601(5).

Some of the Participating Agencies are small businesses, such as engineering firms and HMOs. DHS reimburses Sponsoring Agencies for the eligible costs that the Sponsoring Agencies incur in reimbursing their Participating Agencies. DHS expects Participating Agencies to receive full reimbursement for the salaries and expenses of their personnel who are participating System Members, indirect costs up to 7.5 percent, per diem, travel and related costs when Task Forces activated, and backfill expenses.

DHS has designed the US&R program to be as cost neutral to Sponsoring Agencies as Federal law authorizes. When DHS activates a US&R Task Force it reimburses the Sponsoring Agency for its direct costs incurred, including overtime and Backfill costs, and indirect costs capped at 7.5 percent of direct costs. Upon activation, System Members become Temporary Excepted Federal Volunteers entitled to the benefits of the Federal Employees Compensation Act (FECA) and the Federal Tort Claims Act (FTCA). In some instances, State workers' compensation benefits exceed those available under FECA, and the difference between the State benefits and the Federal benefits may have to be borne by the Sponsoring Agency.

US&R Task Forces also must maintain minimum training requirements that DHS prescribes. Under current interpretations by the Department of Justice, the FTCA covers System Members during Task Force activations, but does not apply to training activities. This lack of FTCA coverage during training is a potential liability that a Sponsoring Agency might incur, but such a circumstance has not occurred in 15 years of experience. DHS is working with the Department of Justice to determine what measures DHS could take to provide liability coverage for System Members during US&R training events.

DHS assumes that the professional skills necessary for preparation of the reports and records are within the capabilities of the Sponsoring and Participating Agencies. DHA further assumes that Sponsoring and Participating Agencies incur no extra, unreimbursed costs for sound administration and accountability that Federal Cooperative Agreements require of any recipient of such awards. We have no basis for estimating the expected cost or range of costs per impacted Sponsoring or Participating Agency.

DHS is not aware of any rules that may duplicate, overlap or conflict with this rule. In our discussion of E.O. 12866 above, we considered several alternatives to this rule, including *status quo ante,* cancellation of the program, management by program directives, and this interim rule. None of the alternatives to this rule met DHS needs to standardize the financing, administration and operation of the US&R System; none provided differing compliance or reporting requirements, or clarified, consolidated, or simplified compliance and reporting, or exempted any of the Sponsoring Agencies from coverage of the rule.

For the reasons stated, we certify under 5 U.S.C. 605(b) that this Interim Rule will not have a significant economic impact on a substantial number of small entities and does not apply to this interim rule.

Paperwork Reduction Act of 1995

DHS has determined that the implementation of this rule is subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As the Paperwork Reduction Act of 1995 requires and, concurrently with this rule, we have submitted a request for Office of Management and Budget (OMB) review and approval of a new collection of

[27] The Task Forces also respond to disasters and emergencies in their home states as State resources. DHS does not directly reimburse Sponsoring Agencies of the Task Forces for the costs that they incur when deploying in their home state, although in a State deployment Task Forces may use equipment that they have purchased with DHS grant funds and Federal property that is in their custody. Subpart C of this rule does not cover in-state deployment of US&R resources. However, Federal reimbursement for the cost of an in-state deployment may be available through DHS's Public Assistance Program under regulations published at 44 CFR part 206. In addition, the Office of Foreign Disaster Assistance of the U.S. Agency for International Development (USAID) often uses the services of certain US&R Task Forces to deliver humanitarian assistance abroad under agreements to which DHS is not a party. The rule does not affect the relationships between USAID and the Sponsoring Agencies of the Task Forces.

information, which is contained in this rule. The collection of information complies with provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). We invite the general public to comment on the collection of information.

Collection of Information

Title: Urban Search and Rescue Program.

US&R grant application forms approved by OMB under Control Number 1660–0025, which expires July 31, 2007, are:

Form Numbers: SF 424, Application for Federal Assistance; DHS Form 20–10, Financial Status Report; DHS Form 20–16, Summary Sheet for Assurances and Certifications; DHS Form 20–16A, Assurances—Non-Construction Programs; DHS Form 20–16C, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; DHS Form 20–20, Budget Information—Non-Construction Programs; and SF LLL, Disclosure of Lobbying Activities.

Abstract: This information collection is to implement the National Urban Search and Rescue System (US&R), by which DHS provides specialized lifesaving assistance during major disaster or emergency. US&R operational activities include locating, extricating and providing on-site medical treatment to victims trapped in collapsed structures, weapons of mass destruction events, and when assigned, incident command or coordination of other operational activities. In order to implement the US&R program DHS must collect certain types of information, including grant applications, budget and budget narrative, financial status reports, assurances and certifications, performance information, and requests for advances or reimbursement on forms approved by OMB under Control Number 1660–0025.

Affected Public: State, local and Indian tribal governments.

Estimated Total Annual Burden Hours: 803 hours. A breakdown of the burden follows:

DHS forms	No. of responders (A)	Frequency of response (B)	Hours per response and record-keeping (C)	Annual burden hours (A × B × C)
The following forms were approved under 1660–0025:				
SF–424 Application for Federal Assistance	28	1	1 hour	28 hours.
DHS Form 20–10 Financial Status Report	28	1	1 hour	28 hours.
DHS Forms 20–16, 20–16A, 20–16C, Summary Sheet for Assurances and Certifications.	28	1	30 minutes	14 hours.
SF LLL, Disclosure of Lobbying Activities	28	1	10 minutes	5 hours.
DHS Form 20–20, Budget Information Non-Construction Programs and Budget Narrative.	28	2	9 hours	504 hours.
SF 270, Request for Advance or Reimbursement	28	2	4 hours	224 hours.
Subtotal		224		803 hours.

OMB Number: New.

Abstract: In order to implement the US&R program, DHS must collect certain types of information not included in OMB Control Number 1660–0025, including memoranda of agreement, program narrative statements, grant awards, progress reports, extension or change requests, closeout information and audits.

Affected Public: State, local and Indian tribal governments.

Estimated Total Annual Burden Hours: 1181 hours. A breakdown of the burden follows:

DHS forms	No. of responders (A)	Frequency of response (B)	Hours per response and recordkeeping (C)	Annual burden hours (A × B × C)
The following are new collections:				
Narrative Statement	28	2	4 hours	224 hours.
Progress Reports	28	2	2 hours	112 hours.
Extension or Change Requests	5	1	1 hour	5 hours.
Audits of States, Local Governments, and Non-Profit Organizations.	28	1	30 hours	840 hours.
Memoranda of Agreement	28	1	([1])	8
Subtotal		145		1181 hours.
Total hours		369		1984 hours.

[1] After we publish the final rule, we will prepare a standardized, streamlined memorandum of agreement in consultation with the National US&R Response System Advisory Committee and its Legal Issues Working Group. When completed, we will make a second Paperwork Reduction Act submission to OMB.

Estimated Times and Costs: The approximate annual salary of State and local staff who will complete the forms is $35,000. The approximate hourly rate of pay is $18.90 ($35,000 divided by 1850 hours). The total cost to grantees is estimated to be $37,498.

The cost to DHS is largely personnel salary costs to review and analyze the information collected on these forms—for all DHS grant programs, not just US&R grants, which is a significant portion of grants management annual work. We estimate that for the US&R program, DHS Headquarters would expend approximately 672 hours on analysis, or an average of 24 hours per program. We estimate the cost to DHS to be $14,112 (672 hours times $21 per hour of staff work). Printing costs are minimal because the forms are available in electronic format.

The total annual estimated time and costs are 1984 hours and $37,498 cost to applicants and $14,112 cost to DHS. This calculation is based on the number of burden hours for each type of information collection/form, as indicated above, and the estimated wage rates for those individuals responsible for collecting the information or completing the forms. The new collection is required for sound grants management and compliance with OMB Circulars and DHS regulations.

FOR FURTHER INFORMATION CONTACT: Contact Michael Tamillow, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Washington, DC 20472, telephone (202) 646–2549, facsimile (202) 646–4684, or e-mail *mike.tamillow@dhs.gov* for additional information. You may contact Muriel B. Anderson for copies of the proposed collection of information at (202) 646–2625 or (facsimile) (202) 646–3347, or e-mail *informationcollections@dhs.gov.*

Executive Order 13132 Federalism—Federalism Summary Impact Statement

Executive Order 13132 requires DHS to develop a process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Such policies are defined in the Executive Order to include rules 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.''

We have analyzed this interim rule in accordance with the principles and criteria in the Executive Order and has determined that this interim rule 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. The rule imposes no mandates on State or local governments; participation in the National US&R Response System is strictly voluntary. Moreover, one of the most significant objectives of this program is to build State and local US&R capability. The US&R program recognizes the primary role of State and local governments in responding to disasters and emergencies. Equipment and supplies purchased with Federal funds may be used to respond to in-state disasters and emergencies. The teams may only be deployed across State lines when released by their home State. The assistance these teams provide, like other assistance under the Stafford Act, is only furnished when disaster or emergency needs exceed the combined State and local capabilities and the Governor requests the assistance. Therefore, we certify that this interim rule does not have federalism implications as defined in Executive Order 13132.

While this interim rule does not have federalism implications, this rule has been developed through a collaborative process with representatives of State and local governments. As noted above, the Legal Issues Working Group, a subgroup of the National US&R Response System Advisory Committee, developed the original draft of these regulations. The National US&R Response System presented a draft to DHS. The Legal Issues Working Group and the National US&R Response System Advisory Committee both comprised Federal, State and Local Government officials, as well as representatives of labor organizations, some of whose members serve on the US&R Task Forces.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a ''major rule'' within the meaning of that Act. It standardizes the financing, administration and operation of the National Urban Search and Rescue Response System, a cooperative effort of the Department of Homeland Security, participating State emergency management agencies and local public safety agencies across the country.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This rule is subject to the information collection requirements of the Paperwork Reduction Act and OMB has assigned Control No. 1660–0025. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 208

Disaster assistance, Grant programs.

■ Accordingly, we add part 208 to title 44, chapter I of the Code of Federal Regulations, as follows:

PART 208—NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM

Subpart A—General

Sec.

208.1 Purpose and scope of this part.
208.2 Definitions of terms used in this part.
208.3 Authority for the National US&R Response System.
208.4 Purpose for System.
208.5 Authority of the Director of the Response Division (Director).
208.6 System resource reports.
208.7 Enforcement.
208.8 Code of conduct.
208.9 Agreements between Sponsoring Agencies and Participating Agencies.
208.10 Other regulations.
208.11 Federal status of System Members.
208.12 Maximum Pay Rate Table.
208.13–208.20 [Reserved]

Subpart B—Preparedness Cooperative Agreements

208.21 Purpose.
208.22 Preparedness Cooperative Agreement process.
208.23 Allowable costs under Preparedness Cooperative Agreements.
208.24 Purchase and maintenance of items not listed on Equipment Cache List.
208.25 Obsolete equipment.
208.26 Accountability for use of funds.
208.27 Title to equipment.
208.28–208.30 [Reserved].

Subpart C—Response Cooperative Agreements

208.31 Purpose.
208.32 Definitions of terms used in this subpart.
208.33 Allowable costs.
208.34 Agreements between Sponsoring Agencies and others.
208.35 Reimbursement for Advisory.
208.36 Reimbursement for Alert.
208.37 Reimbursement for equipment and supply costs incurred during Activation.
208.38 Reimbursement for re-supply and logistics costs incurred during Activation.
208.39 Reimbursement for personnel costs incurred during Activation.
208.40 Reimbursement of fringe benefit costs during Activation.
208.41 Administrative allowance.
208.42 Reimbursement for other administrative costs.
208.43 Rehabilitation.
208.44 Reimbursement for other costs.
208.45 Advance of funds.
208.46 Title to equipment.
208.47–208.50 [Reserved]

Subpart D—Reimbursement Claims and Appeals

208.51 General.
208.52 Reimbursement procedures.

208.53–208.59 [Reserved]
208.60 Determination of claims.
208.61 Payment of claims.
208.62 Appeals.
208.63 Request by DHS for supplemental information.
208.64 Administrative and audit requirements.
208.65 Mode of transmission.
208.66 Reopening of claims for retrospective or retroactive adjustment of costs.
208.67–208.70 [Reserved]

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

Subpart A—General

§ 208.1 Purpose and scope of this part.

(a) *Purpose.* The purpose of this part is to prescribe policies and procedures pertaining to the Department of Homeland Security's (DHS) National Urban Search and Rescue Response System.

(b) *Scope.* This part applies to Sponsoring Agencies and other participants in the National Urban Search and Rescue Response System that have executed agreements governed by this part. Part 206 of this chapter does not apply to activities undertaken under this part, except as provided in §§ 208.5 and 208.10 of this part. This part does not apply to reimbursement under part 206, subpart H, of this chapter.

§ 208.2 Definitions of terms used in this part.

(a) *General.* Any capitalized word in this part is a defined term unless such capitalization results from the application of standard capitalization or style rules for Federal regulations. The following definitions have general applicability throughout this part:

Activated or *Activation* means the status of a System resource placed at the direction, control and funding of DHS in response to, or in anticipation of, a presidential declaration of a major disaster or emergency under the Stafford Act.

Activation Order means the DHS communication placing a System resource under the direction, control, and funding of DHS.

Advisory means a DHS communication to System resources indicating that an event has occurred or DHS anticipates will occur that may require Alert or Activation of System resources.

Alert means the status of a System resource's readiness when triggered by an Alert Order indicating that DHS may Activate the System resource.

Alert Order means the DHS communication that places a System resource on Alert status.

Assistance Officer means the DHS employee who has legal authority to bind DHS by awarding and amending Cooperative Agreements.

Backfill means the personnel practice of temporarily replacing a person in his or her usual position with another person.

Cooperating Agency means a State or Local Government that has executed a Cooperative Agreement to provide Technical Specialists.

Cooperative Agreement means a legal instrument between DHS and a Sponsoring Agency or Cooperating Agency that provides funds to accomplish a public purpose and anticipates substantial Federal involvement during the performance of the contemplated activity.

Daily Cost Estimate means a Sponsoring Agency's estimate of Task Force personnel compensation, itemized fringe benefit rates and amounts including calculations, and Backfill expenditures for a 24-hour period of Activation.

Deputy Director means the Deputy Director of the Response Division, Emergency Preparedness and Response Directorate, Department of Homeland Security, or other person that the Director designates.

DHS means the Department of Homeland Security.

Director means the Director of the Response Division, Emergency Preparedness and Response Directorate, DHS.

Disaster Search Canine Team means a disaster search canine and handler who have successfully completed the written examination and demonstrated the performance skills required by the Disaster Search Canine Readiness Evaluation Process. A disaster search canine is a dog that has successfully completed the DHS Disaster Search Canine Readiness Evaluation criteria for Type II or both Type II and Type I.

Emergency means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

Equipment Cache List means the DHS-issued list that defines:

(1) The equipment and supplies that US&R will furnish to Sponsoring Agencies; and

(2) The maximum quantities and types of equipment and supplies that a Sponsoring Agency may purchase and maintain with DHS funds.

Federal Excess Property means any Federal personal property under the control of a Federal agency that the agency head or a designee determines is not required for its needs or for the discharge of its responsibilities.

Federal Response Plan means the signed agreement among various Federal departments and agencies that provides a mechanism for coordinating delivery of Federal assistance and resources to augment efforts of State and Local Governments overwhelmed by a Major Disaster or Emergency, supports implementation of the Stafford Act, as well as individual agency statutory authorities, and supplements other Federal emergency operations plans developed to address specific hazards.

Joint Management Team or *JMT* means a multi-disciplinary group of National Disaster Medical System (NDMS), Urban Search and Rescue (US&R), and other specialists combined to provide operations, planning, logistics, finance and administrative support for US&R and NDMS resources, and to provide technical advice and assistance to States and Local Governments.

Local Government means any county, city, village, town, district, or other political subdivision of any State; any federally recognized Indian tribe or authorized tribal organization; and any Alaska Native village or organization.

Major Disaster means any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, that in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, Local Governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Memorandum of Agreement (MOA) means the document signed by DHS, a Sponsoring Agency and its State that describes the relationship of the parties with respect to the National Urban Search & Rescue Response System.

Participating Agency means a State or Local Government, non-profit organization, or private organization

that has executed an agreement with a Sponsoring Agency to participate in the National US&R Response System.

Personnel Rehabilitation Period means the period allowed by DHS for a person's rehabilitation to normal conditions of living following an Activation.

Preparedness Cooperative Agreement means the agreement between DHS and a Sponsoring Agency for reimbursement of allowable expenditures incurred by the Sponsoring Agency to develop and maintain System capabilities and operational readiness.

Program Directive means guidance and direction for action to ensure consistency and standardization across the National US&R Response System.

Program Manager means the individual, or his or her designee, within DHS who is responsible for day-to-day administration of the National US&R Response System.

Program Office means the organizational entity within DHS that is responsible for day-to-day administration of the National US&R Response System.

Response Cooperative Agreement means an agreement between DHS and a Sponsoring Agency for reimbursement of allowable expenditures incurred by the Sponsoring Agency as a result of an Alert or Activation.

Sponsoring Agency means a State or Local Government that has executed an MOA with DHS to organize and administer a Task Force.

Stafford Act means the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206.

State means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia or the Republic of the Marshall Islands.

Support Specialist means a person participating in the System who assists the Task Force with administrative or other support during mobilization, ground transportation and demobilization as directed.

System or *National US&R Response System* means the national US&R response capability administered by DHS.

System Member means any Task Force Member, JMT Member, Technical Specialist, Support Specialist or Disaster Search Canine Team.

Task Force means an integrated US&R organization of multi-disciplinary resources with common communications and a leader, organized and administered by a Sponsoring Agency and meeting DHS standards.

Task Force Member means a person occupying a position on a Task Force.

Technical Specialist means a person participating in the System contributing technical knowledge and skill who may be placed on Alert or Activated as a single resource and not as a part of a JMT or a Task Force.

US&R means urban search and rescue, the process of searching for, extricating, and providing for the immediate medical stabilization of victims who are entrapped in collapsed structures.

(b) Additional definitions. Definitions for certain terms that apply only to individual subparts of this part are located in those subparts.

§ 208.3 Authority for the National US&R Response System.

(a) *Enabling legislation.* The Federal Emergency Management Agency established and operated the System under the authority of §§ 303, 306(a), 306(b), 403(a)(3)(B) and 621(c) of the Stafford Act, 42 U.S.C. 5144, 5149(a), 5149(b), 5170b(a)(3)(B) and 5197(c), respectively. Section 503 of the Homeland Security Act of 2002, 6 U.S.C. 313, transferred the functions of the Director of FEMA to the Secretary of Homeland Security. The President redelegated to the Secretary of Homeland Security in Executive Order 13286 those authorities of the President under the Stafford Act that had been delegated previously to the Director of FEMA under Executive Order 12148.

(b) *Implementing plan.* The National Response Plan identifies DHS as the primary Federal agency with responsibility for Emergency Support Function 9, Urban Search and Rescue.

§ 208.4 Purpose for System.

It is DHS policy to develop and provide a national system of standardized US&R resources to respond to Emergencies and Major Disasters that are beyond the capabilities of affected State and Local Governments.

§ 208.5 Authority of the Director of the Response Division (Director).

(a) *Participation in activities of the System.* The Director is responsible for determining participation in the System and any activity thereof, including but not limited to whether a System resource is operationally ready for Activation.

(b) *Standards for and measurement of System efficiency and effectiveness.* In addition to the authority provided in § 206.13 of this chapter, the Director may establish performance standards and assess the efficiency and effectiveness of System resources.

§ 208.6 System resource reports.

(a) *Reports to Director.* The Director may request reports from any System resource relating to its activities as part of the System.

(b) *Reports to FEMA Regional Directors.* Any FEMA Regional Director may request through the Director reports from any System resource used within or based within the Regional Director's jurisdiction.

(c) *Audits, investigations, studies and evaluations.* DHS and the General Accounting Office may conduct audits, investigations, studies, and evaluations as necessary. Sponsoring Agencies, Participating Agencies and System Members are expected to cooperate fully in such audits, investigations, studies and evaluations.

§ 208.7 Enforcement.

(a) *Remedies for noncompliance.* In accordance with the provisions of 44 CFR 13.43, if a Sponsoring Agency, Participating Agency, Affiliated Personnel or other System Member materially fails to comply with a term of a Cooperative Agreement, Memorandum of Agreement, System directive or other Program Directive, the Director may take one or more of the actions provided in 44 CFR 13.43(a)(1) through (5). Any such enforcement action taken by the Director will be subject to the hearings, appeals, and effects of suspension and termination provisions of 44 CFR 13.43(b) and (c).

(b) The enforcement remedies identified in this section, including suspension and termination, do not preclude a Sponsoring Agency, Participating Agency, Affiliated Personnel or other System Member from being subject to ''Debarment and Suspension'' under E.O. 12549, as amended, in accordance with 44 CFR 13.43(d).

(c) *Other authority for sanctions.* Nothing in this section limits or precludes the application of other authority to impose civil or criminal sanctions, including 42 U.S.C. 5156.

§ 208.8 Code of conduct.

The Director will develop and implement a code of conduct for System Members acting under DHS's direction and control. Nothing in this section or the DHS code of conduct will limit the authority of a Sponsoring Agency, Participating Agency or Cooperating Agency to apply its own code of conduct to its System Members or employees. If the DHS code is more restrictive, it controls.

§ 208.9 Agreements between Sponsoring Agencies and Participating Agencies.

Every agreement between a Sponsoring Agency and a Participating Agency regarding the System must include a provision making this part applicable to the Participating Agency and its employees who engage in System activities.

§ 208.10 Other regulations.

The following provisions of title 44 CFR, Chapter I also apply to the program in this part:

(a) Section 206.9, which deals with the non-liability of DHS in certain circumstances.

(b) Section 206.11, which prescribes nondiscrimination in the provision of disaster assistance.

(c) Section 206.14, which deals with criminal and civil penalties.

(d) Section 206.15, which permits recovery of assistance by DHS.

§ 208.11 Federal status of System Members.

The Director will appoint all Activated System Members as temporary excepted Federal volunteers. The Director may appoint a System Member who participates in Alert activities as such a Federal volunteer. The Director may also appoint each System Member who participates in DHS-sanctioned preparedness activities as a temporary excepted Federal volunteer. DHS intends these appointments to secure protection for such volunteers under the Federal Employees Compensation Act and the Federal Tort Claims Act and do not intend to interfere with any preexisting employment relationship between a System Member and a Sponsoring Agency, Cooperating Agency or Participating Agency. System Members whom DHS appoints as temporary excepted Federal volunteers will not receive any compensation or employee benefit directly from the United States of America for their service, but will be compensated through their Sponsoring Agency.

§ 208.12 Maximum Pay Rate Table.

(a) *Purpose.* This section establishes the process for creating and updating the Maximum Pay Rate Table (Table), and the Table's use to reimburse Affiliated Personnel (Task Force Physicians, Task Force Engineers, and Canine Handlers) and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency. Section 208.32 defines the ''Maximum Pay Rate Table'' as ''the DHS-issued table that identifies the maximum pay rates for selected System positions that may be used for reimbursement of Affiliated Personnel compensation and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.'' In that same section, the term ''Affiliated Personnel'' is defined as ''individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers.''

(b) *Scope of this section.* (1) The Maximum Pay Rate Table applies to those individuals who are not normally employed by a Sponsoring Agency or Participating Agency, or whose affiliation with a Sponsoring Agency or Participating Agency is as a volunteer; that is, an individual whom the Sponsoring Agency or Participating Agency does not normally compensate in any way, at any rate.

(2) The Table also applies to Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.

(c) *Method for determining maximum pay rates.* (1) DHS uses the United States Office of Personnel Management's salary rates, computed under 5 U.S.C. 5504, as the basis for the maximum pay rate schedule. DHS considers System members' experience and sets maximum pay rates at the maximum grade, middle step for each position, which demonstrates an experience level of five years.

(2) The Office of Personnel Management (OPM) publishes salary and locality pay schedules each calendar year.

(i) *Physicians.* DHS uses the latest Special Salary Rate Table Number 0290 for Medical Officers (Clinical) Worldwide for physicians. The rates used in the initial Table can be found at *http://www.opm.gov/oca/03 tables/SSR/HTML/0290.asp.*

(ii) *Engineers and Canine Handlers.* DHS uses the latest General Schedule pay scale for both positions. Both specialties are compared to the General Schedule pay scale to ensure parity with like specialties on a task force (canine handlers are equated with rescue specialists). The rates used in the initial Table can be found at *http://www.opm.gov/oca/03tables/html/gs.asp.*

(iii) *Locality Pay.* To determine adjustments for locality pay DHS uses the latest locality pay areas (including the ''Rest of U.S.'' area) established by OPM. The rates used in the initial Table can be found at *http://www.opm.gov/oca/03tables/locdef.asp.*

(3) *Review and update.* DHS will review and update the Table periodically, at least annually. The comments of Sponsoring and Participating Agencies and their experience with the Table will be considered and evaluated in the course of the reviews.

(4) *Initial rates and subsequent revisions.* DHS will publish the initial maximum pay rate table in the **Federal Register** as a notice with request for comments. Subsequent revisions will be made to the pay rate table as OPM changes salary rates as described in this section. When subsequent revisions are made to the maximum pay rate table DHS will publish the new maximum pay rate table in the **Federal Register**. The rates will be effective for the latest year indicated by OPM.[1]

(d) *Application of the maximum pay rate table*—(1) *Applicability.* The Maximum Pay Rate Table sets forth maximum rates for which DHS will reimburse the Sponsoring Agency for compensation paid to Activated Affiliated Personnel and as Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.

(2) *Higher rates.* The Sponsoring Agency may choose to pay Affiliated Personnel at a higher rate, but DHS will not reimburse the increment above the maximum rate specified in the Maximum Pay Rate Table. Likewise, the Sponsoring Agency may choose to enter into a Participating Agency agreement with the individual's employer, rather than use the individual as an Affiliated Personnel, in which case the Maximum Pay Rate Table would not apply.

(3) *Compensation for Sponsoring Agency employees serving as Affiliated Personnel.* An employee of a Sponsoring Agency serving on a Task Force in a capacity other than his or her normal job, *e.g.*, a fire department dispatcher affiliated with the Task Force as a canine search specialist, as an Affiliated Personnel, would not necessarily be subject to the Maximum Pay Rate Table for reimbursement for salary and benefits for that individual. However, Sponsoring Agencies may use the rates in the Maximum Pay Rate Table as a guide for establishing compensation levels for such individuals.

(4) *Backfill expenses for Affiliated Personnel under § 208.39(g).* (i) The only way that DHS can reimburse for Backfill costs incurred for Affiliated Personnel is through Participating

[1] In some years the latest year may not be the current calendar year. For instance, OPM did not change its pay rates for calendar year 2004, and the 2003 schedules apply.

Agencies. If reimbursement for Backfill expenses is needed for Affiliated Personnel, DHS encourages them to urge their employers or professional association to seek Participating Agency status.

(ii) *Private, for-profit organizations.* Participating Agency status is available to private, for-profit organizations, *e.g.*, HMOs or medical or engineering professional associations, under the revised definition of ''Participating Agency'' set forth in this Interim rule. (See Definitions, § 208.2, *Participating Agency*, and § 208.32, *Maximum Pay Rate Table*). When a for-profit Participating Agency must backfill an Activated System Member's position we will compensate that Participating Agency up to the maximum rate provided in the Table.

(iii) *Compensation costs.* DHS will reimburse for-profit organizations, for purposes of reimbursement and Backfill, for the System Member's actual compensation or the actual compensation of the individual who Backfills a position (which includes salary and benefits, as described in §§ 208.39 and 208.40), but will not reimburse for billable or other rates that might be charged for services rendered to commercial clients or patients.

§§ 208.13—208.20 [Reserved]

Subpart B—Preparedness Cooperative Agreements

§ 208.21 Purpose.

Subpart B of this part provides guidance on the administration of Preparedness Cooperative Agreements.

§ 208.22 Preparedness Cooperative Agreement process.

(a) *Application.* To obtain DHS funding for an award or amendment of a Preparedness Cooperative Agreement, the Sponsoring Agency must submit an application. Standard form SF–424 ''Application for Federal Assistance'' generally will be used. However, the application must be in a form that the Assistance Officer specifies.

(b) *Award.* DHS will award a Preparedness Cooperative Agreement to each Sponsoring Agency to provide Federal funding to develop and maintain System resource capabilities and operational readiness. For the purposes of the Preparedness Cooperative Agreement, the Sponsoring Agency will be considered the ''recipient.''

(c) *Amendment*—(1) *Procedure.* Absent special circumstances, DHS will fund and amend Preparedness Cooperative Agreements on an annual basis. Before amendment, the Assistance Officer will issue a call for Cooperative Agreement amendment applications. The Assistance Officer will specify required application forms and supporting documentation to be submitted with the application.

(2) *Period of performance.* Absent special circumstances, the period of performance for Preparedness Cooperative Agreements will be 1 year from the date of award. The Assistance Officer may allow for an alternate period of performance with the approval of the Director.

(3) *Assistance Officer.* The Assistance Officer is the only individual authorized to award or modify a Preparedness Cooperative Agreement.

(d) *Award amounts.* The Director will determine award amounts on an annual basis. A Task Force is eligible for an annual award only if the Program Manager receives and approves the Task Force's current-year Daily Cost Estimate.

(e) *DHS priorities.* The Director will establish overall priorities for the use of Preparedness Cooperative Agreement funds taking into consideration the results of readiness evaluations and actual Activations, overall priorities of DHS, and other factors, as appropriate.

(f) *Cost sharing.* The Director may subject Preparedness Cooperative Agreement awards to cost sharing provisions. In the call for Preparedness Cooperative Agreement amendment applications, the Assistance Officer must inform Sponsoring Agencies about any cost sharing obligations.

(g) *Sponsoring Agency priorities.* The Sponsoring Agency should indicate its spending priorities in the application. The Program Manager will review these priorities and will make recommendations to the Assistance Officer for negotiating the final agreement.

(h) *Responsibility to maintain integrity of the equipment cache.* The Sponsoring Agency is responsible to maintain the integrity of the equipment cache, including but not limited to, maintenance of the cache, replacement of equipment or supplies expended in training, activations, or local use of the cache, and timely availability of the cache for Task Force Activations.

§ 208.23 Allowable costs under Preparedness Cooperative Agreements.

System Members may spend Federal funds that DHS provides under any Preparedness Cooperative Agreement and any required matching funds under 44 CFR 13.22 and this section to pay reasonable, allowable, necessary and allocable costs that directly support System activities, including the following:

(a) Administration, including:

(1) Management and administration of day-to-day System activities such as personnel compensation and benefits relating to System maintenance and development, record keeping, inventory of equipment, and correspondence;

(2) Travel to and from System activities, meetings, conferences, training, drills and exercises;

(3) Tests and examinations, including vaccinations, immunizations and other tests that are not normally required or provided in the course of a System Member's employment, and that DHS requires to meet its standards.

(b) Training:

(1) Development and delivery of, and participation in, System-related training courses, exercises, and drills;

(2) Construction, maintenance, lease or purchase of System-related training facilities or materials;

(3) Personnel compensation expenses, including overtime and other related expenses associated with System-related training, exercises, or drills;

(4) System-required evaluations and certifications other than the certifications that DHS requires System Members to possess at the time of entry into the System. For instance, DHS will not pay for a medical school degree, paramedic certification or recertification, civil engineering license, etc.

(c) Equipment:

(1) Procurement of equipment and supplies specifically identified on the then-current DHS-approved Equipment Cache List;

(2) Maintenance and repair of equipment included on the current Equipment Cache List;

(3) Maintenance and repair of equipment acquired with DHS approval through the Federal Excess Property program, except as provided in § 208.25 of this part;

(4) Purchase, construction, maintenance or lease of storage facilities and associated equipment for System equipment and supplies.

(d) Disaster search canine expenses limited to:

(1) Procurement for use as a System resource;

(2) Training and certification expenses;

(3) Veterinary care.

(e) Management and administrative costs, actually incurred but not otherwise specified in this section that directly support the Sponsoring Agency's US&R capability, provided that such costs do not exceed 7.5 percent of the award/amendment amount.

§ 208.24 Purchase and maintenance of items not listed on Equipment Cache List.

(a) Requests for purchase or maintenance of equipment and supplies not appearing on the Equipment Cache List, or that exceed the number specified in the Equipment Cache List, must be made in writing to the Program Manager. No Federal funds provided under any Preparedness Cooperative Agreement may be expended to purchase or maintain any equipment or supply item unless:

(1) The equipment and supplies directly support the Sponsoring Agency's US&R capability;

(2) The Program Manager approves the expenditure and gives written notice of his or her approval to the Sponsoring Agency before the Sponsoring Agency purchases the equipment or supply item.

(b) Maintenance of items approved for purchase under this section is eligible for reimbursement, except as provided in § 208.26 of this subpart.

§ 208.25 Obsolete equipment.

(a) The Director will periodically identify obsolete items on the Equipment Cache List and provide such information to Sponsoring Agencies.

(b) Neither funds that DHS provides nor matching funds required under a Preparedness Cooperative Agreement may be used to maintain or repair items that DHS has identified as obsolete.

§ 208.26 Accountability for use of funds.

The Sponsoring Agency is accountable for the use of funds as provided under the Preparedness Cooperative Agreement, including financial reporting and retention and access requirements according to 44 CFR 13.41 and 13.42.

§ 208.27 Title to equipment.

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Preparedness Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 44 CFR 13.32(g), for example, when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its obligations under the Memorandum of Agreement.

§§ 208.28–208.30 [Reserved]

Subpart C—Response Cooperative Agreements

§ 208.31 Purpose.

Subpart C of this part provides guidance on the administration of Response Cooperative Agreements.

§ 208.32 Definitions of terms used in this subpart.

Affiliated Personnel means individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers.

Demobilization Order means a DHS communication that terminates an Alert or Activation and identifies cost and time allowances for rehabilitation.

Exempt means any System Member who is exempt from the requirements of the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, pertaining to overtime compensation and other labor standards.

Maximum Pay Rate Table means the DHS-issued table that identifies the maximum pay rates for selected System positions that may be used for reimbursement of Affiliated Personnel compensation and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency. The Maximum Pay Rate Table does not apply to a System member whom a Sponsoring Agency or Participating Agency employs.

Mobilization means the process of assembling equipment and personnel in response to an Alert or Activation.

Non-Exempt means any System Member who is covered by 29 U.S.C. 201 *et seq.*

Rehabilitation means the process of returning personnel and equipment to a pre-incident state of readiness after DHS terminates an Activation.

§ 208.33 Allowable costs.

(a) *Cost neutrality.* DHS policy is that an Alert or Activation should be as cost neutral as possible to Sponsoring Agencies and Participating Agencies. To make an Alert or Activation cost-neutral, DHS will reimburse under this subpart all reasonable, allowable, necessary and allocable costs that a Sponsoring Agency or Participating Agency incurs during the Alert or Activation.

(b) *Actual costs.* Notwithstanding any other provision of this chapter, DHS will not reimburse a Sponsoring Agency or Participating Agency for any costs greater than those that the Sponsoring Agency or Participating Agency actually incurs during an Alert, Activation.

(c) *Normal or predetermined practices.* Consistent with Office of Management and Budget (OMB) Circulars A–21, A–87, A–102 and A–110 (2 CFR part 215), as applicable, Sponsoring Agencies and Participating Agencies must adhere to their own normal and predetermined practices and policies of general application when requesting reimbursement from DHS except as it sets out in this subpart.

(d) *Indirect costs.* Indirect costs beyond the administrative and management costs allowance established by § 208.41 of this part are not allowable.

§ 208.34 Agreements between Sponsoring Agencies and others.

Sponsoring Agencies are responsible for executing such agreements with Participating Agencies and Affiliated Personnel as may be necessary to implement the Sponsoring Agency's Response Cooperative Agreement with DHS. Those agreements must identify established hourly or daily rates of pay for System Members. The hourly or daily rates of pay for Affiliated Personnel must be in accordance with, and must not exceed, the maximum pay rates contained in the then-current Maximum Pay Rate Table.

§ 208.35 Reimbursement for Advisory.

DHS will not reimburse costs incurred during an Advisory.

§ 208.36 Reimbursement for Alert.

(a) *Allowable costs.* DHS will reimburse costs incurred during an Alert, up to the dollar limit specified in the Alert Order, for the following activities:

(1) Personnel costs, including Backfill, incurred to prepare for Activation.

(2) Transportation costs relating to hiring, leasing, or renting vehicles and drivers.

(3) The administrative allowance provided in § 208.41 of this part.

(4) Food and beverages for Task Force Members and Support Specialists when DHS does not provide meals during the Alert. DHS will limit food and beverage reimbursement to the amount of the then-current Federal meals daily allowance published in the **Federal Register** for the locality where such food and beverages were provided, multiplied by the number of personnel who received them.

(b) *Calculation of Alert Order dollar limit.* The Alert Order dollar limit will equal:

(1) An allowance of 10 percent of the Task Force's Daily Cost Estimate; and

(2) A supplemental allowance of 1 percent of the Task Force's Daily Cost Estimate for each 24-hour period beyond the first 72 hours of Alert.

(c) *Non-allowable costs.* DHS will not reimburse costs incurred or relating to the leasing, hiring or chartering of aircraft or the purchase of any equipment, aircraft, or vehicles.

§ 208.37 Reimbursement for equipment and supply costs incurred during Activation.

(a) *Allowable costs.* DHS will reimburse costs incurred for the emergency procurement of equipment and supplies in the number, type, and up to the cost specified in the current approved Equipment Cache List, and up to the aggregate dollar limit specified in the Activation Order. The Director may determine emergency procurement dollar limits, taking into account previous Activation history, available funding, the extent and nature of the incident, and the current state of Task Force readiness.

(b) *Non-Allowable costs.* DHS will not reimburse costs incurred for items that are not listed on the Equipment Cache List; for items purchased greater than the cost or quantity identified in the Equipment Cache List; or for any purchase of non-expendable items that duplicate a previous purchase under a Preparedness or Response Cooperative Agreement.

§ 208.38 Reimbursement for re-supply and logistics costs incurred during Activation.

With the exception of emergency procurement authorized in the Activation Order, and replacement of consumable items provided for in § 208.43(a)(2) of this subpart, DHS will not reimburse costs incurred for re-supply and logistical support during Activation. Re-supply and logistical support of Task Forces needed during Activation are the responsibility of the Joint Management Team.

§ 208.39 Reimbursement for personnel costs incurred during Activation.

(a) *Compensation.* DHS will reimburse the Sponsoring Agency for costs incurred for the compensation of each Activated System Member during Activation. Reimbursement of compensation costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the Activation or traveling to or from locations at which they were actively supporting the Activation. The provisions of § 208.40 of this part govern costs incurred for providing fringe benefits to System Members.

(b) *Public Safety Exemption not applicable.* DHS will reimburse Sponsoring Agencies for costs incurred by Non-Exempt System Members in accordance with 29 U.S.C. 207(a) of the Fair Labor Standards Act, without regard to the public safety exemption contained in 29 U.S.C. 207(k). In other words, DHS will reimburse Sponsoring Agencies on an overtime basis for any hours worked by Non-Exempt System Members greater than 40 hours during a regular workweek.

(c) *Tour of duty.* The tour of duty for all Activated System Members will be 24 hours. DHS will reimburse the Sponsoring Agency for salary and overtime costs incurred in compensating System Members for meal periods and regularly scheduled sleep periods during Activation. Activated System Members are considered ''on-duty'' and must be available for immediate response at all times during Activation.

(d) *Regular rate.* The regular rate for purposes of calculating allowable salary and overtime costs is the amount determined in accordance with § 208.39(e)(1) through (3) of this subpart.

(e) *Procedures for calculating compensation during Activation.* A Sponsoring Agency or Participating Agency must:

(1) Convert the base hourly wage of any Non-Exempt System Member regularly paid under 29 U.S.C. 207(k) to its equivalent for a 40-hour work week;

(2) Convert the annual salary of any salaried Non-Exempt System Member to its hourly equivalent for a 40-hour workweek;

(3) Calculate the daily compensation of Exempt System Members based on their current annual salary, exclusive of fringe benefits;

(4) Calculate the total number of hours worked by each System Member to be included in the Sponsoring Agency's request for reimbursement; and

(5) Submit a request for reimbursement under § 208.52 of this part according to the following table:

If the Sponsoring Agency or Participating Agency * * *	And the Sponsoring Agency or Participating Agency * * *	Then the following compensation costs are allowable:
(i) Customarily and usually compensates Exempt System Members by paying a salary, but not overtime,	Does not customarily and usually grant compensatory time or other form of overtime substitute to Exempt System members.	The daily compensation equivalent calculated under § 208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation.
(ii) Customarily and usually compensates Exempt System Members by paying a salary but not overtime	Customarily and usually awards compensatory time or other overtime substitute for Exempt System Members for hours worked above a predetermined hours threshold (for example, the Sponsoring Agency customarily and usually grants compensatory time for all hours worked above 60 in a given week).	The daily compensation equivalent calculated under § 208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation AND the dollar value at the time of accrual of the compensatory time or other overtime substitute for each Activated Exempt System Member based on the duration of the Activation.
(iii) Customarily and usually compensates Exempt System Members by paying a salary and overtime,	Customarily and usually calculates overtime for Exempt System Members by paying a predetermined overtime payment for each hour worked above a predetermined hours threshold,.	The daily compensation equivalent calculated under § 208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation AND the predetermined overtime payment for each hour during the Activation above the previously determined hours threshold for each Activated Exempt System Member.
(iv) Customarily and usually compensates Non-Exempt System Members by paying overtime after 40 hours per week,	Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System members,.	For each seven-day period during the Activation, the hourly wage of each Activated Non-Exempt System Member for the first 40 hours AND the overtime payment for each Activated Non-Exempt System Member for every hour over 40.

If the Sponsoring Agency or Participating Agency * * *	And the Sponsoring Agency or Participating Agency * * *	Then the following compensation costs are allowable:
(v) Customarily and usually compensates Non-Exempt System Members according to a compensation plan established under 29 U.S.C. 207(k),	Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System Members,.	For each seven-day period during the Activation, the hourly wage equivalent of each Activated Non-Exempt System Member calculated under § 208.39(e)(1) of this part for the first 40 hours AND the overtime payment equivalent for each Activated Non-Exempt System Member calculated under § 208.39(e)(1) of this part for every hour over 40.
(vi) Activates Personnel, who are customarily and usually paid an hourly wage according to the Maximum Pay Rate Table,	.....	For each seven-day period during the Affiliated Activation, the hourly wage for each Activated Affiliated Personnel for the first 40 hours and one and one-half times the hourly wage for each Activated Affiliated Personnel for every hour over 40.
(vii) Activates Affiliated Personnel who are customarily and usually paid a daily compensation rate according to the Maximum Pay Rate Table,	.....	The daily compensation rate for each Activated Affiliated Personnel for each full or partial day during the Activation.

(f) *Reimbursement of additional salary and overtime costs.* DHS will reimburse any identified additional salary and overtime cost incurred by a Sponsoring Agency as a result of the temporary conversion of a Non-Exempt System Member normally compensated under 29 U.S.C. 207(k) to a 40-hour work week under 29 U.S.C. 207(a).

(g) *Reimbursement for Backfill costs upon Activation.* DHS will reimburse the cost to Backfill System Members. Backfill costs consist of the expenses generated by filling the position in which the Activated System Member should have been working. These costs are calculated by subtracting the non-overtime compensation, including fringe benefits, of Activated System Members from the total costs (non-overtime and overtime compensation, including fringe benefits) paid to Backfill the Activated System Members. Backfill reimbursement is available only for those positions that are normally Backfilled by the Sponsoring Agency or Participating Agency during Activation. Employees exempt under the Fair Labor Standards Act (FLSA) not normally Backfilled by the Sponsoring Agency or Participating Agency are not eligible for Backfill during Activation.

§ 208.40 Reimbursement of fringe benefit costs during Activation.

(a) Except as specified in §208.40 (c) of this subpart, DHS will reimburse the Sponsoring Agency for fringe benefit costs incurred during Activation according to the following table:

If the Sponsoring Agency or Participating Agency * * *	Then the Sponsoring Agency or Participating Agency must * * *	Example
(1) Incurs a fringe benefit cost based on the number of base hours worked by a System Member,	Bill DHS for a pro-rata share of the premium based on the number of base hours worked during Activation.	The City Fire Department incurs a premium of 3 percent for dental coverage based on the number of base hours worked in a week (53 hours). The City should bill DHS an additional 3 percent of the firefighter's converted compensation for the first 40 hours Activation.
(2) Incurs a fringe benefit cost based on the number of hours a System Member actually worked (base hours and overtime),	Bill DHS for a pro-rata share of the premium based on the number of hours each System Member worked during Activation.	The City Fire Department pays a premium of 12 percent for retirement based on the number of hours worked by a firefighter. The City should bill DHS an additional 12 percent of the firefighter's total compensation during Activation.
(3) Incurs a fringe benefit cost on a yearly basis based on the number of people employed full-time during the year,	Bill DHS for a pro-rata share of those fringe benefit costs based on the number of non-overtime hours worked during Activation by System Members employed full time.	The City Fire Department pays workers compensation premiums into the City risk fund for the following year, based on the number of full-time firefighters employed during the current year. The City should bill DHS for workers compensation premium costs by multiplying the hourly fringe benefit rate or amount by the number of non-overtime hours worked during Activation by full time firefighters who are System Members.

(b) *Differential pay.* DHS will reimburse the Sponsoring Agency for direct costs incurred because of any separate differential compensation paid for work performed during an Activation including, but not limited to, differentials paid for holidays, night work, hazardous duty, or other paid fringe benefits, provided such differentials are not otherwise reimbursed under paragraph (a) of this section. A detailed explanation of the differential payment for which the Sponsoring Agency seeks reimbursement must accompany any

request for reimbursement under this section together with identification of every fringe benefit sought under §208.40(a) of this part and the method used to calculate each such payment and the reimbursement sought from DHS.

(c) DHS will not reimburse the Sponsoring Agency for fringe benefit costs for Affiliated Personnel.

§ 208.41 Administrative allowance.

(a) The administrative allowance is intended to defray costs of the following activities, to the extent provided in paragraph (b) of this section:

(1) Collecting expenditure information from Sponsoring Agencies and Participating Agencies;

(2) Compiling and summarizing cost records and reimbursement claims;

(3) Duplicating cost records and reimbursement claims; and

(4) Submitting reimbursement claims, including mailing, transmittal, and related costs.

(b) The administrative allowance will be equal to the following:

(1) If total allowable costs are less than $100,000, 3 percent of total allowable costs included in the reimbursement claim;

(2) If total allowable costs are $100,000 or more but less than $1,000,000, $3,000 plus 2 percent of costs included in the reimbursement claim greater than $100,000;

(3) If total allowable costs are $1,000,000 or more, $21,000 plus 1 percent of costs included in the reimbursement claim greater than $1,000,000.

§ 208.42 Reimbursement for other administrative costs.

Costs incurred for conducting after-action meetings and preparing after-action reports must be billed as direct costs in accordance with DHS administrative policy.

§ 208.43 Rehabilitation.

DHS will reimburse costs incurred to return System equipment and personnel to a state of readiness following Activation as provided in this section.

(a) *Costs for Equipment Cache List items*—(1) *Non-consumable items.* DHS will reimburse costs incurred to repair or replace any non-consumable item on the Equipment Cache List that was lost, damaged, destroyed, or donated at DHS direction to another entity, during Activation. For each such item, the Sponsoring Agency must document, in writing, the circumstances of the loss, damage, destruction, or donation.

(2) *Consumable items.* DHS will reimburse costs incurred to replace any consumable item on the Equipment Cache List that was consumed during Activation.

(3) *Personnel costs associated with equipment cache rehabilitation.* DHS will reimburse costs incurred for the compensation, including benefits, payable for actual time worked by each person engaged in rehabilitating the equipment cache following Activation, in accordance with the standard pay policy of the Sponsoring Agency or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this part, up to the number of hours specified in the Demobilization Order. Fringe benefits are reimbursed under the provisions of § 208.40 of this part.

(b) *Costs for personnel rehabilitation.* DHS will reimburse costs incurred for the compensation, including benefits and Backfill, of each Activated System Member regularly scheduled to work during the rehabilitation period specified in the Demobilization Order, in accordance with the standard pay policy of the Sponsoring Agency or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this part.

(c) *Other allowable costs*—(1) *Local transportation.* DHS will reimburse costs incurred for transporting Task Force Members from the point of assembly to the point of departure and from the point of return to the location where they are released from duty. DHS will also reimburse transportation costs incurred for assembling and moving the equipment cache from its usual place(s) of storage to the point of departure, and from the point of return to its usual place(s) of storage. Such reimbursement will include costs to return the means of transportation to its point of origin.

(2) *Ground transportation.* When DHS orders a Sponsoring Agency to move its Task Force Members and equipment cache by ground transportation, DHS will reimburse costs incurred for such transportation, including but not limited to charges for contract carriers, rented vehicles, contract vehicle operators, fleet vehicles, fuel and associated transportation expenses. The Director has authority to issue schedules of maximum hourly or per mile reimbursement rates for fleet and contract vehicles.

(3) *Food and beverages.* DHS will reimburse expenditures for food and beverages for Activated Task Force Members and Support Specialists when the Federal government does not provide meals during Activation. Reimbursement of food and beverage costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the Activation or traveling to or from locations at which they were actively supporting the Activation. Food and beverage reimbursement will be limited to the amount of the then-current Federal meals and incidental expenses daily allowance published in the **Federal Register** for the locality where such food and beverages were provided, multiplied by the number of personnel who received the same.

§ 208.44 Reimbursement for other costs.

(a) Except as allowed under paragraph (b) of this section, DHS will not reimburse other costs incurred preceding, during or upon the conclusion of an Activation unless, before making the expenditure, the Sponsoring Agency has requested, in writing, permission for a specific expenditure and has received written permission from the Program Manager or his or her designee to make such expenditure.

(b) At the discretion of the Program Manager or his or her designee, a request for approval of costs presented after the costs were incurred must be in writing and establish that:

(1) The expenditure was essential to the Activation and was reasonable;

(2) Advance written approval by the Program Manager was not feasible; and

(3) Advance verbal approval by the Program Manager had been requested and was given.

§ 208.45 Advance of funds.

At the time of Activation of a Task Force, the Task Force will develop the documentation necessary to request an advance of funds be paid to such Task Force's Sponsoring Agency. Upon approval, DHS will submit the documentation to the Assistance Officer and will request an advance of funds up to 75 percent of the estimated personnel costs for the Activation. The estimated personnel costs will include the salaries, benefits, and Backfill costs for Task Force Members and an estimate of the salaries, benefits and Backfill costs required for equipment cache rehabilitation. The advance of funds will not include any costs for equipment purchase.

§ 208.46 Title to equipment.

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Response Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 44 CFR 13.32(g), when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its

obligations under the Memorandum of Agreement.

§§ 208.47–208.50 [Reserved]

Subpart D—Reimbursement Claims and Appeals

§ 208.51 General.

(a) *Purpose.* This subpart identifies the procedures that Sponsoring Agencies must use to request reimbursement from DHS for costs incurred under Response Cooperative Agreements.

(b) *Policy.* It is DHS policy to reimburse Sponsoring Agencies as expeditiously as possible consistent with Federal laws and regulations.

§ 208.52 Reimbursement procedures.

(a) *General.* A Sponsoring Agency must present a claim for reimbursement to DHS in such manner as the Director specifies .

(b) *Time for submission.* (1) Claims for reimbursement must be submitted within 90 days after the end of the Personnel Rehabilitation Period specified in the Demobilization Order.

(2) The Director may extend and specify the time limitation in paragraph (b)(1) of this section when the Sponsoring Agency justifies and requests the extension in writing.

§§ 208.53–208.59 [Reserved]

§ 208.60 Determination of claims.

When DHS receives a reviewable claim for reimbursement, DHS will review the claim to determine whether and to what extent reimbursement is allowable. Except as provided in § 208.63 of this part, DHS will complete its review and give written notice to the Sponsoring Agency of its determination within 90 days after the date DHS receives the claim. If DHS determines that any item of cost is not eligible for reimbursement, its notice of determination will specify the grounds on which DHS disallowed reimbursement.

§ 208.61 Payment of claims.

DHS will reimburse all allowable costs for which a Sponsoring Agency requests reimbursement within 30 days after DHS determines that reimbursement is allowable, in whole or in part, at any stage of the reimbursement and appeal processes identified in this subpart.

§ 208.62 Appeals.

(a) *Initial appeal.* The Sponsoring Agency may appeal to the Program Manager any determination made under § 208.60 of this part to disallow reimbursement of an item of cost:

(1) The appeal must be in writing and submitted within 60 days after receipt of DHS's written notice of disallowance under § 208.60 of this part.

(2) The appeal must contain legal and factual justification for the Sponsoring Agency's contention that the cost is allowable.

(3) Within 90 days after DHS receives an appeal, the Program Manager will review the information submitted, make such additional investigations as necessary, make a determination on the appeal, and submit written notice of the determination of the appeal to the Sponsoring Agency.

(b) *Final appeal.* (1) If the Program Manager denies the initial appeal, in whole or in part, the Sponsoring Agency may submit a final appeal to the Deputy Director. The appeal must be made in writing and must be submitted not later than 60 days after receipt of written notice of DHS's determination of the initial appeal.

(2) Within 90 days following the receipt of a final appeal, the Deputy Director will render a determination and notify the Sponsoring Agency, in writing, of the final disposition of the appeal.

(c) *Failure to file timely appeal.* If the Sponsoring Agency does not file an appeal within the time periods specified in this section, DHS will deem that the Sponsoring Agency has waived its right to appeal any decision that could have been the subject of an appeal.

§ 208.63 Request by DHS for supplemental information.

(a) At any stage of the reimbursement and appeal processes identified in this subpart, DHS may request the Sponsoring Agency to provide supplemental information that DHS considers necessary to determine either a claim for reimbursement or an appeal. The Sponsoring Agency must exercise its best efforts to provide the supplemental information and must submit to DHS a written response that includes such supplemental information as the Sponsoring Agency is able to provide within 30 days after receiving DHS's request.

(b) If DHS makes a request for supplemental information at any stage of the reimbursement and appeal processes, the applicable time within which its determination of the claim or appeal is to be made will be extended by 30 days. However, without the consent of the Sponsoring Agency, no more than one such time extension will be allowed for any stage of the reimbursement and appeal processes.

§ 208.64 Administrative and audit requirements.

(a) *Non-Federal audit.* For Sponsoring Agencies and States, requirements for non-Federal audit are contained in 44 CFR 13.26, in accordance with OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations.

(b) *Federal audit.* DHS or the General Accounting Office may elect to conduct a Federal audit of any payment made to a Sponsoring Agency or State.

§ 208.65 Mode of transmission.

When sending all submissions, determinations, and requests for supplemental information under this subpart, all parties must use a means of delivery that permits both the sender and addressee to verify the dates of delivery.

§ 208.66 Reopening of claims for retrospective or retroactive adjustment of costs.

(a) Upon written request by the Sponsoring Agency DHS will reopen the time period for submission of a request for reimbursement after the Sponsoring Agency has submitted its request for reimbursement, if:

(1) The salary or wage rate applicable to the period of an Activation is retroactively changed due to the execution of a collective bargaining agreement, or due to the adoption of a generally applicable State or local law, ordinance or wage order or a cost-of-living adjustment;

(2) The Sponsoring Agency or any Participating Agency incurs an additional cost because of a legally-binding determination; or

(3) The Deputy Director determines that other extenuating circumstances existed that prevented the Sponsoring Agency from including the adjustment of costs in its original submission.

(c) The Sponsoring Agency must notify DHS as early as practicable that it anticipates such a request.

§§ 208.67–208.70 [Reserved]

Dated: February 3, 2005.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–3192 Filed 2–23–05; 8:45 am]

BILLING CODE 9110–69–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[DHS–2004–0010]

RIN 1660–ZA09

Maximum Pay Rate Table, National Urban Search and Rescue Response System (US&R)

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate (EP&R), Department of Homeland Security (DHS).

ACTION: Notice of Maximum Pay Rate Table, National Urban Search and Rescue Response System, with request for comments.

SUMMARY: The Department of Homeland Security is publishing this proposed Maximum Pay Rate Table (Table) in conjunction with its interim rule for National Urban Search and Rescue Response (US&R) System, which is also being published in this edition of the **Federal Register**. The interim rule standardizes the financing, administration and operation of the US&R System, and standardizes the relationships between DHS and ''Sponsoring Agencies'' of the US&R System—those State or local government agencies that agree to organize and administer a US&R Task Force. This notice seeks comment on the proposed Table, which establishes the maximum rates that DHS will pay for US&R Task Force physicians, engineers and canine handlers as ''Affiliated Personnel'' or for backfill positions for activated US&R System Members employed by or otherwise associated with a for-profit ''Participating Agency.''

DATES: Please submit written comments on or before April 11, 2005.

ADDRESSES: *Mail:* When submitting comments by mail, please send the comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472. To ensure proper handling, please reference RIN 1660–ZA09 and Docket No. DHS–2004–0010 on your correspondence. This mailing address may also be used for submitting comments on paper, disk, or CD-ROM.

Hand Delivery/Courier: The address for submitting comments by hand delivery or courier is the same as that for submitting comments by mail.

Viewing comments: You may view comments and background material at: *http://www.epa.gov/feddocket*. You may also inspect comments in person at the Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Michael Tamillow, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 326, Washington, DC 20472, (202) 646–2549, or (e-mail) *mike.tamillow@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Federal Emergency Management Agency (FEMA) published a proposed rule, National Urban Search and Rescue Response (US&R) System, on December 18, 2002, 67 FR 77627—77640. The rule standardizes the financing, administration and operation of the US&R System, an emergency response program that locates, extricates and provides initial medical aid to victims trapped in collapsed structures and victims of weapons of mass destruction events, and other assigned tasks. The rule also standardizes the relationships between DHS and ''Sponsoring Agencies'' of the US&R System—those State or local government agencies that have signed a memorandum of agreement with DHS to organize and administer a US&R Task Force. On March 1, 2003, FEMA became a part of the Emergency Preparedness and Response Directorate, Department of Homeland Security (DHS). The US&R System is now a program in FEMA under the EP&R Directorate.

The Department of Homeland Security is publishing this proposed Maximum Pay Rate Table (Table) in conjunction with its interim rule for National Urban Search and Rescue Response (US&R) System (RIN 1660–AA07), which can be found elsewhere in this issue of the **Federal Register**. When FEMA published the proposed rule for the National Urban Search and Rescue Response System the Maximum Pay Rate Table was still being prepared and was unavailable for public comment. The Table establishes the maximum rates that DHS will pay for US&R Task Force physicians, engineers and canine handlers as ''Affiliated Personnel'' or backfill for activated US&R System Members employed by or otherwise associated with a for-profit ''Participating Agency.'' As there was no formal opportunity for public comment earlier, DHS now requests comments on the Table. DHS will review and evaluate all comments that it receives, and will incorporate any changes that it approves in the final rule for the US&R System.

Section 208.12 of the interim rule for the US&R System establishes the process for creating and updating the Table, and the procedures for using the Table to reimburse ''Affiliated Personnel,'' individuals not normally employed by a ''Sponsoring Agency'' or ''Participating Agency'' as US&R System Members, and ''Backfill'' for Activated US&R ''System Members'' employed by or associated with for-profit ''Participating Agencies.'' DHS expects to review and evaluate the Table periodically, and will publish any adjustments to the Table as Notices in the **Federal Register**.

The Maximum Pay Rate Table sets maximum rates that DHS will reimburse the ''Sponsoring Agency'' for compensation paid to ''Affiliated Personnel'' while activated for a US&R emergency, and for backfill for activated ''System Members'' from for-profit ''Participating Agencies.'' ''Participating Agencies'' include not-for-profit and for-profit organizations that have executed an agreement with a ''Sponsoring Agency'' to participate in the US&R System by making certain personnel available during a US&R emergency. The ''Sponsoring Agency'' or ''Participating Agency'' may choose to compensate these individuals at a higher rate, but DHS will not reimburse the increment above the maximum rate specified in the Maximum Pay Rate Table.

Similarly, the ''Sponsoring Agency'' may choose to enter into a Participating Agency agreement with an individual's employer, rather than use the individual as an ''Affiliated Personnel,'' in which case the Maximum Pay Rate Table would not apply. Consequently, only a ''Sponsoring Agency's'' choice to exceed the maximum rates set forth in the Maximum Pay Rate Table would result in an uncompensated expenditure, and the Table would not violate the principle of cost neutrality.

Maximum Pay Rate Table

US&R Task Force physicians, engineers and canine search specialists will be paid using the following rates:

Task Force Physician	GS–15 Step 5	$51.84/hour plus locality adjustment.
Task Force Engineer	GS–15 Step 5	$46.39/hour plus locality adjustment.

Canine Handler	GS–12 Step 5	$28.06/hour plus locality adjustment.

DHS derived these pay scales by using the annual salary from the 2003 Special Salary Rate Tables Medical Officers 0290 and the Salary Table 2003 GS. Annual rates were then divided by 2080 hours, the number of work-hours per year based on a 40-hour workweek. These pay rate tables can be found at: *http://www.opm.gov/oca/03tables/SSR/HTML/0290.asp* and *http://www.opm.gov/oca/03tables/html/gs.asp.*

Locality Pay Areas

There are 32 locality pay areas (including the ''Rest of U.S.'' area). Unless otherwise noted, all of the components are counties. Locality Pay Areas are found at: *http://www.opm.gov/oca/03tables/locdef.asp.*

Rationale for the Selection of These Maximum Pay Rate Table Rates

After the September 11, 2001 US&R deployment, DHS reviewed the claims and reimbursement process for compensating professionals participating in US&R emergencies, which revealed a wide range of salaries and reimbursement mechanisms for compensating US&R Task Force physicians, engineers and canine handlers. The lack of uniformity led to confusion in the reimbursement process and highlighted the need for a standardized payment schedule for selected System Members. This proposed maximum pay rate table adds the standardization and credibility necessary to continue the life saving US&R program.

The United States Office of Personnel Management (OPM) sets the hourly and biweekly salary rates for General Schedule (government) employees. 5 U.S.C. 5504. To ensure an equitable and reasonable maximum pay rate standard, DHS is relying upon OPM's salary rates as the cornerstone of its pay rate schedule for US&R System Members. Taking System Members' experience into consideration, DHS set maximum pay rates at the maximum grade, middle step for each position, which demonstrates an experience level of five years.

OPM publishes salary schedules for each calendar year.[1] Because the Federal government employs physicians, DHS used the 2003 Special Salary Rate Table for Medical Officers (Clinical) Worldwide in developing this maximum pay rate matrix for Task Force Physicians. DHS initially averaged engineers' and canine handlers' salaries using the data gathered during the September 11, 2001 deployment reimbursement process. The DHS review of that salary information revealed a close correlation to the OPM's 2003 General Schedule pay scale for both positions. In addition, DHS compared canine handlers' salaries to rescue specialists and further compared them to the General Schedule pay scale to ensure parity with like specialties on a task force.

Relation of Maximum Pay Rate Table to the Interim Rule for US&R System

Section 208.12 of the interim rule for US&R System establishes how DHS will create, update and use the Table to reimburse ''Affiliated Personnel'' and ''Backfill'' for ''Activated System Members.'' The Table applies only to US&R Task Force Physicians, US&R Task Force Engineers and Canine Handlers. DHS will publish the initial Maximum Pay Rate Table and subsequent revisions to the Table in the **Federal Register**.

Previous Comments on Maximum Pay Rate Table

Several ''Sponsoring Agencies'' commenting on the previously published proposed rule for US&R Systems expressed concern that highly trained civilians such as physicians, structural engineers and canine handlers are typically Affiliated Personnel, and reimbursement for backfill expenses is important to secure the participation of these individuals in the System. The comments argued that a restriction on backfill costs for Affiliated Personnel could limit the ability of Sponsoring Agencies to recruit and retain these highly trained civilians.

The commenters are essentially correct in that the way that DHS reimburses Affiliated Personnel for backfill costs is normally through Sponsoring Agencies to Participating Agencies. DHS only has a direct relationship with Sponsoring Agencies, and does not have direct relationships with Participating Agencies or Affiliated Personnel. If reimbursement for backfill expenses is a problem for Affiliated Personnel, DHS encourages them to have their employers or professional association seek Participating Agency status. Note that compensation costs, for the purposes of reimbursement and backfill, refer to the System Member's actual compensation, or the compensation of the individual who backfills a position (which includes salary and benefits, as described in §§ 208.39 and 208.40 of the interim rule for US&R System), rather than billable or other rates that might be charged for services rendered to commercial clients or patients.

Request for New Comments

Accordingly, DHS asks for written comments on the Maximum Pay Rate Table.

Dated: February 3, 2005.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–3189 Filed 2–23–05; 8:45 am]

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[1] In some years, the applicable pay schedule may be from a previous year. For instance, OPM did not change its pay rates for calendar year 2004, and the 2003 schedules applied during 2004.

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