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WHEN: Tuesday, August 16, 2005
9:00 a.m.-Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 11

[Docket No. 05–14]

RIN 1557–AC75

Electronic Filing and Disclosure of Beneficial Ownership Reports

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this final rule to adopt in final form, without substantive change, an interim rule to amend the OCC's rules, policies, and procedures to require the electronic filing of beneficial ownership reports by officers, directors, and major shareholders of national banks that have equity securities registered under the Securities Exchange Act of 1934.

As required by the interim rule, this final rule requires that all reports filed with the OCC under section 16(a) of the Securities Exchange Act of 1934 must be filed electronically and posted on a registered national bank's Web site, if it has one, as soon as practicable. This final rule clarifies procedures for officers, directors, and principal shareholders of registered national banks to comply with these mandated electronic filing requirements.

DATES: This final rule is effective on September 9, 2005.

FURTHER INFORMATION CONTACT: Asa Chamberlayne, Counsel, Securities and Corporate Practices Division, 202–874–5210, or Martha Vestal Clarke, Counsel, Legislative and Regulatory Activities Division, 202–874–5090.

SUPPLEMENTARY INFORMATION:

Background

The Securities Exchange Act of 1934 (Exchange Act) seeks to protect investors by requiring accurate, reliable, and timely corporate securities disclosures. Generally, companies with equity securities that are subject to the registration requirements under section 12 of the Exchange Act (15 U.S.C. 78l) must register these securities with the Securities and Exchange Commission (SEC). Section 16(a) of the Exchange Act (15 U.S.C. 78p(a)) requires directors, executive officers, and direct or indirect beneficial owners of more than 10 percent of a class of securities that are registered under the Exchange Act (insiders) to file beneficial ownership reports regarding their ownership and transactions in the company's securities.¹ Section 12(i) of the Exchange Act (15 U.S.C. 78l(i)) vests the OCC, rather than the SEC, with the power to issue regulations implementing certain Exchange Act requirements with respect to national banks that have equity securities registered under the Exchange Act (registered national banks), including section 16, and with the authority to administer and enforce these requirements.²

As amended by the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, section 16(a) requires that insiders of a registered company, including a registered national bank, must file beneficial ownership reports: (1) At the time the company registers its securities pursuant to section 12 of the Exchange Act; (2) within 10 days after becoming an insider of a registered national bank; and (3) within two business days after an insider consummates a transaction resulting in a change in ownership, or resulting in the purchase or sale of a security-based swap agreement,³ in the registered securities. These provisions became effective on August 29, 2002.

Section 16(a)(4) (15 U.S.C. 78p(a)(4)) also requires that, beginning July 30,

¹ Section 16(a) also requires an entity that has registered its securities under the Exchange Act to file initial and transactional reports with any national securities exchange on which it has listed its securities. See 15 U.S.C. 78p(a).

² Under section 12(i), the other Federal banking agencies have the same authority with respect to the registered depository institutions that they supervise. See 15 U.S.C. 78l(i).

³ The term "security-based swap agreement" is defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note).

2003, insiders must file their change-in-ownership reports electronically. Moreover, the SEC, and the OCC in the case of registered national banks, must make these filings available to the public on the Internet not later than the end of the business day following the filing. Also, a registered company, including a registered national bank, must post its insiders' change-in-ownership reports on its Web site, if it has a Web site, not later than the end of the business day following the filing.

The SEC's final rules implementing these requirements for other public companies mandate that all beneficial ownership reports filed under section 16(a), not only the change-in-ownership reports, must be filed electronically and posted on a public company's Web site, if the company has a Web site, not later than the end of the business day following the filing. In addition, the SEC provides Internet access to all such filings that are filed with the SEC. The SEC's rules were effective for all section 16(a) filings that are made on or after June 30, 2003.⁴

The SEC's final rules also amended 17 CFR 240.16a–3, which applies to registered national banks through the OCC's regulations at 12 CFR 11.2(b)(2). As amended by the SEC, 17 CFR 240.16a–3 provides that any issuer with a corporate Web site must post any section 16(a) report on that Web site by the end of the business day after the filing, and the filing must remain accessible on the Web site for at least 12 months. These same requirements apply to registered national banks.

On September 22, 2003, the OCC published and requested comment on an interim rule amending 12 CFR part 11 (see 68 FR 54981). In the interim rule, we imposed requirements similar to those adopted by the SEC and required that all section 16(a) reports must be filed electronically by the required due dates. To provide for the electronic filing of insiders' reports under section 16(a) of the Exchange Act, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the OCC created an electronic filing system utilizing the FDICconnect secure Web platform. This filing system became operational on July 30, 2003.

In order to assure that this new system was operating effectively, we did

⁴ See 68 FR 25788 (May 13, 2003).

not require compliance with the electronic filing and Web site posting requirements until January 1, 2004. We advised that, before January 1, 2004, to the extent practicable, registered national banks should post the section 16(a) filings on their Web sites and their insiders should file their section 16(a) reports electronically.

Description of Comments and Final Rule

The comment period on the interim rule ended November 21, 2003, and no comments were received. Moreover, while a very few banks may have had some minor problems connecting to or filing reports on FDICconnect in the past, no further problems have been reported. Thus, the OCC is adopting the interim rule as a final rule with no substantive modifications.

Accordingly, the final rule revises 12 CFR 11.3(a), which relates to filing requirements and the inspection of documents filed with the OCC pursuant to the Exchange Act. The rule contains a new § 11.3(a)(2), which provides that statements that are required to be filed electronically pursuant to section 16(a) of the Exchange Act shall be filed electronically. New § 11.3(a)(4) clarifies that the electronic filing and Web site posting requirements are mandatory for section 16(a) statements that are required to be filed on or after January 1, 2004.

The final rule also adds a new § 11.3(a)(3)(ii) which provides that an electronic filing pursuant to section 16(a) of the Exchange Act submitted by direct transmission on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, shall be deemed filed on the same business day. This aspect of the final rule is consistent with the SEC's rules applicable to electronic filings that apply to other registered companies. See 17 CFR 232.13(a)(4).

The OCC's current rule at § 11.2(b)(2) references the requirements in the SEC's rules that a public company that has a Web site must post any filings on Forms 3, 4, or 5—the forms for filing beneficial ownership reports under section 16(a) of the Exchange Act—by the end of the business day after the filing and continue to make that form accessible on its Web site for at least 12 months. See 17 CFR 240.16a–3. Under the OCC's current rules, a registered national bank is required to post these filings on its Web site, if it has one, in accordance with 17 CFR 240.16a–3.

The OCC has adopted the interim rule with one technical modification concerning the authority citation. The interim rule contained a change to the

authority citation for part 11 that is no longer necessary. The OCC made this change already in a final rule amending 12 CFR parts 11 and 16, "Reporting and Disclosure Requirements for National Banks With Securities Registered Under the Securities Exchange Act of 1934; Securities Offering Disclosure Rules." See 68 FR 68489 (Dec. 9, 2003).

Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The collections of information requirements in 12 CFR part 11, including the requirements in this final rule, have been submitted to and approved by OMB under OMB Control Number 1557–0106.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the *Federal Register* along with its rule. As of December 31, 2002, there were approximately 25 registered national banks subject to the amendments to part 11. As of the same date, only 15 of these institutions have assets of less than \$100 million and are considered small entities for purposes of the RFA. See 5 U.S.C. 601; 13 CFR 121.201.

Based on the relatively small number of national banks affected by the final rule and the fact that the requirements will not materially change the operating environment for those banks, the OCC hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–04 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more

in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the final rule will not result in expenditures by State, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 12866

The OCC has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

List of Subjects in 12 CFR Part 11

Confidential business information, National banks, Reporting and recordkeeping requirements, Securities.

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264 and 7265.

■ 2. In § 11.3, paragraph (a) is revised to read as follows:

§ 11.3 Filing requirements and inspection of documents.

(a) *Filing requirements.* (1) *General.* Except as otherwise provided in this section, all papers required to be filed with the OCC pursuant to the 1934 Act or regulations thereunder shall be submitted in quadruplicate to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Material may be filed by delivery to the OCC through the mail, by fax (202–874–5279), or otherwise.

(2) *Statements filed pursuant to section 16(a) of the 1934 Act.* Statements required under section 16(a) of the 1934 Act shall be filed electronically, as directed by the OCC.

(3) *Date of filing.* (i) *General.* The date on which papers are actually received by the OCC shall be the date of filing, if the person or bank filing the papers has complied with all applicable requirements.

(ii) *Electronic filings.* An electronic filing of a statement required under section 16(a) of the 1934 Act that is submitted by direct transmission on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time,

whichever is currently in effect, shall be deemed filed on the same business day.

(4) *Mandatory compliance date.* Compliance with paragraph (a)(2) of this section and any applicable requirements that such statements must be posted on a registered national bank's Web site are mandatory for statements required to be filed on or after January 1, 2004.

* * * * *

Dated: August 3, 2005.

Julie L. Williams,

Acting Comptroller of the Currency.

[FR Doc. 05-15750 Filed 8-9-05; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

Air Force Instruction 33-332; Privacy Act of 1974; Implementation

AGENCY: Department of the Air Force.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is deleting an exemption rule for the system of records F031 DOD A, entitled "Joint Personnel Adjudication System (JPAS)". The system of records was transferred to the Defense Security Service and assigned the identifier V5-05, entitled "Joint Personnel Adjudication System (JPAS)", which was published in the **Federal Register** on July 1, 2005 (70 FR 38120). The exemption rule for the system of records also was transferred to the Defense Security Service and incorporated into its existing rules at 32 CFR 321.13(h) which was published in the **Federal Register** on July 1, 2005 (70 FR 38009). The exemption rule for the system of records is therefore being deleted.

DATES: Effective August 10, 2005.

FOR FURTHER INFORMATION CONTACT: Mrs. Novella Hill at (703) 588-7855.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 806b

Privacy.

■ Accordingly, 32 CFR 806b is to be amended to read as follows:

PART 806B—PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

Appendix D [Amended]

■ 2. In part 806b, paragraph (f)(19) of Appendix D is removed and reserved as follows:

Appendix D to Part 806b—General and Specific Exemptions

* * * * *
(f)(19) [Reserved]
* * * * *

Dated: August 4, 2005.

Jeannette Owings-Ballard,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. 05-15787 Filed 8-9-05; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05-05-073]

RIN 1625-AA08

Special Local Regulations for Marine Events; Manasquan River, Manasquan Inlet and Atlantic Ocean, Point Pleasant Beach to Bay Head, NJ, Change of Location

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; amendment.

SUMMARY: On July 15, 2005, the Coast Guard published a temporary final rule in the **Federal Register** establishing temporary special local regulations for the "Point Pleasant OPA/NJ Offshore Grand Prix", a marine event to be held on the waters of the Manasquan River, Manasquan Inlet and Atlantic Ocean between Point Pleasant Beach and Bay Head, New Jersey. On July 21, 2005, the Coast Guard learned that this marine event was proposed to be conducted at a different location. This rule changes the location of the temporary regulated area. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the regulated area during the event.

DATES: This rule is effective from 9:30 a.m. on August 12, 2005, to 3:30 p.m. on August 13, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05-05-073 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-

5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer George Kirk, Marine Events Coordinator, Commander, Coast Guard Sector Delaware Bay, at (609) 677-2215.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM. The new location of where the powerboat race was proposed to be conducted was not known in sufficient time to allow for the publication of an NPRM followed by publication of an effective rule before the event. Delaying this rule would be contrary to the public interest of ensuring the safety of life at sea during this event. The event will begin on August 12, 2005. Because of the danger posed by high-speed powerboats racing in a closed circuit, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the regulated area. However, advance notifications will be made to affected users of the river and adjacent coastal area via marine information broadcasts and area newspapers.

Background and Purpose

On August 12, 2005, the Offshore Performance Association and the New Jersey Offshore Racing Association will sponsor the "Point Pleasant OPA/NJ Offshore Grand Prix". The event will consist of approximately 40 offshore powerboats racing in heats counter-clockwise around a 5.5 mile racecourse on the waters of the Atlantic Ocean. A fleet of spectator vessels is expected to gather in the Atlantic Ocean near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the races.

Discussion of the Amendment to the Temporary Final Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Atlantic Ocean. This amendment to the rule changes the location of the regulated area to include all the waters of the Atlantic Ocean within approximately 1.5 miles of the shoreline between Normandy Beach and Seaside Heights, New Jersey. The temporary special local regulations will be enforced from 9:30 a.m. until 3:30 p.m. on August 12, 2005. If the races are postponed due to weather, then the temporary special local regulations will be enforced during the same time period the next day. The effect of the temporary special local regulations will be to restrict general navigation in the regulated area during the races. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Non-participating vessels will be allowed to transit the regulated area between races, when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Atlantic Ocean during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered

whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this area of the Atlantic Ocean during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period. The Patrol Commander will allow non-participating vessels to transit the event area between races. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132,

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant

energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. The Coast Guard amends the temporary final rule published July 15, 2005 (70 FR 40882) entitled, “special Local Regulations for Marine Events; Manasquan River, Manasquan Inlet and Atlantic Ocean, Point Pleasant Beach to Bay Head, NJ”.

§ 100.35–T05–073 [Amended]

■ 3. In FR rule doc. 05–13962, published on July 15, 2005 (70 FR 40882), make the following amendments to §100.35–T05–073:

■ A. On page 40884, in the second column, revise paragraph (a);

■ B. On page 40884, in the third column, in paragraph (c)(3), line 2, remove the word “north” and add “outside” in its place; and

■ C. On page 40884, in the third column, remove paragraph (c)(4) and redesignate paragraph (c)(5) as (c)(4).

The revision reads as follows:

(a) *Regulated area.* The regulated area is established for the waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Normandy Beach, NJ at latitude 40°00′00″ N, longitude 074°03′30″ W, thence easterly to latitude 39°59′40″ N, longitude 074°02′00″ W, thence southwesterly to latitude 39°56′35″ N, longitude 074°03′00″ W, thence westerly to a position near the Seaside Heights Pier at latitude 39°56′35″ N, longitude 074°04′15″ W, thence northerly along the shoreline to the point of origin. All coordinates reference Datum NAD 1983.

Dated: August 1, 2005.

L.L. Hereth,

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

[FR Doc. 05–15783 Filed 8–9–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–102]

RIN 1625–AA11

Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the previously established temporary final rule published in the **Federal Register** on January 26, 2005 which created a regulated navigation area on the Illinois Waterway near Romeoville, IL. This temporary regulated navigation area will place navigational and operational restrictions on all vessels transiting through the demonstration electrical dispersal barrier located on the Chicago Sanitary and Ship Canal. This regulated navigation area is necessary to protect vessels and their crews from harm as a result of electrical discharges emitting from the electrical dispersal barrier as vessels transit over it.

DATES: This rule is effective from 12 p.m. (local) June 30, 2005 through 12 p.m. (local) December 31, 2005.

Comments and related materials must reach the Docket Management Facility on or before December 31, 2005.

ADDRESSES: You may submit comments identified by Coast Guard docket number [CGD09-05-102] to the Commander (m) Ninth Coast Guard District, 1240 E.9th Street, Room 2069, Cleveland, OH 44199. The Marine Safety and Analysis Branch (map) is the document management facility for this temporary rule and maintains the public docket for this rulemaking. Documents that become a part of this docket are available for inspection between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have further questions on this rule, contact CDR K. Phillips, Marine Safety and Analysis Branch, Cleveland, at (216) 902-6045.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials. Comments and related materials must reach the Docket Management Facility on or before December 31, 2005.

Submitting Comments

If you submit a comment, please include your name and address, identify the docket number for this rulemaking [CGD09-05-102], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail or delivery to the docket management facility (see **ADDRESSES**); but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an

unbound format, no larger than 8 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period, which may result in a modification to the rule.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket management facility (see **ADDRESSES**) explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rulemaking. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This potential hazard to vessels and people only recently became apparent, and therefore we were unable to publish an NPRM followed by a final rule. At this point, it would be impracticable and contrary to the public interest to provide for notice and comment, due to the need to prevent the risk of electrical hazard to vessels and their crew/passengers. During the enforcement of this regulated navigation area, comments will be accepted and reviewed and may result in a modification to the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists to make this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to the public interest of ensuring the safety of persons and vessels, and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

On January 7, 2005, the U.S. Army Corps of Engineers, in close coordination with the U. S. Coast Guard, conducted preliminary safety tests on the Chicago Sanitary and Ship Canal at Mile Marker 296.5 in the vicinity of the demonstration electrical dispersal barrier located on the canal near Romeoville, IL. This barrier was constructed to prevent Asian Carp from entering Lake Michigan through the Illinois River system by generating a low-voltage electric field across the canal. The Coast Guard and Army Corps of Engineers conducted field tests to ensure the continued safe navigation of

commercial and recreational traffic across the barrier; however, results indicated a significant arcing risk and hazardous electrical discharges as vessels transited the barrier posing a significant risk to navigation through the barrier. To mitigate this risk, navigational and operational restrictions will be placed on all vessels transiting through the vicinity.

On January 26, 2005 this regulated navigational area was published in the **Federal Register** (70 FR 3625) as a temporary final rule. Testing has continued since the regulation was first proposed in January 2005. The testing on the electrical dispersal barrier is still being conducted. Preliminary results indicate that further tests and analysis are warranted. Therefore, the Coast Guard is enacting a second RNA and comment period.

Discussion of Comments and Changes

Five comments have been received so far with regards to the first RNA. These have been reviewed, evaluated and responded to. A summary of each follows:

We received two comments concerning the requirement to wear a Coast Guard approved Type I personal flotation device (PFD) while in the demonstration electrical dispersal barrier. It was suggested that the wearing of the Type V PFD would be sufficient. The COTP Chicago has determined that until subsequent field-testing determines the waters in this area do not pose significant risks to human life, the wearing of the Type I will be the standard. A Type I PFD is designed to provide support to the head so that the face of an unconscious or exhausted person is held above the water.

One comment recommended that visual warnings be posted to alert towboat pilots well before the demonstration electrical dispersal barrier. The Coast Guard is presently working with the Army Corp of Engineers to install signs, facing both directions, that will alert waterway operators prior to entering the electrical barrier.

One comment requested that, as the Corp's testing provides new information, that the RNA be reopened for further comment. The Coast Guard will not proceed with a permanent final rule until all testing data has been gathered, analyzed, and reviewed by all concerned parties. The rulemaking will remain open for comment throughout this process.

One comment requested that the Coast Guard allow emergency exception to the requirements that vessels may not

moor or lay up on the right or left descending banks, and towboats may not make or break tows. The Coast Guard does not find this reasonable. Test results indicate such activities in the vicinity of the fish barrier cause electrical arcing and are inherently dangerous at all times when the fish barrier is energized; even in emergency situations.

A request for a public meeting was received by one commenter in order to submit information on the generally accepted use of Type V PFDs as work vests for deck crews in the towing industry, the cost and burden associated with the requirement for Type I PFDs for the limited area versus the equipment required under federal equipment standards, and the company's safety program. The Coast Guard will take the request for a public meeting under consideration.

Discussion of Rule

Until this potential hazard to navigation can be rectified, the Coast Guard will require vessels transiting the regulated navigation area to adhere to specified operational and navigational requirements. The regulated navigation area encompasses all waters of the Chicago Sanitary and Ship Canal from the north side of the Romeo Highway Bridge at Mile Marker 296.1 to the aerial pipeline arch located at Mile Marker 296.7. The requirements placed on vessels include: All vessels are prohibited from loitering in the regulated navigation area. Vessels may enter this section of the waterway with the sole purpose of transiting to the other side, and must maintain headway throughout the transit. All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the regulated navigation area until subsequent field testing determines the waters in this area do not pose significant risk to human life. Vessels may not moor or lay up on the right or left descending banks. Towboats may not make or break tows. Vessels may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side. Commercial tows transiting the barrier must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

These restrictions are necessary for safe navigation of the barrier and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during recent safety tests conducted by

the Army Corps of Engineers. Deviation from this rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This determination is based on the fact that traffic will still be able to transit through the RNA.

Small Entities

This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

We suspect that there may be small entities affected by this rule but are unable to provide more definitive information. The risk, outlined above, is severe and requires that immediate action be taken. The Coast Guard will evaluate as more information becomes available.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and

Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore we believe this rule should be categorically excluded,

under figure 2–1, paragraph 34 (g) from further environmental documentation. This temporary rule establishes a regulated navigation area and as such is covered by this paragraph.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09.102 to read as follows:

§ 165.T09.102 Temporary Regulated Navigation Area between mile markers 296.1 and 296.7 of the Chicago Sanitary and Ship Canal located near Romeoville, IL.

(a) *Location.* The following is a Regulated Navigation Area: All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL beginning at the north side of Romeo Road Bridge Mile Marker 296.1, and ending at the south side of the Aerial Pipeline Mile Marker 296.7.

(b) *Effective period:* This rule is effective from 12 p.m. (local) June 30, 2005 through 12 p.m. (local) December 31, 2005.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.13 apply.

(2) All vessels are prohibited from loitering in the regulated navigation area. Vessels may enter this section of the waterway with the sole purpose of transiting to the other side, and must maintain headway throughout the transit. All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the regulated navigation area until subsequent field testing determines the waters in this area do not pose significant risk to human life. Vessels may not moor or lay up on the right or

left descending banks. Towboats may not make or break tows. Vessels may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side. Commercial tows transiting the barrier must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

(3) All persons and vessels shall comply with this rule and any additional instructions of the Ninth Coast Guard District Commander, or his designated representative.

Dated: June 30, 2005.

R.J. Papp, Jr.,

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

[FR Doc. 05–15781 Filed 8–9–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0156; FRL–7726–9]

Topramezone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of topramezone in or on field corn, pop corn, sweet corn, kidney, and liver. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 10, 2005. Objections and requests for hearings must be received on or before October 11, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0156. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may

access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm/>.

II. Background and Statutory Findings

In the **Federal Register** of June 11, 2003 (68 FR 34950) (FRL-7310-4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F6568) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.612 be amended by establishing tolerances for residues of the herbicide topramezone, [3-(4,5-dihydro-isoxazol-3-yl)-4-methanesulfonyl-2-methylphenyl)-(5-hydroxyl-1-methyl-1H-pyrazol-4-yl)methanone, in or on corn, field, forage; corn, field, grain; corn, field, stover; corn, pop, grain; corn, pop, stover; corn, sweet, forage; corn, sweet, kernal plus cob with husks removed; corn, sweet, stover; cattle, kidney; cattle, liver; goat, kidney; goat, liver; hog, kidney; hog, liver; horse, kidney; horse, liver; sheep, kidney; and sheep, liver at 0.05; 0.01; 0.05; 0.01; 0.05; 0.05; 0.01; 0.05; 0.02; 0.70; 0.20; 0.70; 0.20; 0.70; 0.20; 0.70; 0.20; and 0.70 parts per million (ppm), respectively. That notice included a summary of the petition prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

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

of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of topramezone on cattle, kidney at 0.05 ppm; cattle, liver at 0.15 ppm; corn, field, forage at 0.05 ppm; corn, field, grain at 0.01 ppm; corn, field, stover at 0.05 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 0.05 ppm; corn, sweet, forage at 0.05 ppm; corn, sweet, kernal plus cob with husks removed at 0.01 ppm; corn, sweet, stover at 0.05 ppm; goat, kidney at 0.05 ppm; goat, liver at 0.15 ppm; horse, kidney at 0.05 ppm; horse, liver at 0.15 ppm; sheep, kidney at 0.05 ppm; and sheep, liver at 0.15 ppm, respectively.

A. Toxicological Profile

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

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity--rodents (rat)	NOAEL = 1.1 milligrams/kilogram/day (mg/kg/day) males (M) and 2.1 mg/kg/day females (F) LOAEL = 2.1 mg/kg/day for males based on diffuse degeneration in the pancreas and was not established for females
870.3100	90-Day oral toxicity--rodents (mouse)	NOAEL = 2,289/3,010 mg/kg/day (M/F) LOAEL = was not established
870.3150	90-Day oral toxicity--nonrodents (dog)	NOAEL = 535/1,712 mg/kg/day (M/F) LOAEL = 1,511 mg/kg/day for males based on decreased body-weight gain, impaired food efficiency, and inflammation of the urinary bladder and was not established for females
870.3200	28-Day dermal toxicity (rat)	NOAEL = 100/300 mg/kg/day (M/F) LOAEL = 300 mg/kg/day males based on thyroid follicular cell hypertrophy and 1,000 mg/kg/day females based on thyroid follicular cell hypertrophy
870.3700	Prenatal developmental--rodents (rat)	Maternal NOAEL = not established Maternal LOAEL = 100 mg/kg/day based on decreased body-weight gains Developmental NOAEL = not established Developmental LOAEL = 100 mg/kg/day based on decreased fetal body weight and increased incidences of skeletal variation
870.3700	Prenatal developmental--nonrodents (rabbit)	Maternal NOAEL = not established Maternal LOAEL = 0.5 mg/kg/day based on increased serum tyrosine level Developmental NOAEL = 0.5 mg/kg/day Developmental LOAEL = 5 mg/kg/day based on alterations in skeletal ossification sites and increased number of pairs of ribs
870.3700	Prenatal developmental--nonrodents (rabbit)	Maternal NOAEL = not established Maternal LOAEL = 1.5 mg/kg/day based on increased serum tyrosine level Developmental NOAEL = not established Developmental LOAEL = 1.5 mg/kg/day based on an increased incidence of absent kidney and ureter and increased incidences of supernumerary thoracic vertebrae and supernumerary 13 th rib
870.3700	Prenatal developmental--nonrodents (rabbit)	Maternal NOAEL = 5.0 mg/kg/day Maternal LOAEL = was not established Developmental NOAEL = not established Developmental LOAEL = 1.5 mg/kg/day for N33 and N17/CFR 1–2 based on increased presence of supernumerary thoracic vertebrae and supernumerary 13 th rib. No effect was observed for N17/CFR 3 at 0.5 mg/kg/day (the only dose tested)
870.3700	Prenatal developmental--nonrodents (rabbit)	Maternal NOAEL = 450 mg/kg/day Maternal LOAEL = not established Developmental NOAEL = not established Developmental LOAEL = 5 mg/kg/day based on visceral findings (fluid-filled abdomen, pale liver, and dark content of the stomach and intestines) and alterations in skeletal development (i.e. incomplete ossification of the vertebrae and talus, and supernumerary thoracic vertebrae and 13 th rib)
870.3700	Prenatal developmental--nonrodents (rabbit)	Maternal NOAEL = 150 mg/kg/day Maternal LOAEL = 450 mg/kg/day based on decreased body-weight, body-weight gains, food consumption, and increased incidences of abortion and lack of defecation Developmental NOAEL = not established Developmental LOAEL = 50 mg/kg/day based on decreased fetal weight and increased incidence of visceral malformations, and skeletal malformations, variations, and unclassified abnormalities
870.3700	Prenatal developmental--nonrodents (rabbit)	Maternal NOAEL = 450 mg/kg/day Maternal LOAEL = not established Developmental NOAEL = 0.5 mg/kg/day Developmental LOAEL = 5 mg/kg/day based on increased presence of 27 pre-sacral vertebrae and increased an incidence of full supernumerary 13 th rib

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

Guideline No.	Study Type	Results
870.3700	Prenatal developmental--nonrodents (rabbit)	Maternal NOAEL = 450 mg/kg/day Maternal LOAEL = not established Developmental NOAEL = not established Developmental LOAEL = 50 mg/kg/day based on an increased incidence of extra sternebral ossification sites and supernumerary 13 th rib
870.3700	Prenatal developmental--nonrodents (mouse)	Maternal NOAEL = not established Maternal LOAEL = 30 mg/kg/day based on increased serum tyrosine level Developmental NOAEL = 1,000 mg/kg/day Developmental LOAEL = not established
870.3800	Reproduction and fertility effects (rat)	Parental/Systemic NOAEL = 0.4/0.5 mg/kg/day (M/F) Parental/Systemic LOAEL = 4.2/4.6 mg/kg/day (M/F) based on decreased body-weight, body-weight gain in males, increased thyroid and kidney weights of both sexes, and microscopic findings in eyes, kidney, and thyroid of both sexes Reproductive NOAEL = 426.8/471.9 mg/kg/day (M/F) Reproductive LOAEL = not established Offspring NOAEL = 0.4/0.5 mg/kg/day (M/F) Offspring LOAEL = 4.2/4.6 mg/kg/day (M/F) based on decreased pup weight and weight gain in F ₂ male and female pups and increased time to preputial separation in the F ₁ males
870.4100	Chronic toxicity--rodents (rat)	NOAEL = 0.4/0.5 mg/kg/day (M/F) LOAEL = 3.9/5.3 mg/kg/day (M/F) based on corneal opacity and pannus and chronic keratitis in both sexes, and thyroid hypertrophy in males
870.4100	Chronic toxicity--dogs	NOAEL = 2.9/15.4 (M/F) mg/kg/day LOAEL = 15.3 mg/kg/day (M) based on increased incidence of thyroid C-cell hyperplasia and 92 mg/kg/day (F) based on decreased body-weight, body-weight gain, and food efficiency
870.4200	Carcinogenicity--rats	NOAEL = 0.4/0.5 mg/kg/day (M/F) LOAEL = 3.6/4.7 mg/kg/day (M/F) based on increased incidences of corneal opacity, decreased body-weight and body-weight gains (males only) and histopathological evaluations in the thyroids, pancreas, and eyes of both sexes Neoplastic pathology showed increased incidences of follicular cell adenomas in the thyroid glands of both sexes
870.4300	Carcinogenicity--mice	NOAEL = not established LOAEL = 19/26 mg/kg/day (M/F) based on decreased body-weight and body-weight gains in males No evidence of carcinogenicity
870.5100	Gene mutation	No indication of a mutagenic response in any strain at any level up to cytotoxic concentrations either with or without S9 activation
870.5100	Gene mutation	Based on these considerations, it was concluded that there was confirmed evidence of a mutagenic response in <i>S. typhimurium</i> TA98 in the nonactivated portion of both the plate incorporation and preincubation assays. The effect was, however, observed at high concentrations ($\geq 3,000$ $\mu\text{g}/\text{plate}$ -plate incorporation and $\geq 2,500$ $\mu\text{g}/\text{plate}$ -preincubation). It was further concluded that the mutagenic effect was likely due to impurities in the test article because: 1) The response was seen at high concentrations including and exceeding the limit dose, 2) bacterial gene mutation assays conducted with other lots of the test material were negative up to the limit dose (see Master Record Identification (MRID) Nos. 45902225 through 45902227, and 3) the active ingredient (a.i.) used in the current study has the lowest percentage of purity (95.8% versus 97.7 to 99.3% a.i. for the other lots)
870.5300	<i>In vitro</i> mammalian cell gene mutation	No indication that topramezone induced a mutagenic response, either in the presence or absence of S9 activation
870.5375	<i>In vitro</i> mammalian chromosome aberration	Topramezone-induced a clastogenic response in the presence of S9 activation with significant effects recorded only at an insoluble limit concentration
870.5395	<i>In vivo</i> mouse bone marrow micronucleus	No evidence that topramezone was clastogenic or aneugenic
870.5550	Unscheduled DNA synthesis (UDS)	No evidence that topramezone-induced UDS, as determined by radioactive tracer procedures (nuclear silver grain counts) at any concentration tested

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

Guideline No.	Study Type	Results
870.6200	Acute neurotoxicity screening battery (rat)	NOAEL= 2,000 mg/kg/day, no neurotoxicity observed
870.6200	Subchronic neurotoxicity (rat)	No neurotoxicity observed Systemic NOAEL = not established LOAEL = 4.2/5/0 mg/kg/day (M/F) based on elevated levels of granular casts and transitional epithelial cells in the urinary sediment of the males, increased incidences of corneal clouding in females, minimal diffuse degeneration of the pancreas (both sexes), and slight to moderate flaky colloid in the thyroid of the males
870.6300	Developmental neurotoxicity (rat)	Maternal NOAEL = not established Maternal LOAEL = 8 mg/kg/day based on corneal opacities Offspring NOAEL = not established Offspring LOAEL = 8 mg/kg/day based on decreased auditory startle reflex response
870.7485	Metabolism and pharmacokinetics	Absorption of [¹⁴ C]-topramezone following a single oral dose was rapid but limited, with the highest plasma concentrations observed at 1 hour (first time point measured). Oral absorption is estimated to be approximately 20% of the administered dose. The majority of the dose was recovered within 48 hours in the feces (73–91% dose) and urine (8–29% dose)
870.7600	Dermal penetration	The majority of the applied dose for each group was not absorbed (91.0–98.3% dose), with the greatest amount of the non-absorbed material being recovered from the skin wash (90.8–96.0% dose). Absorbed radioactivity was low and accounted for 0.16–2.60% of the dose for all groups for all exposures

B. Toxicological Endpoints

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

Three other types of safety or uncertainty factors may be used: “Traditional uncertainty factors;” the “special FQPA safety factor;” and the “default FQPA safety factor.” By the term “traditional uncertainty factor,” EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the

additional safety factor for the protection of infants and children. The term “special FQPA safety factor” refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The “default FQPA safety factor” is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

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

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the

LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

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

A summary of the toxicological endpoints for topramezone used for human risk assessment is shown in Table 2. of this unit:

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

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–50 years of age)	NOAEL = 0.5 mg/kg/day UF = 100 Acute RfD = 0.005 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD ÷ Special FQPA SF = 0.005 mg/kg/day	Developmental Toxicity Study in Rabbits LOAEL = 5 mg/kg/day based on alterations in skeletal ossification sites and increased number of pairs of ribs
Acute Dietary (General population including infants and children)	An endpoint of concern for the general population attributable to a single dose was not identified in the hazard database		
Chronic Dietary (All populations)	NOAEL = 0.4 mg/kg/day UF = 100 Chronic RfD = 0.004 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD ÷ Special FQPA SF = 0.004 mg/kg/day	Carcinogenicity Study in Rats LOAEL = 3.6 mg/kg/day based on increased incidences of corneal opacity, decreased body-weight and body-weight gains in males and histopathological evaluations in the thyroid, pancreas, and eyes of both sexes
Cancer (oral, dermal, inhalation)	In accordance with the EPA Final Guidelines for Carcinogen Risk Assessment (March 29, 2005), EPA classified topramezone as “not likely to be carcinogenic to humans at doses that do not alter rat thyroid hormone homeostasis.” EPA determined that quantification of human cancer risk is not required since the NOAEL (0.4 mg/kg/day) for non-cancer risk assessment is not expected to alter thyroid hormone homeostasis nor result in thyroid tumor formation		

Topramezone inhibits the 4-hydroxyphenylpyruvate dioxygenase (4-HPPD) enzyme in the metabolism of tyrosine. Inhibition of this enzyme results in increased serum tyrosine levels and eventually in adverse effects in the animal with increased incidences of corneal opacity, decreased body-weight, and body-weight gains. The petitioner conducted eight rabbit studies to determine the NOAEL for increased serum tyrosine levels as well as determine the NOAELs for systemic maternal and fetal developmental toxicity endpoints that are not based on tyrosine measurements.

There are well established NOAELs and LOAELs for the standard endpoints for maternal and developmental toxicity in rabbits. Currently, it is not known what level of inhibition of the 4-HPPD enzyme results in an adverse effect. Therefore, the observation of enzyme inhibition in the absence of systemic toxicity in maternal animals or soft tissue or skeletal alterations in pups/offspring are being considered to be a biomarker of exposure, not an adverse effect. None of the data in the submitted studies permit a determination of the percentage of increased tyrosine levels that result in detrimental or adverse effects.

The lowest maternal LOAEL observed in the numerous rabbit developmental toxicity studies was 0.5 mg/kg/day. It is not clear, however, that this value is actually a LOAEL because it is based on increased serum tyrosine levels. In this study it could not be determined what

dose would not induce increased serum tyrosine levels. In fact, in no study could a “no effect” level be determined for increased serum tyrosine levels in dams. However, a maternal NOAEL of 5 mg/kg/day was observed in another study based on systemic toxicity; in this study tyrosine measurements were not performed. This study has the lowest maternal NOAEL for systemic toxicity among the eight rabbit developmental toxicity studies. Tyrosine levels were not measured for fetuses in any of the rabbit developmental studies. There was a clear developmental toxicity NOAEL of 0.5 mg/kg/day, based on skeletal variations observed at 5 mg/kg/day.

The acute RfD for females 13–49 years of age is based on a NOAEL of 0.5 mg/kg/day for alterations in skeletal ossification sites in rabbits. The chronic RfD is based on the NOAEL of 0.4 mg/kg/day in the carcinogenicity study in rats. In this study the LOAEL was based on increased incidence of corneal opacities, decrease in body weight gain, liver, pancreas, and thyroid effects seen at 3.6 mg/kg/day.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* No tolerances have been established (40 CFR 180.612) previously for the residues of topramezone. Risk assessments were conducted by EPA to assess dietary exposures from topramezone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide,

if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

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

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for

the chronic exposure assessments: For the chronic analyses, tolerance-level residues were assumed for all food commodities with current or proposed topramezone tolerances, and it was assumed that all of the crops included in the analysis were treated. PCT and/or anticipated residues were not used in the chronic risk assessment.

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

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

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

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

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of topramezone for acute exposures are estimated to be 0.77 parts per billion (ppb) for surface water and 0.0671 ppb for ground water. The EECs for chronic exposures are estimated to be 0.14 ppb for surface water and 0.0671 ppb for ground water.

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

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

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to topramezone and any other substances and topramezone does not appear to produce a toxic metabolite produced by other substances. However, EPA is aware of other herbicides that inhibit the 4-HPPD enzyme (i.e. mesotrione and isoxaflutole). Topramezone, isoxaflutole and mesotrione are known to cause tyrosinemia. To ensure that the potential cumulative effects from these pesticides are not of concern EPA examined three factors:

- The extent to which the uses of these pesticides overlap.
- The exposure assumptions used in the risk assessments for each of the pesticides.
- The risk characterization for each pesticide.

As explained Unit III.C.4.i.,ii., and iii., this analysis suggests both that the individual risk characterizations for each pesticide are highly overstated and that cumulative exposure to these pesticides, even if they are later determined to share a common mechanism, is unlikely to pose a risk of concern.

i. *Pesticide uses.* Topramezone, mesotrione, and isoxaflutole are broad-spectrum herbicides used to control grassy and broadleaf weeds in corn (the mesotrione label does not list grasses on the label). All three active ingredients

are in the phenylpyrazolyl ketone class of chemicals and share the same mode of herbicidal action. They inhibit the 4-HPPD enzyme and thereby impair carotenoid biosynthesis in the chlorophyll synthesis pathway, leading to the breakdown in chloroplasts. Therefore no more than one of these active ingredients would be applied to the same field in the same growing season. Topramezone is used post-emergent, mesotrione is used pre- and post-emergent, and isoxaflutole is used pre-plant and pre-emergent. The current PCT information for field corn indicates a 5–10% PCT for isoxaflutole and 10–15% PCT for mesotrione. Sweet corn PCT is < 2.5 for both chemicals.

Maximum PCT projections for topramezone on field corn and sweet corn, made by assuming that it will surely not overtake the current leader(s) among herbicides on those crops (i.e. atrazine), are 68 and 60, respectively.

ii. *Exposure assumptions.* Highly-conservative assumptions were used for the aggregate (food + water) risk assessments for each individual assessment. First, it was assumed that 100% of the corn crop was treated with all three of the pesticides. Second, each of the exposure assessments assumed all corn in the diet would have residues present at the tolerance level. In fact, residue data indicates that very low levels of residues were detected in the grain for all three pesticides.

iii. *Risk characterization.* Even with the highly-conservative assumptions, the individual aggregate risk for each of the active ingredients is as follows:

- The topramezone chronic dietary risk estimates (food + water) were < 1% of the cPAD for the U.S. population and 1.2% of the cPAD for the most highly exposed population subgroup (children 3–5 years old).
- The mesotrione chronic dietary risk estimates (food + water) were 15% of the cPAD for the U.S. population and 45% of the cPAD for the most highly-exposed population subgroup (all infants (< 1 year old)).
- The chronic dietary risk estimates (food + water) for residues of the 4-HPPD inhibitors (isoxaflutole + RPA 202248) were 18% of the cPAD for the U.S. population and 40% of the cPAD for the most highly-exposed population subgroup (children 3–5 years old).

In fact, even if one were to calculate the chronic dietary risk for all three herbicides by combining the individual exposures and using the most sensitive endpoint, the risk would not exceed the level of concern. These pesticides do not share a common acute adverse effect.

Accordingly, because the use patterns, exposure assumptions, and risk characterizations for the three pesticides do not suggest that any potential cumulative effect would be at a level of concern, EPA concludes it has adequately considered the potential cumulative effects of topramezone and the pesticides for which it may possibly share a common mechanism of toxicity.

For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative/>.

D. Safety Factor for Infants and Children

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

2. *Increased sensitivity of the young.* There is a potential of increased quantitative susceptibility following *in utero* and/or pre-/post-natal exposure in the developmental toxicity and developmental neurotoxicity studies in rats because a NOAEL for parental or offspring systemic toxicity was not established. However, the current NOAEL of 0.5 mg/kg/day for an acute RfD would provide a 200-fold lower dose based on the most sensitive endpoint. In a developmental neurotoxicity (DNT) study in rats, decreased auditory startle reflex was seen at the LOAEL of 8 mg/kg/day in the presence of maternal toxicity manifested as corneal opacity. Therefore, the

susceptibility in this study could not be assessed. However, the NOAEL for the chronic RfD is 0.4 mg/kg/day based on the most critical tyrosine-mediated effects which is 20-fold lower than the LOAEL for the DNT study. There is no evidence of increased susceptibility following pre-/post-natal exposure to rats in the two-generation reproduction study.

3. *Conclusion.* There is a complete toxicity data base for topramezone and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Although there is the potential for increased quantitative sensitivity in the young from exposure to topramezone, the RfDs selected for evaluating the safety of exposure provide a wide margin of safety for the effects seen in the young. Accordingly, the additional 10X factor for the protection of infants and children is removed.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and drinking water to topramezone will occupy 1.4 % of the aPAD for females 13 years and older.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to topramezone from food and drinking water will utilize 0.6 % of the cPAD for the U.S. population, 0.9 % of the cPAD for all infants (< 1 year old), and 1.2 % of the cPAD for children 3–5 years old.

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

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

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue limits (MRLs) for topramezone.

V. Conclusion

Therefore, the tolerance is established for residues of topramezone, [3-(4,5-dihydro-3-isoxazolyl)-2-methyl-4-(methylsulfonyl)phenyl](5-hydroxy-1-methyl-1H-pyrazol-4-yl)methanone, in or on cattle, kidney at 0.05 ppm; cattle, liver at 0.15 ppm; corn, field, forage at 0.05 ppm; corn, field, grain at 0.01 ppm; corn, field, stover at 0.05 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 0.05 ppm; corn, sweet, forage at 0.05 ppm; corn, sweet, kernal plus cob with husks removed at 0.01 ppm; corn, sweet, stover at 0.05 ppm; goat, kidney at 0.05 ppm; goat, liver at 0.15 ppm; horse, kidney at 0.05 ppm; horse, liver at 0.15 ppm; sheep, kidney at 0.05 ppm; and sheep, liver at 0.15 ppm, respectively.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0156 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 11, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the

grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2005-0156, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risk* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national

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

VIII. Congressional Review Act

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

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: July 26, 2005.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.612 is added to read as follows:

§ 180.612 Topramezone; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide topramezone, [3-(4,5-dihydro-3-isoxazolyl)-2-methyl-4-(methylsulfonyl)phenyl](5-hydroxy-1-methyl-1H-pyrazol-4-yl)methanone, in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, kidney	0.05
Cattle, liver	0.15
Corn, field, forage	0.05
Corn, field, grain	0.01
Corn, field, stover	0.05
Corn, pop, grain	0.01
Corn, pop, stover	0.05
Corn, sweet, forage	0.05
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	0.05
Goat, kidney	0.05
Goat, liver	0.15
Horse, kidney	0.05
Horse, liver	0.15
Sheep, kidney	0.05
Sheep, liver	0.15

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

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

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

[FR Doc. 05-15604 Filed 8-9-05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2004-0139; FRL-7724-8]

Aminopyralid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for free and conjugated residues of aminopyralid in or on grass and wheat commodities; and residues of aminopyralid in or on meat; fat and meat byproducts, excluding kidney; of cattle, goat, and sheep, and milk. Dow AgroSciences, LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 10, 2005. Objections and requests for hearings must be received on or before October 11, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP-2004-0139. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket/>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460-0001; telephone number: (703) 305-6224; e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm/>.

II. Background and Statutory Findings

In the **Federal Register** of June 2, 2004 (69 FR 31106-31110) (FRL-7359-3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C.

346a(d)(3), announcing the filing of a pesticide petition (PP 4F6827, incorrectly stated as 7F4851) by Dow AgroSciences, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for combined residues of the herbicide aminopyralid (XDE-750): 4-amino-3,6-dichloropyridine-2-carboxylic acid and its glucose conjugate, expressed as total parent in or on grass forage at 25 parts per million (ppm), grass hay at 65 ppm, wheat forage at 2 ppm, wheat hay at 4 ppm, wheat grain at 0.05 ppm, wheat straw at 0.5 ppm, wheat bran at 0.1 ppm, wheat middlings at 0.02 ppm, wheat shorts at 0.05 ppm, wheat flour at 0.01 ppm, wheat germ at 0.02 ppm, wheat aspirated grain fractions at 0.5 ppm. Tolerances of the parent, aminopyralid (free) were also proposed for milk at 0.02 ppm, cream at 0.02 ppm, edible animal tissues except kidney at 0.05 ppm, and kidney at 1.0 ppm. That notice included a summary of the petition prepared by Dow AgroSciences, LLC, the registrant.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in

residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for free and conjugated residues; of aminopyralid in or on grass, forage at 25 ppm; grass, hay at 50 ppm; aspirated grain fractions at 0.2 ppm; wheat, bran at 0.1 ppm; wheat, forage at 2.0 ppm; wheat, grain at 0.04 ppm; wheat, hay at 4.0 ppm; wheat, straw at 0.25 ppm; and for a tolerance for residues of aminopyralid per se in or on cattle, fat at 0.02 ppm; cattle, meat at 0.02 ppm; cattle, meat byproducts,

except kidney at 0.02 ppm; cattle, kidney at 0.3 ppm; goat, fat at 0.02 ppm; goat, meat at 0.02 ppm; goat, meat byproducts, except kidney at 0.02 ppm; goat, kidney at 0.3 ppm; horse, fat at 0.02 ppm; horse, meat at 0.02 ppm; horse, meat byproducts, except kidney at 0.02 ppm; horse, kidney at 0.3 ppm; sheep, fat at 0.02 ppm; sheep, meat at 0.02 ppm; sheep, meat byproducts, except kidney at 0.02 ppm; sheep, kidney at 0.3 ppm; and milk at 0.03 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

Studies were performed using aminopyralid technical acid (XDE-750) and a formulation (GF-871) consisting of triisopropanolamine salt of aminopyralid (XDE-750 TIPA). Doses (Table 1 and Table 2 of this unit) are expressed as acid equivalents for all studies regardless of the material administered to test animals.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study type	Results
870.3100	2001 13-Week feeding—rat (XDE-750) with 4 week recovery period	NOAEL = 500 milligrams/kilogram/day (mg/kg/day) for males (M) and 1,000 mg/kg/day for females (F) LOAEL M = 1,000 mg/kg/day based on hyperplasia of mucosal epithelium of the ileum and cecum. F = not determined
870.3100	2004 13-Week feeding—rat (GF-871)	NOAEL = 520 mg/kg/day LOAEL = mg/kg/day: not determined
870.3100	2001 13-Week feeding—mouse (XDE-750)	NOAEL = 1,000 mg/kg/day LOAEL = mg/kg/day: not determined
870.3200	2002 28-Day dermal—rat (XDE-750)	<i>Systemic:</i> NOAEL = 1,000 mg/kg/day LOAEL = (mg/kg/day) not determined <i>Dermal:</i> NOAEL = M= 100 mg/kg/day F = 1,000 mg/kg/day LOAEL = M = 500 mg/kg/day, based on histopathological changes (slight epidermal hyperplasia) F= not determined

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

Guideline No.	Study type	Results
870.3150	2002 13-Week feeding—dog (XDE-750)	NOAEL = M = 282 mg/kg/day F = 232 mg/kg/day LOAEL = M = 1,070 mg/kg/day F = 929 mg/kg/day, based on stomach histopathology (slight diffuse hyperplasia and hypertrophy of the mucosal epithelium)
870.3700	2002 Developmental tox—rabbit (XDE-750)	<i>Maternal:</i> NOAEL = 250 mg/kg/day LOAEL = 500 mg/kg/day, based on decrease in body weight (GD 7–10), decreased food consumption, incoordinated gait (23/26), and ulcers and erosions of the stomach. <i>Developmental:</i> NOAEL = 500 mg/kg/day LOAEL = (mg/kg/day) not determined
870.3700	2004 Developmental tox—rabbit (GF-871)	<i>Maternal:</i> NOAEL = 104 mg/kg/day LOAEL = 260 mg/kg/day, based on severe inanition and body weight loss, decreased fecal output, and mild incoordinated gait <i>Developmental:</i> NOAEL = 260 mg/kg/day LOAEL = 520 mg/kg/day, based on decreased fetal body weight.
870.3700	2001 Developmental tox—rat (XDE-750)	<i>Maternal:</i> NOAEL = 1,000 mg/kg/day LOAEL = (mg/kg/day) not determined <i>Developmental:</i> NOAEL = 1,000 mg/kg/day LOAEL = (mg/kg/day) not determined
870.3700	2004 Developmental tox—rat (GF-871)	<i>Maternal:</i> NOAEL = 520 mg/kg/day LOAEL = mg/kg/day, not determined <i>Developmental:</i> NOAEL = 520 mg/kg/day LOAEL = (mg/kg/day) not determined
870.3800	2003 2-Generation reproduction—rat (XDE-750)	<i>Parental/Systemic:</i> NOAEL = 1,000 mg/kg/day LOAEL = (mg/kg/day) not determined <i>Reproductive:</i> NOAEL = 1,000 mg/kg/day LOAEL = (mg/kg/day) not determined <i>Offspring:</i> NOAEL = 1,000 mg/kg/day LOAEL = (mg/kg/day) not determined.
870.4100	2003 1-Year feeding—dogs (XDE-750)	NOAEL = M = 99 mg/kg/day F = 93 mg/kg/day LOAEL = M = 967 mg/kg/day F = 1038 mg/kg/day, based on thickening of stomach mucosa (F), and stomach histopathology in all animals (slight diffuse hyperplasia and hypertrophy of the mucosa epithelium, slight lymphoid hyperplasia of the gastric mucosa and very slight/slight chronic mucosal inflammation).
870.4200	2003 18-Month carcinogenicity—mice (XDE-750)	NOAEL = M = 1,000 mg/kg/day LOAEL = (mg/kg/day) not determined
870.4300	2004 2-Year carcinogenicity—rats (XDE-750)	NOAEL = 50 mg/kg/day LOAEL = 500 mg/kg/day based on cecal enlargement, slight mucosal hyperplasia (M) and slightly decreased body weights.
870.5100	2004 Bacterial reverse mutation assay (XDE-750)	Negative
870.5100	2004 Bacterial reverse mutation assay (GF-871) XDETIPA	Negative

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

Guideline No.	Study type	Results
870.5300	2004 <i>In vitro</i> mammalian cell gene mutation test	Negative
870.5300	2004 <i>In vitro</i> mammalian cell gene mutation test (GF-871)	Negative
870.5375	2004 <i>In vitro</i> mammalian cell chromosome aberration test (XDE-750)	XDE induced chromosome aberrations, but only at cytotoxic concentrations, the clastogenic response was induced secondary to toxicity.
870.5375	2004 <i>In vitro</i> Mammalian cell chromosome aberration test (GF-871)	Negative
870.5395	2002 Mammalian erythrocyte micronucleus test (XDE-750)	Negative
870.5395	2004 Mammalian erythrocyte micronucleus test (GF-871)	Negative
870.6200	Acute neurotoxicity screening battery (XDE-750)	NOAEL = 1,000 mg/kg/day LOAEL = 2,000 mg/kg/day based on fecal soiling in M and urine soiling in F.
870.6200	Chronic neurotoxicity—rat (XDE-750)	NOAEL = 1,000 mg/kg/day LOAEL = (mg/kg/day) not determined.
870.7485	2004 Metabolism and pharmacokinetics—rat (XDE-750)	Recovery after 168 hrs: 96% in low dose (urine—50%, feces— 43%, tissues—0.1%, cage wash—3%), 95% in high dose (urine—41%, feces—43%, tissues—1%, caged wash— 10%), and 95% in the repeated low dose (urine—59%, feces— 33%, tissues—0.1%, cage wash—3%). XDE-750 represented ≥96% of administered dose (AD) in urine and 100% AD in feces. Three unknown components (≥4%) found in urine were also found in dose formulations.
Non-guide-line	Triisopropanolamine Salt, Dissociation and Metabolism in Maile Fischer 344—rats (XDE-750)	¹⁴ C-XDE-750 and ¹⁴ C-XDE-750-TIPA, when administered orally to rats, were bioequivalent in terms of absorption, distribution, metabolism, and excretion of the amino-dichloropicolinate portion of the molecule(s)

B. Toxicological Endpoints

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

Three other types of safety or UFs may be used: “Traditional uncertainty factors;” the “special FQPA safety factor;” and the “default FQPA safety factor.” By the term “traditional

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

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors

deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic population adjusted dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of

occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the

carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose

response curve. To estimate risk, a ratio of the point of departure to exposure ($MOE_{\text{cancer}} = \text{point of departure} / \text{exposures}$) is calculated.

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

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CHEMICAL FOR USE IN HUMAN RISK ASSESSMENTS

Exposure scenario	Dose used in risk assessment, UF	Special FQPA SF and level of concern for risk assessment	Study and toxicological effects
Acute dietary (General population, including infants and children)			No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies.
Chronic dietary (All populations)	NOAEL= 50 mg/kg/day UF= 100 Chronic RfD=0.5 mg/kg/day	cPAD= cRfd/FQPA SF cPAD= 0.5 mg/kg/day	Chronic toxicity/carcinogenicity study LOAEL= 500mg/kg/day based on cecal enlargement, slight mucosal hyperplasia in males and slightly decreased body weights.
Incidental oral Short-term (1-30 days)	NOAEL= 104 mg /kg/day	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Developmental rabbit study (GF-871) LOAEL=260 mg/kg/day based on severe inanition (exhaustion due to lack of food) and body weight loss, decreased fecal output, and mild incoordinated gait.
Incidental oral Intermediate-term (1–6 months)	NOAEL = 104 mg /kg/day	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Developmental rabbit study (GF-871) LOAEL=260 mg/kg/day based on severe inanition (exhaustion due to lack of food) and body weight loss, decreased fecal output, and mild incoordinated gait.
Dermal Short-term (1–30 days)	N/A	N/A	No endpoint identified for this group. No absorption study available. No systemic toxicity seen at the limit dose (1,000 mg/kg/day) in the 28–day dermal toxicity study in rats.
Dermal Intermediate-term (1–6 months)	N/A	N/A	No endpoint identified for this group. No absorption study available. No systemic toxicity seen at the limit dose (1,000 mg/kg/day) in the 28–day dermal toxicity study in rats.
Dermal Long-term (> 6 months)	N/A	N/A	No endpoint identified for this group. No absorption study available. No systemic toxicity seen at the limit dose (1,000 mg/kg/day) in the 28–day dermal toxicity study in rats.
Inhalation Short-term (1–30 days)	NOAEL = 104 mg /kg/day	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Developmental rabbit study (GF-871) LOAEL = 260 mg/kg/day based on severe inanition (loss of vitality due to lack of food) and body weight loss, decreased fecal output, and mild incoordinated gait.
Inhalation Intermediate-term (1–6 months)	NOAEL = 104 mg /kg/day	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Developmental rabbit study (GF-871) LOAEL=260 mg/kg/day based on severe inanition (loss of vitality due to lack of food) and body weight loss, decreased fecal output, and mild incoordinated gait.
Inhalation Long-term (> 6 months)	N/A	N/A	N/A
Cancer (Oral, dermal, inhalation)	Classification: There was no treatment related increase in tumor incidence when compared to control. This chemical is not likely to be a carcinogen.		

LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose, MOE = margin of exposure, LOC = level of concern, N/A = Not Applicable

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Currently, no tolerances have been established for the residues of aminopyralid, in or on any raw agricultural commodity. Risk assessments were conducted by EPA to assess dietary exposures from aminopyralid in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. An endpoint of concern attributable to a single dose of aminopyralid was not identified. Therefore, an acute dietary exposure assessment was not conducted.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Lifeline™ Model Version 2.0 software which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments. This risk assessment assumed that 100% crop treated for all food and feed commodities and tolerance level residues.

The dietary exposure was based on residues of aminopyralid in or on grass and wheat commodities treated with formulations of its triisopropanolammonium (TIPA) salt and potential drinking water exposure. Total dietary exposures for the U.S. population and all subpopulations were less than 0.0013 mg/kg/day.

iii. *Cancer.* Aminopyralid is classified as “not likely to be carcinogenic to humans” based on the lack of evidence for carcinogenicity in mice and rats. Therefore, a quantitative cancer exposure assessment was not conducted.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) of FFDCA require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it

deems appropriate. For the present action, EPA did not rely on anticipated residues or PCT information.

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

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

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

Aminopyralid is relatively persistent in the environment at relevant pH's and temperatures. It is rapidly photodegraded in water under favorable light conditions. Laboratory studies found a half-life of 0.6 day. In addition to carbon dioxide, there were two major degradates, oxamic acid and malonic acid, other degradates were at least four different 2 and 3 carbon acid amides. Photodegradation is expected to be a significant route of dissipation for aminopyralid in the environment in clear shallow surface water. Aminopyralid photodegrades

moderately slowly on soil, with half-life of 72.2 days in one study.

Aminopyralid is mobile in soils and generally is not expected to bind to aquatic sediments. Based on results reported in terrestrial field dissipation studies, aminopyralid appears to be non-persistent in the field. No major degradates were identified.

Since the models used are considered to be screening tools in the risk assessment process, the Agency estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. Estimated drinking water concentration (EDWC) derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD.

Based on the PRZM/EXAMS model, the EECs of aminopyralid for chronic exposures are estimated to be 1.937 parts per billion (ppb) for surface water and 0.630 ppb for ground water. The chronic estimated water concentrations derived from surface water modeling results were significantly higher than the modeled ground water concentrations, and therefore protective of potential exposures via ground water sources of drinking water when incorporated into aggregate exposure estimates. The aminopyralid EEC's were incorporated into LifeLine™ Model Version 2.0 to determine aggregate pesticide exposures from pesticide residues in the diet.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Aminopyralid has no pending applications to register any use on residential sites; however, use of aminopyralid is requested on campgrounds and other natural recreation areas. Such use could result in post-application incidental oral exposures for infants and children.

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

Aminopyralid is a pyridinecarboxylic acids as are the pesticides picloram and clopyralid. Although these pesticides share a common herbicidal mode-of-action (auxinic growth regulation), this auxinic growth process in plants is not

present in mammals. No common mode of mammalian toxicity has been identified for auxinic herbicides. An evaluation of the mammalian toxicology databases of all three active ingredients for target organ toxicities indicates that there is no evidence that the same toxic effect occurs in or at the same organ or tissue by essentially the same sequence of major biochemical events.

For the purposes of this tolerance action, therefore, EPA has not assumed that aminopyralid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative/>.

D. Safety Factor for Infants and Children

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

2. *Pre-natal and post-natal sensitivity.* There is no evidence of increased qualitative or quantitative susceptibility of the fetuses in the rat or rabbit developmental toxicity studies (XDE-750 and GF-871) or in a 2-generation reproduction study (rat) after exposure to aminopyralid. The toxicology database is complete with respect to pre- and post-natal toxicity. Therefore, EPA has no residual uncertainty regarding this finding.

In an acute neurotoxicity study in rats with XDE-750, there were no treatment-

related effects on the Functional Observational Battery (FOB), motor activity, or neuropathological observations. Clinical observations of rats in the 2,000 mg/kg/day group revealed a higher incidence of fecal soiling in males and urine soiling in females compared to the controls. However, these effects were transient (most resolving within 3–4 days of treatment) and without gross or neuropathologic changes. In addition, a chronic neurotoxicity study in rats did not demonstrate effects that would suggest neurotoxicity. In developmental toxicity studies in rabbits with aminopyralid (XDE-750 and GF-871) incoordinated gait was observed in males and females in the mid- and high-dose groups. However this finding was transient, with complete reversal within 2 hours post-dosing. Incoordinated gait was not observed in any of the other toxicity studies reviewed. A developmental neurotoxicity study (DNT) is not recommended based on these studies.

3. *Conclusion.* There is a complete toxicity database for aminopyralid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA SF was reduced to 1X, based upon the following: As mentioned above, there is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to *in utero* exposure to aminopyralid in developmental toxicity studies. There is no quantitative or qualitative evidence of increased susceptibility to aminopyralid following pre-/post-natal exposure in a 2-generation reproduction study. In addition, there is no concern for developmental neurotoxicity resulting from exposure to aminopyralid, and a developmental neurotoxicity study is not required. Furthermore, the chronic dietary food exposure assessment assumes 100% crops treated for all commodities. The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded. Finally, for the proposed uses for aminopyralid which result in recreational exposure; default assumptions, that result in high-end estimates of exposure, were used.

E. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and

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

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

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

More recently the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface and ground water EECs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in

developing drinking water modeling inputs.

1. *Acute risk.* An endpoint of concern attributable to a single dose was not identified. Therefore, no acute risk is expected.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to aminopyralid from food plus drinking water will utilize <1% of the cPAD for the U.S. population, <1% of the cPAD for children 1–2 years old, and <1% of the cPAD for children 6–12 years old. There are no residential uses for aminopyralid that result in chronic residential exposure to aminopyralid.

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

Although there will not be any residential uses for aminopyralid, Dow AgroSciences, LLC has pending applications for use-sites: Campgrounds and recreational areas. EPA has completed short-term risk assessment for these use-sites. The risk assessment was for the potential post-application exposure of infants and children, based on hand-to-mouth transfer of residues and ingestion of aminopyralid-contaminated grass and soil. Post-application inhalation exposure is not

expected to occur. For the risk assessment of these incidental exposures, the NOAEL of 104 mg/kg/day found in the rabbit development study, was used. The combined exposures from food and drinking water and these incidental exposures were used to estimate short-term aggregate risk for infants and children. The Table 3 of this unit gives the EPA's short-term exposure and risk estimates for aminopyralid, resulting from potential exposures from food, drinking water and the recreational uses of aminopyralid.

TABLE 3.—SHORT-TERM AGGREGATE EXPOSURE AND RISK ESTIMATES FOR AMINOPYRALID

Population sub-group	NOAEL, mg/kg/day	Exposure, mg/kg/day			Aggregate MOE
		Dietary	Total non-dietary	Total aggregate	
All infants (< 1 year)	104	0.00052	0.0021	0.00262	40,000
Children 1–2 years	104	0.00120	0.0021	0.00330	32,000
Children 3–5 years	104	0.00088	0.0021	0.00298	35,000
Children 6–12 years	104	0.00052	0.0021	0.00262	40,000

The EPA acknowledges that the aggregate exposure and risk estimates for infants and children are likely overestimates and the coincidence of such exposures will not be common.

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

Aminopyralid has no pending registration for any sites that would result in intermediate-term exposure. While there is potential short-term exposure from the campgrounds and recreation area uses, there are no potential intermediate-term (30–180 days) exposures.

5. *Aggregate cancer risk for U.S. population.* Aminopyralid has not been shown to be carcinogenic. Therefore, aminopyralid is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, liquid chromatography and positive ion electrospray tandem spectrometry with limits of quantitation of 0.01 ppm, is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue limits for aminopyralid.

C. Conditions

Dow AgroScience, LLC must submit storage stability data for grass forage and hay reflecting up to approximately 15 months of frozen storage.

D. Public Comments

One comment was received. B. Sachau objected to the proposed tolerance because of the amounts of pesticides already consumed and carried by the American population. The commenter also claimed that tests conducted with animals have absolutely

no validity and are cruel to the test animals. EPA has responded to B. Sachau's generalized comments on numerous previous occasions. (See the **Federal Register** of January 7, 2005 (70 FR 1349–1354) (FRL–7691–4) and the **Federal Register** of October 29, 2004 (69 FR 63083–63096) (FRL–7681–9)).

V. Conclusion

Therefore, the tolerances are established for residues of aminopyralid, free and conjugated residues, in or on aspirated grain fractions at 0.2 ppm; grass, forage at 25 ppm; grass, hay at 50 ppm; wheat bran at 0.1 ppm; wheat, forage at 2.0 ppm; wheat, grain at 0.04 ppm; wheat, hay at 4.0 ppm; wheat, straw at 0.25 ppm; and tolerances are established for residues of aminopyralid in or on cattle, fat at 0.02 ppm; cattle, meat at 0.02 ppm; cattle, meat byproducts, except kidney at 0.02 ppm; cattle, kidney at 0.3 ppm; goat, fat at 0.02 ppm; goat, meat at 0.02 ppm; goat, meat byproducts, except kidney at 0.02 ppm; goat, kidney at 0.3 ppm; horse, fat at 0.02 ppm; horse, meat at 0.02 ppm; horse, meat byproducts, except kidney at 0.02 ppm; horse, kidney at 0.3 ppm; milk at 0.03 ppm; sheep, fat at 0.02 ppm; sheep, meat at 0.02 ppm; sheep, meat byproducts,

except kidney at 0.02 ppm; and sheep, kidney at 0.3 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2004-0139 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 11, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2004-0139 to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has

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

processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 27, 2005.
James Jones,
 Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

- 1. The authority citation for part 180 continues to read as follows:
Authority: 21 U.S.C. 321(q), 346a and 371.
- 2. Section 180.610 is added to subpart C to read as follows:

§ 180.610 Aminopyralid; tolerances for residues.

(a) *General.* (1) Tolerances are established for free and conjugated residues of the herbicide, aminopyralid (2-pyridine carboxylic acid, 4-amino-3,6-dichloro-) calculated as aminopyralid in or on:

Commodity	Parts per million
Grass, forage	25
Grass, hay	50
Wheat, bran	0.1
Wheat, forage	2.0
Wheat, grain	0.04
Wheat, hay	4.0
Wheat, straw	0.25
Aspirated grain fractions	0.2

(2) Tolerances are established for residues of the herbicide aminopyralid in or on:

Commodity	Parts per million
Cattle, fat	0.02
Cattle, meat	0.02
Cattle, meat by-products, excluding kidney	0.02
Cattle, kidney	0.3
Goat, fat	0.02
Goat, meat	0.02
Goat, meat by-products, excluding kidney	0.02
Goat, kidney	0.3
Horse, fat	0.02
Horse, meat	0.02
Horse, meat by-products, excluding kidney	0.02
Horse, kidney	0.3
Milk	0.03
Sheep, fat	0.02
Sheep, meat	0.02
Sheep, meat by-products, excluding kidney	0.02
Sheep, kidney	0.3

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

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

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

[FR Doc. 05-15523 Filed 8-9-05; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2005-0141; FRL-7728-1]

2-amino-4,5-dihydro-6-methyl-4-propyl-s-triazolo(1,5-alpha)pyrimidin-5-one (PP796); Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the established exemption from the requirement of a tolerance under 40 CFR 180.1065 for 2-amino-4,5-dihydro-6-methyl-4-propyl-s-triazolo(1,5-alpha)pyrimidin-5-one, which is also known as "PP796", by increasing the amount that can be used to not more than 0.3 percent in formulation of paraquat dichloride. Syngenta Crop Protection submitted a pesticide petition (PP) 5E6929 requesting this amendment.

DATES: This regulation is effective August 10, 2005. Objections and requests for hearings must be received on or before October 11, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP-2005-0141. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 306-0404; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this Action Apply to Me?*

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

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

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

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

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

II. Background and Statutory Findings

In the **Federal Register** of June 30, 2005 (70 FR 37847) (FRL-7719-4), EPA issued a notice pursuant to section 408(d)(3) of the Federal Food Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 5E6929) by Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27419-8300 for 2-amino-4,5-dihydro-6-methyl-4-propyls-triazolo(1,5- α)pyrimidin-5-one, which is also known as "PP796". This

notice included a summary of the petition prepared by the petitioner. The petition requested that the established exemption from the requirement of a tolerance under 40 CFR 180.1065 be amended by increasing the amount of PP796 that can be used to not more than 0.3 percent in formulation of paraquat dichloride. No substantive comments were received in response to the notice of filing.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues" and "other substances that have a common mechanism of toxicity."

The existing tolerance exemption under 40 CFR 180.1065 allows for the use of PP796 as an emetic at not more than 0.1 percent in formulation of paraquat dichloride. In the **Federal Register** Notice (November 12, 1981; 46 FR 55725) that established this exemption, EPA stated the following in its Basis for Approval: "This exemption is justified because the severe health hazard associated with oral ingestion of paraquat allows for efforts to advance any opportunity to reduce retention of accidentally ingested paraquat formulations. Also, any possible adverse effect of PP796 (the inert emetic) is minimal in comparison to the irreversible severe consequences of paraquat ingestion. Based on the above information, and review of its use, it has been found that, when used in

accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or to the environment."

According to EPA's Reregistration Eligibility Decision (RED; 1997) for paraquat dichloride, since 1988 the manufacturer of paraquat dichloride has added the emetic PP796 (a substance that induces vomiting), a stenching agent, and blue dye in an effort to prevent accidental and intentional ingestions from occurring. The RED stated that "U.S. Poison Control Center data show a decline of almost 50 percent when comparing the proportion of all pesticide exposures due to paraquat ingestion for the four years pre- and post 1988."

According to the RED, paraquat dichloride is a restricted use herbicide currently registered to control weeds and grasses in many agricultural and non-agricultural areas. The RED states there are no residential or other non-occupational uses of paraquat dichloride, and exposure to paraquat dichloride in drinking water is not expected. Therefore, exposure to PP796 from applications of paraquat dichloride are not expected from residential/non-occupational and drinking water sources. A substantial increase in dietary risk is not anticipated from this small raise of the allowable percentage of the emetic PP796 from 0.1 to 0.3 in formulation of paraquat dichloride. Therefore, the Agency has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure when considering dietary exposure and all other non-occupational sources of pesticide exposure for which there is reliable information. Also, the health benefits of including an emetic in paraquat dichloride formulations as stated in the 1981 **Federal Register** Notice (46 FR 55725) are reaffirmed here. In addition, the RED states paraquat dichloride does not pose a hazard to the environment. This small increase in the allowable amount of PP796 is also not expected to pose a hazard to the environment.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the Food Quality Protection Act of 1996 (FQPA), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the

FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to “object” to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2005-0141 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 11, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor’s contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is

described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2005-0141, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IV. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates

Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. The Agency hereby certifies that this rule will not have significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with*

Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 1, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.1065 is revised to read as follows:

§ 180.1065 2-Amino-4,5-dihydro-6-methyl-4-propyl-s-triazolo(1,5- α)pyrimidin-5-one; exemption from the requirement of a tolerance.

The inert ingredient, 2-amino-4,5-dihydro-6-methyl-4-propyl-s-triazolo(1,5- α)pyrimidin-5-one is exempted from the requirement of a tolerance when used as an emetic at not more than 0.3 percent in formulations of paraquat dichloride. Further restrictions on this exemption are that this ingredient may not be advertised as an emetic and the paraquat product may not be promoted in any way because of the inclusion of this inert ingredient.

[FR Doc. 05-15837 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 586

[Docket No. NHTSA-2005-21330]

RIN 2127-AJ64

Federal Motor Vehicle Safety Standards; Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to a petition for reconsideration from DaimlerChrysler Corporation of a final rule relating to the agency’s upgrade of rear and side impact tests in Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*. Among other matters, that final rule provided manufacturers of vehicles with a gross vehicle weight rating greater than 2,722 kilograms (6,000 pounds) an additional year of lead time to certify their vehicles to the amended side impact requirements, but did not provide for a phase-in of those requirements for those vehicles. On reconsideration, NHTSA is providing manufacturers of those vehicles a two year phase-in for the side impact requirements. Ninety percent of the vehicles manufactured on or after September 1, 2005 must meet the upgraded side impact requirements, with 100 percent of the vehicles manufactured on or after September 1, 2006 meeting the requirements.

DATES: *Effective date:* The amendments made in this rule are effective August 10, 2005. Petitions for reconsideration must be received by September 26, 2005, and should refer to this docket

and the notice number of this document.

ADDRESSES: Petitions for reconsideration must be sent to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Mr. Tewabe Asebe, Office of Crashworthiness Standards, by telephone at (202) 366-2365, or by fax at (202) 366-7002. For legal issues, you may contact Ms. Deirdre Fujita, Office of Chief Counsel, at (202) 366-2992 (telephone), or at (202) 366-3820 (fax). You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

To provide occupant protection from exposure to fire that result from fuel spillage during and after crashes, Federal Motor Vehicle Safety Standard (FMVSS) No. 301 (49 CFR 571.301) specifies performance requirements for the fuel systems of vehicles with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) or less (10,000 pounds (lb) or less). The standard limits the amount of fuel spillage from vehicles during and after frontal, rear, and side impact tests.

a. December 2003 Final Rule

In December 2003, NHTSA upgraded both the rear impact and lateral (side) impact test requirements in FMVSS No. 301 to increase safety and provide for more realistic testing of fuel systems (68 FR 67068, December 1, 2003, Docket 16523). The December 2003 upgrade established an offset rear impact test procedure that specifies striking the rear of the test vehicle at 50 miles per hour (mph) (80 \pm 1 kilometers per hour (km/h)) with a 1,368 kg (3,015 lb) deformable barrier at a 70 percent overlap with the test vehicle. The rear impact test replaced a 30 mph (48 km/h) crash test that had used a 1,814 kg (4,000 lb) rigid moving barrier. The upgrade of the standard’s side impact test requirements replaced a lateral 20 mph (32 km/h) crash test with the side impact crash test specified in FMVSS No. 214, “Side impact protection.” FMVSS No. 214’s test specifies that the test vehicle is impacted at 33 \pm 0.6 mph (53 \pm 1 km/h) with a 1,368 kg (3,015 lb) deformable barrier.

The final rule provided manufacturers three years of lead time to meet the upgraded rear impact test, followed by a three year phase-in beginning

September 1, 2006, according to the percentages of production of 40%, 70% and 100%. The final rule established a September 1, 2004 effective date for the upgraded side impact requirements, and did not provide for a phase-in of the requirements. A long lead time and a phase-in for the side impact requirements were not deemed necessary by NHTSA because the agency believed that few vehicles (approximately 1%) will have to be modified to meet FMVSS No. 301 when tested to the new side impact test.

b. Alliance Petition for Reconsideration

The Alliance of Automobile Manufacturers, Inc. (Alliance)¹ petitioned for reconsideration of the December 2003 final rule, requesting: (a) A one-year extension of the compliance date for the side impact upgrade for all vehicles (from September 1, 2004 to September 1, 2005); and (b) a phase-in for vehicles greater than 2,722 kg (6,000 lb) GVWR.² The Alliance requested the phase-in to begin September 1, 2005, with 90% in the first year, and 100% in the second year. The petitioner stated that because the moving deformable barrier side impact test of FMVSS No. 214 does not presently apply to multipurpose passenger vehicles, trucks and buses with a GVWR greater than 2,722 kg, manufacturers need more time than that provided by the final rule to perform the testing necessary to ensure that the vehicles can be certified as meeting the side impact requirements, even if no modifications were required to meet the requirements.

In August 2004, NHTSA published a final rule that responded to the petition (69 FR 51393, August 19, 2004, Docket 18900). The August 2004 final rule decided against extending the September 1, 2004 compliance date for vehicles with a GVWR less than 2,722 kg (6,000 lb). NHTSA explained that those vehicles are already subject to the FMVSS No. 214 side impact test and there was no indication that there would be difficulty in certifying these vehicles to the upgraded fuel system integrity requirements. On the other hand, the August 2004 final rule extended the compliance date a year for vehicles with a GVWR greater than 2,722 kg (6,000 lb). NHTSA explained that the vehicles have not previously been subject to the FMVSS No. 214 side

impact test. While the agency continued to believe that less than one percent of vehicles required modification to comply with the side impact upgrade, an additional year was provided manufacturers to determine what changes, if any, need to be made. The request for a phase-in of the side impact requirements was not granted.

c. DaimlerChrysler Petition for Reconsideration

DaimlerChrysler Corporation (“DCC”) petitioned for reconsideration of the agency’s decision in the August 2004 final rule not to provide a two-year phase-in of the FMVSS No. 301 side impact requirements for vehicles with a GVWR greater than 2,722 kg (6,000 lb). In its petition (Document NHTSA–2004–18900–2), DCC stated that NHTSA reached its decision on the Alliance petition when NHTSA “was not aware of the burdens that its decision would impose with regard to the Sprinter van.” DCC stated:

The Sprinter is a vehicle with a GVWR in excess of 6,000 lb. As such, it has not been subject to the FMVSS 214 dynamic side impact test, and DCC had not tested it to determine whether it would comply with dynamic FMVSS 214. When the agency published the new FMVSS 301 requirements in December 2003, DCC conducted an analysis of the current vehicle and concluded that it would not meet the new FMVSS 301 side impact requirement based on the current design. [Footnote omitted.]

DCC had not brought its concerns about the Sprinter van to NHTSA earlier in the rulemaking proceeding because DCC had not tested the Sprinter for compliance with FMVSS No. 214’s side impact test. DCC submitted information to NHTSA regarding the modifications and costs that would be necessary to modify the vehicle to meet the side impact requirements.³ DCC stated that the necessary modifications would be “complicated and expensive, and would involve additional tooling, material, and assembly costs.” The petitioner further stated:

The magnitude of the fixed costs would be particularly onerous because they would be spread across a relatively small number of vehicles. This is attributable to the fact that the current version of the Sprinter is scheduled to cease production in September 2006—one year after vehicles with a GVWR in excess of 6,000 lb are required under S6.3(c) to begin complying with the new FMVSS 301 side impact requirement. Thus, if FMVSS 301 is not amended as requested herein, the Sprinter will be subject to the new FMVSS 301 requirements for only one year, and the costs of modifying the Sprinter

to comply with the new FMVSS 301 requirements would be spread out over only one year’s production. * * *

In light of the exorbitant costs that the final rule would necessitate for the production of the current Sprinter during its remaining production life, DCC respectfully requests that the agency reconsider the final rule and amend S6.3(c) to provide a two-year phase-in with an implementation schedule of 90% by September 1, 2005 and 100% by September 1, 2006.

Discussion

DCC has provided cost and production information regarding a specific vehicle that DCC is discontinuing in 2006. The Sprinter was heretofore excluded from the FMVSS No. 214 dynamic crash test; information about its inability to meet the new fuel leakage requirement when tested laterally was not previously available.

In issuing the final rule on the FMVSS No. 301 upgrade, NHTSA did not believe that modifications will involve structural changes. The agency stated: “Since most vehicles readily pass the fuel leakage requirements using the Standard No. 214 side impact test, we do not believe modifications will be required which are not minor.” (68 FR 67079.) The cost data provided by the petitioner indicate that the Sprinter will require more substantial modifications than those envisioned by the agency. Instituting a two-year, 90%–100% phase-in provides a reasonable period of time for manufacturers to adjust to the burdens of the upgrade and reduce the costs of the rulemaking. While NHTSA believed that the adopted FMVSS No. 214 test was somewhat stricter than the existing lateral impact test of FMVSS No. 301, NHTSA could not quantify the benefits of adopting the FMVSS No. 214 test. Accordingly, the agency does not believe that there will be any quantifiable loss of benefits associated with phasing in the side impact requirement over two years, particularly if 90% of the vehicles in question (GVWR greater than 2,722 kg) must comply in the first year.

For the aforementioned reasons, NHTSA is providing manufacturers of multipurpose passenger vehicles, trucks and buses with a GVWR greater than 2,722 kg (6,000 lb) an additional year, for a few model lines, to assess whether the vehicles meet the side impact requirements and to make necessary changes to meet the requirements. Ninety (90) percent of the vehicles they manufacture on or after September 1, 2005 and before September 1, 2006 must be certified as meeting the upgraded side impact fuel system integrity requirements. One hundred (100) percent of the vehicles manufactured on

¹ The Alliance is a trade association of motor vehicle manufacturers including BMW group, DaimlerChrysler, Ford Motor Company, General Motors, Mazda, Mitsubishi Motors, Porsche, Toyota, and Volkswagen.

² The agency also received petitions from others, but only the Alliance petition is discussed here because of its relevancy to this rulemaking action.

³ The agency granted confidentiality of the provided cost data and production information.

or after September 1, 2006 must be certified as meeting the requirements. These phase-in requirements are set forth in S6.3(c) of FMVSS No. 301, as revised. Reporting and recordkeeping requirements implementing the phase-in are also added to Part 586.

Effective Date

The amendments are effective upon publication in the **Federal Register**. An effective date less than 180 days after date of publication of this rule is in the public interest because these amendments affect an upcoming September 1, 2005 compliance date for the side impact upgrade of FMVSS No. 301 for vehicles with a GVWR greater than 2,722 kg (6,000 lb). This rule provides an additional year to manufacturers to certify a few model lines. The effective date provides relief and allows manufacturers to make informed decisions regarding the upcoming September 1, 2005 compliance date.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action has been determined to not be significant under the Department's regulatory policies and procedures. The amendments made in this final rule do not significantly impact the costs and benefits of the December 2003 final rule. The agency has concluded that the impacts of today's amendments are so minimal that a regulatory evaluation is not required.

In response to a petition for reconsideration of the final rule published August 19, 2004, we are providing a short phase-in of the side impact requirements for manufacturers of multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 2,722 kg (6,000 lb). The phase-in permits these manufacturers to comply with the side impact upgrade with the percentages of production of 90% of vehicles manufactured on or after September 1, 2005 and 100% of vehicles manufactured on or after September 1, 2006. The phase-in allows manufacturers an additional year to assess whether their vehicles meet the requirements and to make necessary changes to meet the requirements.

NHTSA estimates that most vehicles already meet the upgraded side impact requirements of FMVSS No. 301.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The December 2003 final rule, and the August 2004 final rule which this document amends, were certified as not having a significant economic impact on a substantial number of small entities. The amendments made by today's final rule affect manufacturers of multipurpose passenger vehicles, trucks and buses with a GVWR or more than 2,722 kg (6,000 lb) by providing an additional year to meet the side impact requirements of the upgraded FMVSS No. 301 for a few model lines. NHTSA believes that most of these vehicles already meet the requirements at issue.

C. National Environmental Policy Act

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects

on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with base year of 1995). This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Consequently, no Unfunded Mandates assessment has been prepared.

F. Executive Order 12988 (Civil Justice Reform)

This final rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) 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 technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: Final rule, response to a petition for reconsideration; Phase-in reporting requirements.

OMB Control Number: None.

Affected Public: Manufacturers of passenger cars, and trucks and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 2,722 kilograms (6,000 pounds) or more but not more than GVWR of 4,536 kilograms (10,000 pounds).

Form Number: None.

Number of Respondents: No more than 21.

Estimated Annual Burden: Since almost all of the information required is already recorded by the manufacturers as part of their production control and tracking systems, a nominal assessment of 24 total burden hours per respondent is estimated for data retrieval and report preparation. The estimated cost per hour in dollars is \$45. Based on this estimate, the total annual burden for manufacturers would be: (21 respondents) × (24 total burden hours per respondent) × (\$45 per hour) = \$22,680.

Abstract: In August 2004, NHTSA published a final rule to upgrade Federal motor vehicle safety standard No. 301, "Fuel system integrity," in response to petitions for reconsideration (69 FR51393, August 19, 2004). On October 4, 2004, DaimlerChrysler Corporation petitioned to reconsider the August 2004 final rule. The petitioner requested a two-year phase-in of the upgraded fuel system integrity side impact requirements for vehicles with a gross vehicle weight rating (GVWR) in excess of 2,722 kg (6,000 pounds). DaimlerChrysler Corporation requested an implementation schedule of 90 percent by September 1, 2005, and 100 percent by September 1, 2006. This action responds to the petition.

This final rule gives vehicle manufacturers an additional year for vehicles above GVWR of 2,722 kg and up to 4,536 kg to comply with the FMVSS No. 301 side impact test requirement. Ninety (90) percent of these vehicles must be certified as meeting the FMVSS No. 301 side impact test requirement before September 1, 2005. One hundred (100) percent of the vehicles manufactured on or after September 1, 2006 must be certified as meeting the requirements. The collection of information is used for recordkeeping to keep track of covered vehicles, and for reporting to the agency the covered vehicles that comply with the requirements.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Executive Order 13045

Executive Order 13045 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 NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us. This rulemaking does not involve decisions about health risks that disproportionately affect children.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs NHTSA 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 standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This final rule does not address matters such as performance requirements or test conditions, procedures or devices. It addresses compliance schedules only. There are no voluntary consensus standards applicable to this final rule.

K. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

List of Subjects in 49 CFR Parts 571 and 586

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR part 571 and part 586 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.301 is amended by revising S6.3(c) to read as follows.

§ 571.301 Standard No. 301; Fuel system integrity.

* * * * *

S6.3 * * *

(c)(1) Notwithstanding S6.3(b) of this standard, vehicles having a GVWR greater than 6,000 lb (2,722 kg) may meet S6.3(a) instead of S6.3(b) of this standard until September 1, 2005.

(2) Notwithstanding S6.3(b) of this standard, vehicles having a GVWR greater than 6,000 lb (2,722 kg) manufactured on or after September 1, 2005 must meet the requirements of S6.3(b) of this standard unless they are excluded from S6.3(b) under the phase-in specified in this paragraph. Excluded vehicles must meet the requirements of S6.3(a) of this standard. For vehicles having a GVWR greater than 6,000 lb (2,722 kg) manufactured on or after September 1, 2005 and before September 1, 2006, the number of vehicles complying with S6.3(b) shall be not less than 90 percent of:

(i) The manufacturer's average annual production of vehicles with a GVWR greater than 6,000 lb (2,722 kg) manufactured on or after September 1, 2002 and before September 1, 2005; or

(ii) The manufacturer's production of vehicles with a GVWR greater than 6,000 lb (2,722 kg) on or after September 1, 2004 and before September 1, 2005.

(iii) Vehicles that have a GVWR greater than 6,000 lb (2,722 kg) and that are manufactured on or after September 1, 2006 must meet the requirements of S6.3(b) of this standard.

(3) *Vehicles produced by more than one manufacturer.* For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S6.3(c)(2)(i) and S6.3(c)(2)(ii) of this standard, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S6.3(c)(4).

(i) A vehicle which is imported shall be attributed to the importer.

(ii) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

(4) A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR 568.6, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S6.3(c)(3).

* * * * *

PART 586—FUEL SYSTEM INTEGRITY UPGRADE PHASE-IN REPORTING REQUIREMENTS

■ 3. The authority citation for Part 586 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 4. Sections 586.5, 586.6 and 586.7 are revised to read as follows:

§ 586.5 Response to inquiries.

At any time during the production years ending August 31, 2006, August 31, 2007, August 31, 2008 and August 31, 2009, each manufacturer must, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification model) that have been certified as complying with S6.2(b) and S6.3(b) of Standard No. 301 (49 CFR 571.301). The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

§ 586.6 Reporting requirements.

(a) *Phase-in reporting requirements.*
(1) Within 60 days after the end of the production years ending August 31, 2006, each manufacturer must submit a report to the National Highway Traffic Safety Administration concerning its compliance with S6.3(b) of Standard No. 301 (49 CFR 571.301) for its multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating (GVWR) greater than 2,722 kg (6,000 pounds) produced in that year.

(2) Within 60 days after the end of the production years ending August 31, 2007, August 31, 2008, and August 31, 2009, each manufacturer must submit a report to the National Highway Traffic Safety Administration concerning its compliance with S6.2(b) of Standard No. 301 (49 CFR 571.301) for its passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of less than 4,536 kilograms (10,000 pounds) produced in that year.

(3) Each report must—

(i) Identify the manufacturer;
(ii) State the full name, title, and address of the official responsible for preparing the report;
(iii) Identify the production year being reported on;

(iv) Contain a statement regarding whether the manufacturer complied with the requirements of S6.2(b), S6.2(c) if applicable, or S6.3(b) of Standard No. 301 (49 CFR 571.301) for the period covered by the report and the basis for that statement;

(v) Provide the information specified in paragraph (b) of this section;

(vi) Be written in the English language; and

(vii) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Phase-in report content*—(1) *Basis for statement of compliance with side impact test requirements.* (i) Each manufacturer must provide the number of multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 2,722 kilograms (6,000 pounds) manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the previous production year. A new manufacturer that has not previously manufactured these vehicles for sale in the United States must report the number of such vehicles manufactured during the current production year.

(ii) *Production.* Each manufacturer must report for the production year for which the report is filed: the number of multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 2,722 kilograms (6,000 pounds) that meets S6.3(b) of Standard No. 301 (49 CFR 571.301).

(2) *Basis for statement of compliance with rear impact test requirements.* (i) Each manufacturer must provide the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the previous production year. A new manufacturer that has not previously manufactured these vehicles for sale in the United States must report the number of such vehicles manufactured during the current production year.

(ii) *Production.* Each manufacturer must report for the production year for which the report is filed: the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less that meet S6.2(b) of Standard No. 301 (49 CFR 571.301).

(3) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S6.3(c)(4) and S8.3.2 of Standard No. 301 (49 CFR 571.301) must:

(i) Report the existence of each contract, including the names of all parties to the contract, and explain how the contract affects the report being submitted.

(ii) Report the actual number of vehicles covered by each contract.

* * * * *

§ 586.7 Records.

Each manufacturer must maintain records of the Vehicle Identification Number (VIN) for each vehicle for which information is reported under § 586.6(b)(1)(ii) until December 31, 2007. Each manufacturer must maintain records of the VIN for each vehicle for which information is reported under § 586.6(b)(2)(ii) until December 31, 2010.

Issued on: August 3, 2005.

Jeffrey W. Runge,
Administrator.

[FR Doc. 05-15691 Filed 8-9-05; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332-5039-02; I.D. 080405C]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). These actions are necessary to allow the 2005 B season total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective August 5, 2005, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2005.

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 B season allowance of the Pacific cod TAC specified for vessels using jig gear in the BSAI is 762 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005), for the period 1200 hrs, A.l.t., April 30, 2005, through 1200 hrs, A.l.t., August 31, 2005. See § 679.20(c)(3)(iii), (c)(5), and (a)(7)(i)(A). The 2005 Pacific cod TAC specified for catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI is 2,854 mt as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005), the reallocation on April 13, 2005 (70 FR 19708, April 14, 2005) and the reallocation on May 17, 2005 (70 FR 28486, May 18, 2005).

The Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 500 mt of the B season apportionment of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(A) and (a)(7)(iii)(A)(3). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(1), NMFS apportions 500 mt of Pacific cod from the B season jig gear apportionment to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) are revised as follows: 262 mt to the B season apportionment for vessels using jig gear and 3,354 mt to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

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 reallocation of Pacific cod specified for jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 1, 2005.

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

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

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

Dated: August 4, 2005.

Alan D. Risenhoover,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05-15819 Filed 8-5-05; 3:02 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 70, No. 153

Wednesday, August 10, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-22053; Directorate Identifier 2004-NM-74-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300 B4-600, B4-600R, and F4-600R Series Airplanes, and Model C4-605R Variant F Airplanes (Collectively Called A300-600 Series Airplanes); and Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus airplanes, listed above. This proposed AD would require installing two-stage relays in the electronics rack (90VU), and performing related corrective and investigative actions. This proposed AD is prompted by reports of inadvertent rudder trim activation when the autopilot is on. We are proposing this AD to prevent inadvertent trim activation when the autopilot is on and the slats are extended, which could result in rudder activation when the autopilot is turned off.

DATES: We must receive comments on this proposed AD by September 9, 2005.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400

Seventh Street SW., Nassif Building, room PL-401, Washington, DC 20590.

- By fax: (202) 493-2251.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA-2005-22053; the directorate identifier for this docket is 2004-NM-74-AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2005-22053; Directorate Identifier 2004-NM-74-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act

Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you can visit <http://dms.dot.gov>.

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A300 B4-600, B4-600R, and F4-600R series airplanes, and Model C4-605R Variant F airplanes (collectively called A300-600 series airplanes); and Airbus Model A310 series airplanes. The DGAC advises that there have been reports of inadvertent activation of the rudder trim when the autopilot was engaged. Inadvertent trim activation when the autopilot is on and the slats are extended could result in rudder activation when the autopilot is turned off.

Relevant Service Information

Airbus has issued Airbus Service Bulletin A300-27-6031, Revision 03, dated February 9, 2001, for Model A300 B4-601, B4-603, B4-605R, B4-622R, A300 C4-605R Variant F, and F4-605R airplanes; and Airbus Service Bulletin A310-27-2077, Revision 03, dated February 9, 2001, for Airbus Model A310 series airplanes.

The service bulletins describe procedures for installing two-stage relays that are controlled by the flight control computers (FCC1 and FCC2). The service bulletins recommend this installation to further improve the protection against rudder trim activation caused by inadvertent selection. The two-stage relays inhibit the rudder trim control when the autopilot is engaged and the slats are extended, and are installed in the electronics rack 90VU between switch 4CG and relays 12CG

and 13CG. The installation includes applicable related corrective actions. The related corrective actions include installing new equipment (such as clamps, brackets, relay plate, and relays) in the electronics rack, and modifying certain wiring in the electronics rack.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive 98-175-249(B), dated April 22, 1998, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 115 airplanes of U.S. registry. The proposed actions would take about between 3 and 14 work hours per airplane, depending on the airplane's configuration, at an average labor rate of \$65 per work hour. Required parts would cost between \$520 and \$1,330 per airplane, depending on the airplane's configuration. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between \$82,225 and \$257,600, or between \$715 and \$2,240 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that

section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA-2005-22053; Directorate Identifier 2004-NM-74-AD.

Comments Due Date

- (a) The Federal Aviation Administration must receive comments on this AD action by September 9, 2005.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to the Airbus airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—AIRBUS AIRPLANES AFFECTED BY THIS AD

Affected Models—	As Identified in Paragraph 1.A.(2)(a), "Effectivity by MSN," of Airbus Service Bulletin—
Model A300 B4-600, B4-600R, and F4-600R series airplanes, and Model C4-605R Variant F airplanes (collectively called A300-600 series airplanes).	A300-27-6031, Revision 03, dated February 9, 2001.
Model A310 series airplanes.	A310-27-2077, Revision 03, dated February 9, 2001.

Unsafe Condition

- (d) This AD was prompted by reports of inadvertent rudder trim activation when the autopilot is on. We are issuing this AD to prevent inadvertent trim activation when the autopilot is on and the slats are extended, which could result in rudder activation when the autopilot is turned off.

Compliance

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

Installation

- (f) Within 16 months after the effective date of this AD: Install two-stage relays in the electronics rack 90VU between switch 4CG and relays 12CG and 13CG; and do any applicable related corrective and investigative actions before further flight. Do all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300-27-6031, Revision 03, dated February 9, 2001 (for Model A300-600 series airplanes); and Airbus Service Bulletin A310-27-2077, Revision 03, dated February 9, 2001 (for Model A310 series airplanes).

Modification According to Previous Issues of Service Bulletins

- (g) Installations are also acceptable for compliance with the requirements of paragraph (f) of this AD if done before the effective date of this AD in accordance with one of the service bulletins in Table 2 of this AD.

TABLE 2.—PREVIOUS ISSUES OF SERVICE BULLETINS

Airbus Service Bulletin	Revision	Date
A300–27–6031.	01	September 3, 1997.
A300–27–6031.	02	December 4, 1998.
A310–27–2077.	01	September 3, 1997.
A310–27–2077.	02	December 4, 1998.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) French airworthiness directive 98–175–249(B), dated April 22, 1998, also addresses the subject of this AD.

Issued in Renton, Washington, on August 3, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15802 Filed 8–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2005–21836; Directorate Identifier 2005–CE–36–AD]

RIN 2120–AA64

Airworthiness Directives; Pręsiębiorstwo Doswiadczałno—Produkcyjne Szybownictwa “PZL–Bielsko” Model SZD–50–3 “Puchacz” Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Pręsiębiorstwo Doswiadczałno—Produkcyjne Szybownictwa “PZL–Bielsko” Model SZD–50–3 “Puchacz” gliders. This proposed AD would require you to perform a visual inspection of the turnbuckle link for cracks or wear and replace if cracks or wear is found. This proposed action would only apply to those gliders where the turnbuckle is directly connected to the pedal. This proposed AD results

from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. We are issuing this proposed AD to detect and correct cracks in the turnbuckle link, which could result in failure of the rudder cable. This failure could lead to loss of control of the glider.

DATES: We must receive any comments on this proposed AD by September 29, 2005.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

- *Fax:* 1–202–493–2251.

- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Allstar PZL Glider Sp. z o.o., ul.Cięzynska 325, 43–300 Bielsko-Biala, Poland; telephone: 43 33 812 50 26; facsimile: 48 33 812 37 39; Web site: <http://www.szd.com.pl>.

To view the comments to this proposed AD, go to <http://dms.dot.gov>. This is docket number FAA–2005–21836; Directorate Identifier 2005–CE–36–AD.

FOR FURTHER INFORMATION CONTACT:

Gregory Davison, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:**Comments Invited**

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, “FAA–2005–21836; Directorate Identifier 2005–CE–36–AD” at the beginning of your comments. We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with

FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–21836; Directorate Identifier 2005–CE–36–AD. You may review the DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://dms.dot.gov>.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at <http://dms.dot.gov>. The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? The Civil Aviation Office, which is the airworthiness authority for Poland, recently notified FAA that an unsafe condition may exist on all Pręsiębiorstwo Doswiadczałno—Produkcyjne Szybownictwa “PZL–Bielsko” Model SZD–50–3 “Puchacz” gliders. The Civil Aviation Office reports a broken turnbuckle on a glider performing rudder operations in flight. Specifically, material fatigue caused the end of the turnbuckle that connects the rudder cable with rear seat, right-side pedal to break. Occupants, because of glider design, may have stepped on the rudder cable while entering or exiting

the glider, putting stress on the turnbuckle link. This may have contributed to the material fatigue.

What is the potential impact if FAA took no action? Cracks or wear in the turnbuckle link could result in failure of the rudder cable. This failure could lead to loss of control of the glider.

Is there service information that applies to this subject? PZL-Bielsko has issued Mandatory Bulletin No. BE-054/SZD-50-3/2003 "Puchacz," as approved in the Republic of Poland Civil Aviation Office AD No. SP-0012-2004-A, dated February 5, 2004.

What are the provisions of this service information? The service bulletin includes procedures for:

- Visually inspecting the turnbuckle end for excessive wear and cracks; and
- Replacing the turnbuckle end if wear or cracks are found.

What action did the Civil Aviation Office take? The Civil Aviation Office classified this service bulletin as mandatory and issued Polish AD Number SP-0012-2004-A, dated February 5, 2004, to ensure the continued airworthiness of these gliders in Poland.

Did the Civil Aviation Office inform the United States under the bilateral airworthiness agreement? These PZL-Bielsko Model SZD-50-3 "Puchacz" gliders are manufactured in Poland and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the Civil Aviation Office has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the Civil Aviation Office's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other PZL-Bielsko Model SZD-50-3 "Puchacz" gliders of the same type design that are registered in the United States, we are proposing AD action to detect and correct cracks in the turnbuckle link that could result in

failure of the rudder cable. This failure could lead to loss of control of the glider.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many gliders would this proposed AD impact? We estimate that this proposed AD affects 8 gliders in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected gliders? We estimate the following costs to do this proposed inspection:

	Labor cost	Total cost per glider	Total cost on U.S. operators
1 workhour × \$65 = \$65		\$65	\$520

We estimate the following costs to do any necessary replacements that would

be required based on the results of this proposed inspection. We have no way of

determining the number of gliders that may need this repair/replacement:

	Labor cost	Parts cost	Total cost per glider
1 workhour × \$65 = \$65		\$20	\$85

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket FAA-2005-21836;

Directorate Identifier 2005-CE-36-AD” in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Przedsiębiorstwo Doswiadczalno-Produkcyjne Szybownictwa “PZL-Bielsko”; Docket No. FAA-2005-21836; Directorate Identifier 2005-CE-36-AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by September 29, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Gliders Are Affected by This AD?

(c) This AD affects Model SZD-50-3 “Puchacz” gliders, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of a turnbuckle link breaking in flight. The actions specified in this AD are intended to detect and correct cracks in the turnbuckle link, which could result in failure of the rudder cable. This failure could lead to loss of control of the glider.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following on gliders where the turnbuckle is directly connected to the pedal:

Actions	Compliance	Procedures
(1) Visually inspect turnbuckle end for cracks or wear. Use a magnifying glass with 10 times the magnifying power. The magnifying power in this AD takes precedence over the magnifying power stated in PZL-Bielsko Mandatory Bulletin No. BE-054/SZD-50-3/2003 “Puchacz.” Inspection is not required on gliders where additional short cables between the rear seat pedal and turnbuckle have been installed.	Initially within 25 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 50 hours TIS.	Follow PZL-Bielsko Mandatory Bulletin No. BE-054/SZD-50-3/2003 “Puchacz.”
(2) If cracks or wear is found, during any inspection required by this AD, replace turnbuckle end. The turnbuckle must have a steel end and support a maximum load of 6,100 newtons (converts to 1,371 pounds of force), following PZL-Bielsko Mandatory Bulletin No. BE-054/SZD-50-3/2003 “Puchacz”.	Prior to further flight after the inspection where cracks or wear is found.	Follow the procedures in the maintenance manual.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Gregory Davison, Aerospace Engineer, ACE-112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4130; facsimile: (816) 329-4090.

Is There Other Information That Relates to This Subject?

(g) PZL-Bielsko Mandatory Bulletin No. BE-054/SZD-50-3/2003 “Puchacz,” as approved by the following AD, and the Civil Aviation Office Airworthiness Directive No. SP-0012-2004-A, dated February 5, 2004, also addresses the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact Allstar PZL Glider Sp. z o.o., ul.Ciechyzynska 325, 43-300 Bielsko-Biala, Poland; telephone: 43 33 812

50 26; facsimile: 48 33 812 37 39; Web site: <http://www.szd.com.pl>. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC, or on the Internet at <http://dms.dot.gov>. This is docket number FAA-2005-21836; Directorate Identifier 2005-CE-36-AD.

Issued in Kansas City, Missouri, on August 2, 2005.

Kim Smith,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-15803 Filed 8-9-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD09-05-081]

RIN 1625-AA09

Drawbridge Operation Regulations; Fox River, Green Bay, WI and DePere, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the operating regulations for the Main Street, Walnut Street, Mason Street (Tilleman Memorial), and George Street highway drawbridges to establish permanent winter operating hours, and to establish operating regulations for two Canadian National Railway drawbridges. All six of these drawbridges are located over the Fox River at Green Bay, WI and DePere, WI. The proposed rule is expected to reflect the need for bridge openings during

winter months and still provide for the reasonable needs of navigation. The proposed establishment of regulations for the Canadian National drawbridges would provide consistency for operating regulations for all drawbridges at Green Bay and DePere.

DATES: Comments and related material must reach the Coast Guard on or before September 26, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), Ninth Coast Guard District, 1240 E. 9th Street, Room 2025, Cleveland, Ohio, 44199-2060. The Ninth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Ninth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scot M. Striffler, Bridge Management Specialist, Ninth Coast Guard District, at (216) 902-6087.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09-05-081), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (obr), Ninth Coast Guard District, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The four highway drawbridges over the Fox River between miles 1.58 and

7.27 are bascule bridges operated by both the Wisconsin Department of Transportation (W-DOT) and the City of Green Bay, WI. The Main Street and Mason Street Bridges are operated by W-DOT, and the Walnut Street and George Street Bridges are operated by the City of Green Bay. The Main Street, Mason Street, and Walnut Street Bridges at Green Bay are currently required to operate year-round and open on signal, except between the hours of 7 a.m. to 8 a.m., 12 noon to 1 p.m., and 4 p.m. to 5 p.m., Monday through Saturday, except for Federal holidays. This schedule does not apply to public vessels of the United States, tugs, fireboats, and vessels with a cargo capacity of 300 short tons or over engaged in commercial transportation, which are passed at any time.

The George Street Bridge at DePere opens on signal during the navigation season, except from 6 p.m. to 8 a.m. During those hours, the draw shall open on signal if at least two hours notice is given.

The railroad drawbridges operated by Canadian National Railway at miles 1.03 and 3.31 over the Fox River are swing bridges, currently have no permanent operating regulations, and open on signal for vessels year-round, 24 hours per day.

The Ninth Coast Guard District has granted a yearly winter operating schedule for both the highway and railroad drawbridges under the provisions of 33 CFR 117.45 from December 15 to April 1 each year since approximately 1992.

W-DOT requested that the Coast Guard implement a permanent winter operating schedule for the Walnut Street and Mason Street drawbridges between December 1 and April 1 each year. The Coast Guard requested that drawbridge opening logs be provided for these two bridges for the month of December since the yearly authorization granted by the Coast Guard started on December 15 instead of the requested December 1 start date. Vessels traveling as far as the Mason Street Bridge must pass through one of the railroad bridges and all other highway bridges in Green Bay. Consequently, the Coast Guard evaluated the provided logs as representative of drawbridge requirements for all drawbridges in Green Bay.

The bridge opening logs revealed the following number of drawbridge openings during the month of December in 2002, 2003, and 2004:

Year	Number of openings
Walnut Street Bridge (between December 1 and December 15)	
2002	60
2003	11
2004	15
Walnut Street Bridge (between December 16 and December 31)	
2002	27
2003	18
2004	13
Mason Street Bridge (between December 1 and December 15)	
2002	50
2003	4
2004	10
Mason Street Bridge (between December 16 and December 31)	
2002	16
2003	15
2004	8

The Coast Guard also contacted the City of Green Bay about including the Main Street drawbridge in this proposed change and received no objection to the proposed schedule. Local Coast Guard units and representatives of American shipping companies were also consulted regarding the proposed schedule and provided no objections. The Canadian National Railway drawbridges would operate under the same schedules as the highway drawbridges, as requested by the railroad company in the past.

Discussion of Proposed Rule

The Coast Guard proposes to revise the operating regulations for the Main Street, Walnut Street, Mason Street, and George Street highway drawbridges currently listed in 33 CFR 117.1087, and establish permanent operating regulations for the two Canadian National Railway drawbridges over the Fox River, mile 1.03 and mile 3.31, both at Green Bay.

This proposed schedule would not significantly alter drawbridge operations in the Green Bay area during the non-winter navigation season. The proposed rule would permanently establish winter operating schedules for all drawbridges on the Fox River up to and including the George Street Bridge at mile 7.27, instead of the yearly authorization currently granted by the Coast Guard under 33 CFR 117.45. Between December 1 and March 31 of each year, all six of these drawbridges would open if at least 12 hours advance notice is provided.

The Coast Guard believes that this proposed schedule reflects the reasonable needs of navigation for commercial vessel traffic requiring drawbridge openings during the winter navigation season, provides consistent operating schedules for all drawbridges owned and operated by different owners (highway and rail), and reduces paperwork. The winter operating schedules have been in place since approximately 1992 with no known objections or conflicts.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

The Coast Guard expects minimal public impact from the proposed schedule. The operating hours for recreational vessels does not effectively change since the substantive changes occur during winter months when recreational vessel activity has ceased. Commercial vessels have been required to provide 12-hours advance notice prior to passing drawbridges since approximately 1992 with no reported problems.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The proposed schedule for all highway and railroad drawbridges is not expected to significantly affect large commercial vessels during the winter navigation season. Impacts to a

substantial number of small entities are not expected since these entities mostly operate during non-winter months.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Scot M. Striffler, Bridge Management Specialist, Ninth Coast Guard District, at (216) 902–6087. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.1087 is amended by revising paragraphs (a) and (b) to read as follows:

§ 117.1087 Fox River.

(a) The draws of the Canadian National Bridge, mile 1.03, Main Street Bridge, mile 1.58, Walnut Street Bridge, mile 1.81, Mason Street (Tilleman Memorial) Bridge, mile 2.27, and Canadian National Bridge, mile 3.31, all at Green Bay, shall open as follows:

(1) From April 1 through November 30, the draws shall open on signal for recreational vessels; except the draws need not open from 7 a.m. to 8 a.m., 12 noon to 1 p.m., and 4 p.m. to 5 p.m., Monday through Saturday except Federal holidays. Public vessels, tugs, and commercial vessels with a cargo capacity of 300 short tons or greater shall be passed at all times.

(2) From December 1 through March 31, the draws shall open on signal if

notice is given at least 12 hours in advance of a vessel's time of intended passage.

(3) The opening signal for the Main Street Bridge is two short blasts followed by one prolonged blast, for the Walnut Street Bridge one prolonged blast followed by two short blasts, and for the Mason Street Bridge one prolonged blast, followed by one short blast, followed by one prolonged blast.

(b) The draw of the George Street Bridge, mile 7.27 at DePere, shall open on signal from April 1 to November 30; except that, from 6 p.m. to 8 a.m., the draw shall open on signal if notice is given at least 2 hours in advance of a vessel's time of intended passage. From December 1 to March 31, the draw shall open on signal if notice is given at least 12 hours in advance of a vessel's time of intended passage.

* * * * *

Dated: July 25, 2005.

R.J. Papp, Jr.,

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

[FR Doc. 05–15779 Filed 8–9–05; 8:45 am]

BILLING CODE 4910–15-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0216; FRL–7729–3]

40 CFR Chapter 1

Fenpyroximate; Notice of Filing a Pesticide Petition To Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0216, must be received on or before September 9, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460–0001; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

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

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0216. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be

scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specific comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please allow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2005-0216. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or

other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP-2005-0216. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID number OPP-2005-0216.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP-2005-0216. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public

docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action Is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 29, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Interregional Research Project Number 4 (IR-4), and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 5E6943

EPA has received a pesticide petition (5E6943) from Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 S. North Brunswick, NJ 08902-3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.566, by establishing tolerances for residues of fenpyroximate in or on the raw agricultural commodities nut, tree, group 14 at 0.1 parts per million (ppm); pistachio at 0.1 ppm; almond, hulls at 1.8 ppm; fruit, citrus, group 10 at 0.4 ppm; fruit, citrus, dried pulp at 2.5 ppm; citrus, oil at 15 ppm; hop at 4.5 ppm; peppermint, tops at 3.0 ppm; and spearmint, tops at 3.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition that was prepared by Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, Delaware 19808.

A. Residue Chemistry

1. *Plant metabolism.* Fenpyroximate and the Z-isomer are the residues of concern for tolerance setting purposes in crops. The metabolism of fenpyroximate and its Z-isomer has been studied, and is adequately understood.

2. *Analytical method.* An enforcement method has been developed which involves extraction of fenpyroximate from crops with acetone, filtration, partitioning and cleanup, and analysis

by gas chromatography using a nitrogen/phosphorous detector. This method allows detection of residues at or above the proposed tolerances. The method has undergone independent laboratory validation as required by PR Notices 88-5 and 96-1.

3. *Magnitude of residues.* The magnitude of residues for fenpyroximate, and the Z-isomer are adequately understood for the requested tolerances.

B. Toxicological Profile

An extensive battery of toxicology studies has been conducted with fenpyroximate. EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. An assessment of toxic effects caused by fenpyroximate, including the toxicological endpoints of concern, is discussed in Unit III.A. and Unit III.B. of the fenpyroximate final rule published in the June 10, 2004 issue of the **Federal Register** (69 FR 32457) (FRL-7362-9).

1. *Animal metabolism.* The qualitative nature of the residues of fenpyroximate, Z-isomer, and acid metabolite in animals is adequately understood.

2. *Metabolite toxicology.* No toxicologically significant metabolites were detected in plant or animal metabolism studies for citrus, hops, mint, and tree nuts.

3. *Endocrine disruption.* Chronic, lifespan, and multi-generational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal any endocrine effects for fenpyroximate. Any endocrine related effects would have been detected in this comprehensive series of required tests. The probability of any such effect due to agricultural uses of fenpyroximate is negligible.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances have been established (40 CFR 180.566) for the combined residues of fenpyroximate and its metabolites, in or on a variety of raw agricultural commodities. Acute and chronic dietary risk analyses were conducted to estimate the potential fenpyroximate and Z-isomer residues in or on the following crops: Citrus orange, citrus lemon, citrus grapefruit, citrus oil, mint oil, hops, almond, pecans, and pistachio, using modeling based on USDA survey data.

i. *Food.* The acute dietary exposure was based on the following assumptions: Residues at tolerance levels, 100% crop treated, and default

processing factors for all proposed commodities (Tier 1, 95th percentile consumption). The chronic dietary exposure was based on the following assumptions: Residues at tolerance levels, 100% crop treated, using dietary exposure modeling, based on USDA survey data.

ii. *Drinking water.* The Agency does not have comprehensive monitoring data; therefore, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fenpyroximate. The Agency uses the Food Quality Protection Act (FQPA) Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir to predict surface water concentrations. The Screen Concentrations in Groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water.

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

The residue of concern in drinking water was determined to be fenpyroximate. There are no established maximum contaminant levels or health advisory levels for residues of fenpyroximate in drinking water. Laboratory and field data have demonstrated that fenpyroximate is immobile in soil and will not leach into ground water. Other data show that fenpyroximate is virtually insoluble in water. As a result, EPA concluded that residues reaching surface waters from field runoff will quickly absorb to sediment particles and be partitioned from the water column.

Estimates of the contribution of the petitioned crops to water concentrations were derived. The acute and chronic EEC's in surface water calculated by PRZM/EXAMS, Version 3.12, were 1.5 parts per billion (ppb), and 0.13 ppb respectively. In ground water, using Tier

I SCI-GROW (Version 2.3), the estimated EEC was 0.006 ppb.

2. *Non-dietary exposure.* The term, residential exposure, is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fenpyroximate is not registered for use on any sites that would result in residential exposure.

D. Cumulative Effects

A determination has not been made that fenpyroximate has a common mechanism of toxicity with other substances. Fenpyroximate does not appear to produce a common toxic metabolite with other substances. A cumulative risk assessment was not performed for this analysis. Section 408(b)(2)(D)(v) of FFDCA requires that when considering whether to establish, modify, or revoke a tolerance the Agency considers, "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fenpyroximate and any other substances. Fenpyroximate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, EPA has not assumed that fenpyroximate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs (OPP) concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's Web site at <http://www.epa.gov/pesticides/cumulative/>.

E. Safety Determination

1. *U.S. population—i. Acute risk.* The acute dietary acute Population Adjusted Dose (aPAD) was set at 0.05 milligrams/kilogram/day (mg/kg/day) for females ages 13–49 years old based on a developmental toxicity study in rats that had an oral no observed adverse effect level (NOAEL) of 5.0 mg/kg/day. The resulting food exposure estimate for this population subgroup was less than 1% of the aPAD. The petitioned crops in

addition to the registered crop uses accounted for less than 6% of the aPAD.

The addition of these new uses results in a DWLOC of approximately 1,400 ppb. Surface water concentration estimates increase from 1.5 ppb to 1.6 ppb with the added crops. The aggregate exposure will not exceed 100% of the aPAD.

ii. *Chronic risk.* The chronic dietary chronic Population Adjusted Dose (cPAD) was determined to be 0.01 mg/kg/day for the general population based on an oral NOAEL of 0.97 mg/kg/day in the 2-year rat chronic/carcinogenicity study. The Agency determined that exposure from currently registered crops utilize 8% of the cPAD. The additional new uses will result in a utilization of 10% of the cPAD. Using the exposure assumptions previously described, EPA has concluded that exposure to fenpyroximate from food, including the additional new uses, will utilize 10% of the cPAD for the U.S. population, 21% of the cPAD for all infants (<1 year old), and 33% of the cPAD for children (1–2 years old).

In addition, there is potential for chronic dietary exposure to fenpyroximate in drinking water. The DWLOC for the general population, infants (<1 year old) and children (1–6 years old) were 320 ppb, 82 ppb, and 71 ppb, respectively. Average yearly drinking water concentration in surface water was estimated at 0.13 ppb, and 0.006 ppb in ground water for both registered and petitioned uses. After calculating the DWLOCs and comparing them to the EECs for surface and ground water, the aggregate exposure will not exceed 100% of the cPAD.

2. *Infants and children.* The Agency confirmed the endpoint selection for fenpyroximate and evaluated the potential for increased susceptibility of infants and children from exposure to fenpyroximate (July 2003). Based on toxicological considerations, the special FQPA safety factor was set at 1X when assessing acute and chronic dietary exposures.

3. *Aggregate cancer risk for U.S. population.* Fenpyroximate is classified as not likely to be carcinogenic to humans; therefore, an aggregate cancer risk assessment was not performed.

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

F. International Tolerances

Codex MRLs have been established for residues of fenpyroximate and Z-isomer on hops in Germany at 10 ppm.

[FR Doc. 05-15738 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 26

[OPP-2005-0219; FRL-7728-9]

RIN 2070-AD57

Protections for Test Subjects in Human Research; Notification to the Secretaries of Agriculture and Health and Human Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretaries of Agriculture and Health and Human Services.

SUMMARY: This document notifies the public that the Administrator of EPA has forwarded to the Secretaries of Agriculture and Health and Human Services a draft proposed rule under sections 21 and 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The draft proposed rule will formalize and clarify EPA's policies on the use of intentional human exposure studies under FIFRA and the Federal Food Drug and Cosmetic Act (FFDCA). The proposed rule would establish stringent ethical protections for human subjects in certain types of research conducted or sponsored by entities other than the Federal government (i.e., "third-parties"). These protections are consistent with requirements currently in place under the *Federal Policy for the Protection of Human Subjects of Research* (the "Common Rule"), which has been adopted by 17 Federal agencies. The draft proposed rule is not available to the public until after it has been signed by EPA.

ADDRESSES: EPA has established a docket for this action under Docket identification (ID) number OPP-2005-0219. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket

materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: William Jordan, Office of Pesticide Programs (7501C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-1049; e-mail address: jordan.william@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

II. What Action is EPA Taking?

Section 25(a)(2) of FIFRA provides that the Administrator must provide the Secretary of Agriculture with a copy of any draft proposed rule at least 60 days

before signing it for publication in the **Federal Register**. Similarly, section 21(b) of FIFRA provides that the Administrator must provide the Secretary of Health and Human Services with a copy of any draft proposed rule pertaining to a public health pesticide at least 60 days before signing it for publication in the **Federal Register**. The draft proposed rule is not available to the public until after it has been signed by EPA. If either Secretary comments in writing regarding the draft proposed rule within 30 days after receiving it, the Administrator shall include in the proposed rule when published in the **Federal Register** the comments of the Secretary and the Administrator's response to those comments. If the Secretary does not comment in writing within 30 days after receiving the draft proposed rule, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime after the 30-day period.

III. Do Any Statutory and Executive Order Reviews Apply to this Notification?

No. This document is not a rule, but merely a notification of submission to the Secretaries of Agriculture and Health and Human Services. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects in 40 CFR Part 26

Environmental protection, Human research subjects, Reporting and recordkeeping requirements.

Dated: July 27, 2005.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 05-15839 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06-OAR-2005-TX-0020; FRL-7950-7]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Texas Low-Emission Diesel Fuel Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the State Implementation Plan (SIP) for the state of Texas. This revision makes changes to the Texas Low-Emission Diesel (TXLED) Fuel program. On April 6, 2005 EPA

approved the compliance date change that was part of this submittal. None of the revisions being proposed for approval change the ultimate requirements regarding the reductions to be achieved. As a result and in accordance with section 110(l) of the Act, 42 U.S.C. section 7410(l), these revisions will not interfere with attainment, reasonable further progress or any other applicable requirement of the Clean Air Act.

DATES: Comments must be received on or before September 9, 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 online 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 online instructions for submitting comments.

- U.S. EPA Region 6 "Contact Us" Web site: <http://epa.gov/region6/r6comment.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), regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the Federal 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 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: Ms. Sandra Rennie, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7367; fax number 214-665-7263; e-mail address rennie.sandra@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" is used, we mean the 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. The revisions were adopted on March 9, 2005, and submitted to EPA on March 23, 2005.

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. EPA proposed action prior to completion of the State rulemaking process and, after completion of the State process, approved the compliance date portion of the SIP revision for TXLED on April 6, 2005 (70 FR 17321).

The Executive Director of the TCEQ submitted a letter to EPA on July 5, 2005, requesting that we not act on certain portions of the rule revision as it was submitted on March 23, 2005. These exceptions are noted below in the discussion of the rule. We are proposing to approve those aspects of the rule on which the TCEQ has not requested that EPA postpone action.

What Did the State Submit?

The State submitted revisions to TXLED rules found in 30 TAC 114.6 and 114.312, 114.314-114.316, 114.318, and 114.319. These include revisions to definitions; low emission diesel standards; registration of producers and importers; approved test methods; monitoring, recordkeeping, and

reporting requirements; alternative emission reduction plans; and affected counties and compliance dates.

Why Are These Revisions Approvable?

We thoroughly analyzed the rule revisions to ensure that they did not compromise the integrity of the approved SIP. Many changes were nonsubstantive editorial or format changes. Some substantive changes are considered minor. Major substantive changes that needed a more thorough analysis are discussed below. A detailed analysis can be found in the Technical Support Document that accompanies this action.

Section 114.312. Low Emission Diesel Standards

In 114.312(b) the sulfur standard is removed. The sulfur standard is no longer needed in this rule because the federal ultra-low sulfur diesel standards are now promulgated and will reduce sulfur in on-highway diesel in 2006 and in nonroad equipment starting in 2007. Removal of sulfur by itself does not influence NO_x emissions when the fuel is combusted unless advanced technology equipment is used. This equipment is not required to be manufactured until federal compliance dates beginning in 2006 and 2007. While the delay in achieving sulfur reductions does not impact NO_x emissions and therefore does not impact ozone plans in Texas, it does impact SO₂ and PM emissions. However, there are no PM or SO₂ nonattainment areas in the area covered by the rule so the delay in the sulfur requirement will not interfere with attainment of these standards. Because the affected areas are in attainment of these standards before the compliance date of these standards, these revisions will not interfere with any applicable requirements concerning nonattainment nor will they have an adverse impact on reasonable further progress. Therefore, the repeal of the sulfur standard will not interfere with attainment, reasonable further progress or any other applicable requirement of the Act.

Renumbered 114.312(f) removes EPA from approval of alternative formulations. This revision is not approvable unless the executive director discretion is removed from the replicable test procedures in 114.315. The State requested that EPA not act upon the executive director discretion portions of 114.315 because the State plans to remove these references in future rulemakings.

Section 114.314. Registration of Diesel Producers and Importers

The previously approved SIP required registration with the State by all suppliers of diesel fuel in the affected area as of December 1, 2004, to gather data on suppliers and potential suppliers. In the revisions approved on April 6, 2005, the deadline to register was changed to May 1, 2005.

Section 114.315. Approved Test Methods

We are taking no action on subsection § 114.315(b) nor Alternative V at § 114.315(c)(4)(C)(ii)(V) at the request of the State. These citations give the executive director discretion for changing test methods. The State requested in the letter dated July 5, 2005, that we not act on these portions of the submittal.

Subsection (c) contains the methods and procedures for getting an alternative fuel formulation tested and approved. The adopted amendments to § 114.315(c) clarify and update existing references and provide additional flexibility in the testing of alternative formulations. Adopted revisions to § 114.315(c)(1)(C) and also to § 114.315(c)(4) replace or add language to reference the active version of the appropriate test methods or procedures rather than the date-specific versions. These revisions will ensure the use of the most accurate and up-to-date testing methods or procedures by ASTM or EPA.

The adopted revision to § 114.315(c)(1)(C) clarifies the diesel grades and sulfur content of the reference fuel for the testing of alternative formulations. Because the sulfur requirements were removed from § 114.312, revisions to § 114.315(c)(3)(A) set the sulfur limit of the reference fuel at a maximum value of 15 parts per million (ppm). This limit matches the federal sulfur requirements starting in 2006.

The revision to § 114.315(c)(4)(C) provides additional flexibility in the testing of new diesel formulations under § 114.312(f). These revisions amend the test sequences to now include sequences for testing with cold and hot start exhaust emission testing cycles. The revisions also contain sequences for testing only with hot start exhaust emission test cycles, including a new sequence for testing formulations that require an extended duration conditioning cycle. Alternative I at § 114.315(c)(4)(C)(ii)(I) is retained from the approved rule. Clarification that 20 or 21 hot-start tests must be run with each fuel is now included for the first

three alternatives. These revisions allow increased flexibility in test procedures while assuring adequate data is available for a determination of emission reductions from the proposed alternatives and, therefore, are approvable.

Alternative IV at § 114.315(c)(4)(C)(ii)(IV) does not clearly specify that at least 20 tests must be run as in the first three alternatives. If only a few tests were run on each fuel, it would not be similar enough to the first three alternatives for us to say it is effectively the same as the others. At least 20 tests must be run on each fuel for Alternative IV. In addition, the conditioning cycle must include four tests on the candidate fuel but not count them toward the data used to evaluate the emission impacts of the candidate fuel. This sets a new baseline from which to make the determination. The State is currently providing guidance on the testing requirements, clarifying that 20 tests must be run for Alternative IV and 4 additional tests are necessary as a conditioning cycle.

The major revision to § 114.315(c)(5) is a new formula that specifies the measurement tolerances per pollutant type that will be acceptable when calculating whether the emissions generated by a candidate fuel are comparable to the emissions generated by the reference fuel. This formula is essentially the same as the one in the California diesel fuel rules.

The revision to § 114.315(c)(6) adds consultation with the EPA into the process to approve an alternative fuel formulation. This provides EPA input into the process to ensure the adequacy of the alternative fuel formulations and is approvable.

By letter dated July 5, 2005, the State has asked that EPA not consider Alternative V at § 114.315(c)(4)(C)(ii)(V). This provision gives the executive director discretion to approve other test sequences considered to be equivalent. We are taking no action on this provision in this action.

The revision adopted in § 114.315(d) adds requirements for what must be included in the application for approval of alternative diesel fuel formulations using additives. Adopted new paragraph (1) outlines that the application provided to the executive director must include the identity, chemical composition, and concentration of each additive used in the formulation, and the test method by which the presence and concentration of the additive may be determined. Adopted new paragraph (2) outlines what will be included in the executive director's approval notification of an alternative diesel fuel

formulation. The adopted paragraph requires an approval notification to identify the total aromatic hydrocarbon content, cetane number, and other parameters as appropriate and as determined in accordance with the test methods identified in § 114.315(a). For alternative diesel fuel formulations using additives, the approval notice must specify, at a minimum, the identity, the minimum concentration, and the treatment rate of the additives used, along with the minimum specifications for the base fuel to be used in the approved formulation as determined by the test method identified in § 114.315(d)(1).

As a final point in the discussion of this subsection, we would like to clarify what could be included as “demonstrated to the satisfaction of * * * EPA” in § 114.315(d). Any fuel or fuel additive that has been verified by EPA through our Voluntary Diesel Retrofit Program/Environmental Technology Verification program could be considered demonstrated to the satisfaction of EPA. Also, a fuel prepared using EPA’s Unified Model (the Model) could be included. The Model was created to evaluate the emission reduction benefits of TXLED in highway vehicles. In a memo from Bob Larson, EPA’s Office of Transportation and Air Quality to Carl Edlund, Director of the Multimedia Permitting and Planning Division, Region 6 of the EPA, dated September 27, 2001, we stated that the Unified Model should not be used to evaluate any other diesel fuel control program. Allowing the use of the Unified Model by refiners to evaluate diesel that can achieve the same NO_x reductions as TXLED smooths the path to compliance. Alternative emission reduction plans would not be required in this case.

Along with this clarification, we make the following caveats regarding the use of the Unified Model for this purpose:

(1) It is for use only in the Texas Low-Emission Diesel program because it was developed specifically for evaluating TXLED. No other state may adopt this Model as a compliance tool or to evaluate the benefits of their own state-run diesel fuel program.

(2) The Unified Model allows the production of fuels using Cetane improvers. It does not allow for the use of any other additive.

(3) The Unified model was created primarily for highway vehicles. For highway vehicles the benefits decrease over time starting in 2004. In running the Model to determine a formulation, the evaluation year used in the Model will make a difference in the benefit. The Unified Model can be used for

nonroad without decreasing benefits over time because nonroad engines do not have exhaust gas recirculation (EGR).

Section 114.316. Monitoring, Recordkeeping, and Reporting Requirements

New subsection (d) removes the sulfur testing requirement. The proposed gallonage requirement was revised at adoption from 50,000 gallons of LED produced to 250,000 gallons. In the approved SIP, no gallonage requirement was included, so this change is more stringent. Sampling for sulfur was removed as a State requirement.

New subsection (e) contains additive sampling language that is more stringent than what was previously approved.

Several administrative revisions were made. One is to provide records to the executive director within 15 days instead of five days of a written request. The other is a change to the 15 day requirement for companies to send in quarterly reports after the end of a quarter. This was changed at adoption to 45 days based on comments received during the State public comment period. These changes were made to be consistent with EPA requirements for these activities.

In § 114.316(g)(7) two new certification statements were added to account for diesel that may need further processing before becoming TXLED, and alternative fuel formulations of TXLED. These replace one certification that was deleted.

The sulfur requirement was removed from § 114.316(h)(2). This change is approvable for reasons discussed earlier.

New language in § 114.316(k) adds specific recordkeeping and reporting requirements for producers or importers that have Alternate Emission Reduction Plans, thus enhancing enforcement of the program. This language strengthens the SIP which previously required that plans “contain adequate enforcement provisions.” This includes information that producers must put into quarterly reports, e.g., volume of diesel fuel produced subject to the provisions of the alternative emission reduction plan, the volume of diesel fuel not produced but sold or supplied by the producer that is subject to provisions of the alternative emission reduction plan, the volume of additive utilized by the producer to produce diesel fuel subject to the provisions of the alternative emission reduction plan. This is approvable because it enhances enforcement of the program.

Section 114.318. Alternative Emission Reduction Plans

The meaning of this section remains essentially unchanged after reformatting and minor substantive changes. Language now in (d) was revised to allow plan implementation with executive director approval. In the SIP-approved version, it was implied but not explicitly stated that implementation of plans was allowed upon EPA and executive director approval. This has now been clarified. The July 5, 2005 letter from the State indicates that the language in 30 Tex. Admin. Code § 114.318(d) is meant to reference the approval mentioned in § 114.318(a) and therefore is interpreted to include EPA approval as well. Ultimately, if the plans that the State submits to EPA for approval as a SIP revision when implemented do not add up to equivalent or comparable reductions in NO_x, the State will be responsible for replacing the lost reductions with other reductions not yet claimed. It is also presumed that the State will take appropriate enforcement action on any producer or importer that does not comply by supplying equivalent or comparable NO_x reductions through a fuel strategy.

Section 114.319. Affected Counties and Compliance Dates

As stated previously, 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. We proposed approval on February 24, 2005, and gave final approval on April 6, 2005 (70 FR 17321).

In § 114.319(b)(1) five more counties were included in the Dallas-Fort Worth area bringing the total to nine for that area. These counties were part of the DFW Extended Compliance area under the 1-hour ozone standard, and are now part of the DFW 8-hour nonattainment area.

Proposed Action

We are proposing approval of the revisions to the TXLED rule as submitted March 23, 2005, with the following exceptions: (1) The compliance date changes that were already approved on April 6, 2005; (2) revisions to Approved Test Methods in §§ 114.315(b) and 114.315(c)(4)(C)(ii)(V) that the State specifically requested we not process at this time as specified above. None of the revisions being proposed for approval change the ultimate requirements regarding the reductions to be achieved. As a result

and in accordance with section 110(l) of the Act, 42 U.S.C. section 7410(l), these revisions will not interfere with attainment, reasonable further progress or any other applicable requirement of the Clean Air Act.

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, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 2, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05-15830 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR-2004-0019, FRL-7950-9]

RIN 2060-AK10

National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed decision; request for public comment.

SUMMARY: On December 14, 1994, we promulgated National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (59 FR 64318). The national emission standards limit and control hazardous air pollutants (HAP) that are known or

suspected to cause cancer or have other serious health or environmental effects.

Section 112(f)(2) of the Clean Air Act (CAA) directs EPA to assess the risk remaining (residual risk) after the application of national emission standards controls. Also, CAA section 112(d)(6) requires us to review and revise the national emission standards as necessary by taking into account developments in practices, processes, and control technologies. The proposal announces a decision and requests public comments on the residual risk assessment and technology review for the national emission standards. We are proposing no further action at this time to revise the national emission standards.

DATES: *Comments.* Submit comments on or before October 11, 2005.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by August 30, 2005, a public hearing will be held on September 7, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR-2004-0019, by one of the following methods:

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

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

- E-mail: a-and-r-docket@epa.gov.

- Fax: (202) 566-1741.

- Mail: Air Docket, EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

- Hand Delivery: EPA, 1301 Constitution Ave., NW., Room B102, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR-2004-0019. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the federal

regulations.gov websites are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation 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 Air and Radiation Docket is (202) 566-1742.

Public Hearing. If a public hearing is held, it will begin at 10 a.m. and will be held at the EPA facility complex in Research Triangle Park, North Carolina, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held must contact Mr. Stephen Shedd, listed in the **FOR FURTHER INFORMATION CONTACT** section at least 2 days in advance of the hearing. The public hearing will provide interested parties the opportunity to

present data, views, or arguments concerning the proposed action.

FOR FURTHER INFORMATION CONTACT: For additional information on this proposed decision, review the reports listed in the **SUPPLEMENTARY INFORMATION** section.

General and technical information. Mr. Stephen Shedd, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Waste and Chemical Processes Group (C439-03), Research Triangle Park, North Carolina 27711, telephone (919) 541-5397, facsimile number (919) 685-3195, electronic mail (e-mail) address: shedd.steve@epa.gov.

Residual risk assessment information. Mr. Ted Palma, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Risk and Exposure Assessment Group (C404-01), Research Triangle Park, North Carolina 27711, telephone (919) 541-5470, facsimile number (919) 541-0840, electronic mail (e-mail) address: palma.ted@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated entities. The regulated categories and entities affected by the national emission standards include:

Category	NAICS ^a	(SIC) ^b	Examples of regulated entities
Industry	324110 493190 486910 424710	(2911) (4226) (4613) (5171)	Operations at major sources that transfer and store gasoline, including petroleum refineries, pipeline breakout stations, and bulk terminals.
Federal/State/local/tribal governments .....	.....	.....

^aNorth American Industry Classification System.

^bStandard Industrial Classification.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the national emission standards. To determine whether your facility would be affected by the national emission standards, you should examine the applicability criteria in 40 CFR 63.420. If you have any questions regarding the applicability of the national emission standards to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today’s proposed decision will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed decision will be posted on the TTN’s policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg/>.

The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Reports for Public Comment. We have prepared two summary documents covering the development of, and the rationale for, the proposed decision and the residual risk analyses. These documents are entitled: “Technology Review and Residual Risk Data Development for the Gasoline Distribution NESHAP,” and “Residual Risk Assessment for the Gasoline Distribution (Stage I) Source Category.” Both documents are available in Docket ID Number OAR-2004-0019. See the preceding *Docket* section for docket information and availability.

Outline. The information presented in this preamble is organized as follows:

- I. Background
 - A. What is the statutory authority for these actions?

- B. What is our approach for developing residual risk standards?
- C. What are the current standards?
- II. Analyses and Results
 - A. Residual risk review
 - B. Technology review
- III. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer Advancement Act

I. Background

A. What is the statutory authority for these actions?

Section 112 of the CAA establishes a comprehensive regulatory process to address emissions of HAP from stationary sources. In implementing this process, EPA has identified categories of sources emitting one or more of the HAP listed in the CAA, and gasoline distribution facilities were identified as one such source category. Section 112(d) requires us to promulgate national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as "major sources"), as well as for certain "area sources" emitting less than those amounts. These technology-based national emission standards for hazardous air pollutants (NESHAP) must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards. EPA completed the NESHAP for gasoline distribution in 1994 (59 FR 64318).

In what is referred to as the "technology review," the EPA is required to review these technology-based standards and to revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years.

The "residual risk" review is described in section 112(f) of the CAA. Section 112(f)(2) requires us to determine for each section 112(d) source category whether the NESHAP protect public health with an ample margin of safety. If the NESHAP for HAP "classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million," EPA must promulgate residual risk standards for the source category (or subcategory) which provide an ample margin of safety. EPA must also adopt more stringent standards to prevent an adverse environmental effect (defined in section 112(a)(7) as "any significant and widespread adverse effect * * * to wildlife, aquatic life, or natural resources * * *"), but must consider cost, energy, safety, and other relevant factors in doing so.

B. What is our approach for developing residual risk standards?

Following an initial determination that the risk to the individual most exposed to emissions from sources in the category exceeds a 1-in-1 million lifetime excess individual cancer risk, our approach to developing residual risk standards is based on a two-step determination of acceptable risk and ample margin of safety.

The terms "individual most exposed," "acceptable level," and "ample margin of safety" are not specifically defined in the CAA. However, section 112(f)(2)(B) retains EPA's interpretation of the terms "acceptable level" and "ample margin of safety" provided in our 1989 rulemaking (54 FR 38044, September 14, 1989), "National Emission Standards for Hazardous Air Pollutants (NESHAP): Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants," (Benzene NESHAP). We read CAA section 112(f)(2)(B) as essentially directing EPA to use the interpretation set out in that notice¹ or to utilize approaches affording at least the same level of protection.² The EPA likewise notified Congress in its "Residual Risk Report to Congress" that EPA intended to use the Benzene NESHAP approach in making section 112(f) residual risk determinations.³

In the Benzene NESHAP (54FR 38044-45), we stated as an overall objective:

[I]n protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million; and (2) limiting to no higher than

¹ This reading is confirmed by the Legislative History to section 112(f); see, e.g., "A Legislative History of the Clean Air Act Amendments of 1990," vol. 1, page 877 (Senate Debate on Conference Report).

² Legislative History, vol. 1, p. 877, stating, "[T]he managers intend that the Administrator shall interpret this requirement [to establish standards reflecting an ample margin of safety] in a manner no less protective of the most exposed individual than the policy set forth in the Administrator's benzene regulations * * *."

³ "Residual Risk Report to Congress" at page ES-11, EPA-453/R-99-001 (March 1999). EPA prepared this Report to Congress in accordance with CAA section 112(f)(1). The Report discusses (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the NESHAP, the public health significance of those risks, the means and costs of controlling them, actual health effects to persons in proximity to emitting sources, and recommendations as to legislation regarding such remaining risk.

approximately 1-in-10 thousand [i.e., 100 in a million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

As explained more fully in our Residual Risk Report to Congress, these goals are not "rigid line[s] for acceptability," but rather broad objectives to be weighed "with a series of other health measures and factors."⁴

Our decisions regarding residual risk in the gasoline distribution source category followed the two-step framework established in the Benzene NESHAP and applied in the April 15, 2005 (70 FR 19992) National Emission Standards for Coke Oven Batteries; Final Rule (Coke Oven Batteries NESHAP) analysis. In the Benzene NESHAP, EPA interpreted and applied the two-step test drawn from the D.C. Circuit Court's Vinyl Chloride opinion. The first step involves determining which risks are "acceptable." In the second step, EPA must decide whether additional reductions are necessary to provide "an ample margin of safety" (54 FR 38049). As part of this second decision, EPA may consider costs, technological feasibility, uncertainties, or other relevant factors.

Further clarifying how the two steps would be conducted, EPA emphasized the distinction between facilitywide emissions and source category emissions in the Coke Oven Batteries NESHAP. In the first step ("acceptable risk") and the second step ("ample margin of safety"), HAP emissions from the source category are considered. In the second step, facilitywide emissions may be considered, as discussed in the next paragraph. For the first step, "* * * EPA has concluded that, in its assessment of 'acceptable risk' for purposes of section 112(f), the agency will only consider the risk from emissions from that source category. This was the approach in the Benzene NESHAP, wherein EPA limited consideration of acceptability of risk to the specific sources under consideration * * * rather than to the accumulation of these and other sources of benzene emissions that may occur at an entire facility." (70 FR 19997)

Again following the framework used in the Benzene NESHAP, in the second step of our decision making, we consider setting standards at a level which may be equal to or lower than the acceptable risk level and which protect public health with an ample margin of safety. In making this determination, we considered the estimate of health risk and other health information along with

⁴ *Id.* at B-4.

additional factors relating to the appropriate level of control, including costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors. As stated in the Coke Oven Batteries NESHAP, "EPA believes one of the 'other relevant factors' that may be considered in this second step is co-location of other emission sources that augment the identified risks from the source category" (70 FR 19998). In examining facilities with gasoline distribution sources, we did evaluate facilitywide emissions, but they were not considered in this "ample margin of safety" determination.

C. What are the current standards?

The National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (Gasoline Distribution NESHAP) were promulgated on December 14, 1994 (59 FR 64318).

The Gasoline Distribution NESHAP cover HAP emissions resulting from gasoline liquid storage and transfer operations at facilities with bulk gasoline terminals and pipeline breakout stations. The gasoline emission sources regulated by the Gasoline Distribution NESHAP are storage tanks, loading racks, tank truck vapor leakage, and equipment leaks.

The Gasoline Distribution NESHAP regulates only those sources located at major sources. During the development of the NESHAP, we estimated that there were approximately 1,290 facilities nationwide (1,020 terminals and 270 pipeline stations), of which about 260 (240 terminals and 20 pipeline stations) would be considered major and, therefore, subject to the NESHAP.

Usually, these gasoline operations are located at facilities with other types of HAP-emitting sources (e.g., terminals, refineries, chemical plants, pipeline facilities). These other collocated sources are regulated under separate NESHAP (e.g., Refinery NESHAP, 40 CFR part 63, subpart CC), and today's proposed decision does not purport to satisfy the statutory review requirements for these other sources under CAA section 112(f) or 112(d)(6).

The HAP content of the gasoline vapors that escape to the atmosphere from gasoline distribution sources is generally from 5 to 16 percent by weight and is dependent on the type of gasoline used (normal or gasoline oxygenated with methyl tert butyl ether).

We estimated that the NESHAP would reduce emissions of nine key air toxics, including benzene and toluene, that are found in gasoline vapor by 2,300 tons

annually. We also estimated that the NESHAP would reduce emissions of volatile organic compounds (VOC) by over 38,000 tons annually and result in energy savings of 10 million gallons of gasoline per year from collecting or preventing gasoline evaporation.

II. Analyses and Results

A. Residual Risk Review

As required by CAA section 112(f)(2), we have prepared a risk assessment to determine the residual risk posed by gasoline distribution sources after implementation of the Gasoline Distribution NESHAP. As with the NESHAP, we focused on nine HAP typically found in gasoline vapor (referred to here as "gasoline HAP") and collected data on the emissions of these. Based on information collected from EPA's Regional Offices and from industry associations, we compiled a list of 102 facilities covered by the Gasoline Distribution NESHAP.⁵ Using our National Emissions Inventory (NEI) database, we were able to collect detailed emissions data for 69 of these facilities. Even though we do not have emissions information for every facility in the category, it is unlikely that the risk would be significantly higher for the other facilities in the category because the facilities we assessed are believed to be a representative subset of this industry.

Because the gasoline HAP are VOC, the inhalation pathway was expected to be the primary route of exposure for humans, and the assessment of human health risk via inhalation was the focus of this analysis. Using the collected information, we estimated emissions, modeled exposure concentrations surrounding these facilities, calculated the risk of possible chronic cancer and noncancer health effects, and evaluated whether acute exposures might exceed relevant health thresholds.

We considered risks attributable to the gasoline distribution source category in the "acceptable risk" and "ample margin of safety" determinations. However, HAP emissions reported in the available inventory databases are generally based on total, facilitywide emissions, and some of the HAP emissions reported for these facilities are from emission sources that are not

in the gasoline distribution source category. We estimate that the contribution from gasoline distribution sources at the modeled facilities ranges from as low as 10 percent up to 100 percent of the total facilitywide emissions of the nine gasoline HAP.

The modeled facility with the highest calculated maximum individual lifetime risk (MIR) attributable to gasoline distribution sources was co-located at a petroleum refinery and the MIR was estimated to be about 5-in-1 million. The MIR attributable to gasoline distribution sources at each of the other modeled facilities was estimated to be less than 3-in-1 million.

Even when facilitywide emissions are included, only 20 percent of the facilities modeled pose greater than 1-in-1 million cancer risk. Of those, only four are facilities where it was determined that all of the reported emissions came from gasoline distribution sources, and the facilitywide MIR values for these four facilities were all less than 2-in-1 million.

The highest calculated MIR was 26-in-1 million at one facility (the petroleum refinery mentioned earlier) when we included all of the facility's reported emissions of the examined HAP without limiting the analysis to the gasoline distribution source category.

Estimated annual cancer incidence was also calculated, based on predicted individual cancer risk and the number of people reported to reside in the U.S. census blocks within the modeled area around each facility (i.e., out to 50 kilometers). When examining emissions from the entire facility, without regard to source category, we found that for the 13 facilities for which estimated maximum individual cancer risk is greater than 1-in-1 million for the whole facility, the summed estimated cancer incidence is 0.003 cases per year. Across all 69 facilities, the total estimated incidence is 0.004 cases per year. Incidence attributable to gasoline distribution sources would be about 20 percent of those cases per year. Note that values presented here are estimated incremental rates based on modeled concentrations and 2000 U.S. Census data, and they should not be interpreted as actual cancer incidence rates derived from observations of disease occurrence over time (such as cancer incidence rates that may be reported based on epidemiological studies).

When examining noncancer impacts, we found that the highest calculated chronic noncancer hazard index was 0.2 for one of the facilities modeled, and that no other facilities included in the assessment had a chronic noncancer

⁵ This is a smaller number of facilities than we originally predicted would be covered by the NESHAP. During the development of the NESHAP, we used model facility analyses to estimate that as many as 260 facilities would be subject to the NESHAP. The lower number compiled for our risk analysis may be the result of facilities reducing emissions and accepting permit limits or otherwise demonstrating that their emissions remain below applicability cutoffs.

hazard index greater than 0.2. This means that the total lifetime exposures to the HAP emitted by these facilities only exceeded 20 percent of the noncancer reference concentration at one facility.

Finally, we found that acute exposures, which were calculated by assuming the maximum hourly emissions rate would be twice the average rate of emissions, did not exceed the relevant health thresholds for acute effects for these HAP, even when total facility emissions were estimated rather than just emissions from within the gasoline distribution source category.

All of this analysis can be found in our "Technology Review and Residual Risk Data Development for the Gasoline Distribution NESHAP" and "Residual Risk Assessment for the Gasoline Distribution (Stage I) Source Category." See "Reports for Public Comment" in the **SUPPLEMENTARY INFORMATION** section above for information on obtaining these reports.

In the Benzene NESHAP, we explained, "The EPA will generally presume that if the risk to that individual [the MIR] is no higher than approximately 1 in 10 thousand, that risk level is considered acceptable and EPA then considers the other health and risk factors to complete an overall judgment on acceptability." Based on the risk estimates calculated for the gasoline distribution source category emissions at these 69 facilities, we have concluded that the residual risk for this source category is acceptable.

Because our conservative risk estimates suggest risks exceeding 1-in-1 million after the application of MACT, we considered the feasibility and costs of additional controls to reduce emissions and associated risks. We considered options for adding controls, increasing inspections, and tightening standards for each of the emissions points in the gasoline distribution source category. We collected information on whether new methods of controlling emissions existed and whether other States or local air agencies had adopted more stringent requirements. We identified options for each emission point and evaluated the costs and emission reduction benefits of these options. This analysis can be found in our "Technology Review and Residual Risk Data Development for the Gasoline Distribution NESHAP."

Because the data for the facilities analyzed in our risk assessment were not sufficient to analyze the existing level of control and the potential for emission reductions, we examined the potential maximum impacts for a model

bulk gasoline terminal with HAP emissions just from the gasoline distribution source category. We estimated that the maximum HAP reduction that could be expected from the model terminal was about 0.8 tons per year (about a 30 percent reduction). This emission reduction would reduce the source category's highest calculated MIR cancer risk from the nine HAP from a MIR of 5-in-1 million to about 3-in-1 million.

We estimated that achieving these reductions would involve a capital cost of about \$700,000 and a total annualized cost of about \$265,000. For comparison, the impacts for an average facility complying with the current NESHAP are estimated to be HAP reduction of nearly 9 tons per year, a capital cost of about \$450,000, and a total annualized cost of about \$60,000. We request comments specifically addressing the adequacy of the model terminal analysis of potential emission reductions and costs, and comparing emissions from the model terminal to terminals analyzed in this risk analysis.⁶

The maximum individual cancer risk for this source category is already below the level we presumptively consider acceptable, and additional control requirements would achieve minimal risk reduction at a very high cost. Further, the analysis has shown that both the noncancer and acute risks from this source category are below their relevant health thresholds. As a result, we concluded that no additional control should be required because an ample margin of safety (considering cost, technical feasibility, and other factors) has been achieved by the NESHAP for the gasoline distribution source category. In this conclusion, we did not consider facilitywide risk. Although we believe we can consider facilitywide risk as a relevant factor in determining an ample margin of safety, we do not have cost, technical feasibility and other data to analyze emission sources at the facility that are outside the gasoline distribution source category.

We are also required to consider adverse impacts to the environment

⁶ The model gasoline bulk terminal operating parameters were based on information gathered during the development of the NESHAP. Based on the gasoline throughput, number and size of gasoline storage tanks, and number of loading racks, the model terminal has an annual emission rate (after implementation of NESHAP controls) of about 2.5 tons of HAP when handling only normal gasoline. According to the NEI database, several of the actual facilities that were analyzed for residual risk emit HAP at a much higher rate. We determined that the percentage of HAP emission reductions (and the estimated costs per ton of HAP emissions reduced) for additional controls on the model terminal would also be representative of larger facilities.

(e.g., ecological risks) as a part of a residual risk assessment. As previously noted, because gasoline HAP are VOC, the inhalation pathway was expected to be the primary route of exposure. Regarding the inhalation exposure pathway for terrestrial mammals, we contend that human toxicity values for the inhalation pathway are generally protective of terrestrial mammals. Because the maximum cancer and noncancer hazards to humans from inhalation exposure are relatively low, we expect there to be no significant and widespread adverse effect to terrestrial mammals from inhalation exposure to HAP emitted from the gasoline distribution source category. To ensure that the potential for adverse effect to wildlife (including birds) resulting from emissions of HAP for this source category is low, we have carried out a screening-level assessment of ecological effect via inhalation toxicity. No such adverse effect was identified. Since our results showed no screening-level ecological effect, we do not believe that there is an effect on threatened or endangered species or on their critical habitat within the meaning of 50 CFR 402.14(a). Because of these results, EPA concluded that a consultation with the Fish and Wildlife Service was not necessary. Thus, we have concluded that the level of risk resulting from the limits in the NESHAP is acceptable for this source category, and that changes to the NESHAP are not required to satisfy section 112(f) of the CAA.

B. Technology Review

In addition to the requirements in CAA section 112(f)(2) to review the residual risk, section 112(d)(6) requires us to review and revise as necessary (taking into account developments in practices, processes, and control technologies) emission standards promulgated under section 112(d) no less often than every 8 years.

As described above, we investigated emission control levels and the potential for additional emission reductions from existing affected facilities within the gasoline distribution source category. Additional controls would achieve at best, minimal emission and risk reductions at a very high cost. We also did not identify any significant developments in practices, processes, or control technologies since promulgation of the original standards in 1994.

For new affected facilities, we found that the best controlled storage tanks use the new source performance standards seal types already required by the NESHAP. We also found the NESHAP's 10 milligrams standard for tank truck

and rail car loading to be the best control in practice. We also concluded that the NESHAP requirement for monthly inspections for equipment leaks is the best control level in practice.

In the assessment of leak standards for tank trucks at new facilities, we found that California uses the same annual test method as the NESHAP, but the California regulations allow a maximum pressure change of a half inch over the five minute test for all tank trucks in California compared to the one inch allowed by the NESHAP. We concluded that the change to a lower allowable leakage rate is impractical for a national program. From our model facility assessment discussed earlier, these controls achieve small HAP reductions and have a poor HAP cost effectiveness. Adjusting the standards for existing sources could not be justified under section 112(d)(6). As a result, any revised limits in the NESHAP under section 112(d)(6) would only apply to affected new sources, and existing sources would still be subject to the current limits. We also concluded that potentially having different leak testing requirements at facilities within the same geographical area would be hard to implement because it would require tank truck owners and operators to track and understand which terminals have the different requirements. Thus, because there are expected to be very few, if any, affected new sources across the U.S. in the next 5 to 10 years, a revised testing requirement would not apply at most terminals. The annual pressure testing requirement of the NESHAP is also considered to be the best control nationally. We concluded that the new source standard for leakage rates should be kept the same as that for existing sources and that no further revisions to the Gasoline Distribution NESHAP are needed. Because the NESHAP continue to represent the best controls that can be implemented nationally, we are proposing to not revise the Gasoline Distribution NESHAP under CAA section 112(d)(6).

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulation is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory

action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or 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 government 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 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 today's proposed decision is a "significant regulatory action" under the terms of Executive Order 12866. Therefore, today's proposed decision was submitted to OMB for review. However, today's proposed decision will result in no additional cost impacts beyond those estimated for the current national emission standards. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements for the national emissions standards under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0325, EPA ICR number 1659. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

EPA has established a public docket for this action, which includes the ICR, under Docket ID number OAR-2004-0019, which can be found in <http://www.epa.gov/edocket>. Today's proposed decision will not change the burden estimates from those developed and approved in 1994 for the national emission standards.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed decision on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,500 employees, or a maximum of \$5 million to \$18.5 million in revenues, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR part 121).

After considering the economic impacts of today's proposed decision on small entities, I certify that the decision will not have a significant economic impact on a substantial number of small entities. The proposed decision will not impose any requirements on small entities. Today's proposal announces a decision and requests public comments on the residual risk assessment and technology review for the national

emission standards and imposes no additional burden on facilities impacted by the national emission standards. We are proposing no further action at this time to revise the national emission standards. We continue to be interested in the potential impacts of the proposed decision on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's proposed decision does not contain a Federal mandate that may result in expenditures of \$100 million or more to State, local, and tribal governments in the aggregate, or to the private sector in any 1 year. Therefore, today's proposed decision is not subject to the

requirements of sections 202 and 205 of the UMRA. In addition, today's proposed decision does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed decision is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

Today's proposed decision 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. Thus, the requirements of the Executive Order do not apply to today's proposed decision.

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 proposed decision does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

Thus, Executive Order 13175 does not apply to today's proposed decision.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the 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 the Agency.

Today's proposed decision is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risk addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results of early life exposure to gasoline distribution facility emissions.

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

Today's proposed decision is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that today's proposed decision is not likely to have any adverse energy impacts.

I. National Technology Transfer Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with

explanations when the agency does not use available and applicable VCS.

Today's proposed decision does not involve technical standards. Therefore, the requirements of the NTTAA are not applicable.

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 4, 2005.

Stephen L. Johnson,
Administrator.

[FR Doc. 05-15825 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 420

[Docket Number OW-2002-0027; FRL-7950-8]

RIN 2040-AE78

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Iron and Steel Manufacturing Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend certain provisions of the regulations establishing effluent limitations guidelines, pretreatment standards and new source performance standards for the Iron and Steel Manufacturing Point Source Category. Prior to 2002, regulations applicable to the Iron and Steel Manufacturing Point Source Category had authorized the establishment of limitations applicable to the total mass of a pollutant discharged from more than one outfall. The effect of such a "water bubble" was to allow a greater or lesser quantity of a particular pollutant to be discharged from any single outfall so long as the total quantity discharged from the combined outfalls did not exceed the allowed total mass limitation. In 2002, EPA revised the water bubble to prohibit establishment of alternative oil and grease effluent limitations. Based on consideration of new information and analysis, EPA proposes to reinstate the provision authorizing alternative oil and grease limitations with one exception.

Today's notice also proposes to correct errors in the effective date of new source performance standards.

DATES: Comments must be received by September 9, 2005. Comments postmarked after this date may not be considered.

ADDRESSES: Submit your comments, data and information for this proposed rule identified by Docket ID No. OW-2002-0027, by one of the following methods:

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

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

C. E-mail: OW-Docket@epa.gov.

D. Mail: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OW-2002-0027. Please include a total of 3 copies.

E. Hand Delivery: Water Docket, EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC, 20460. Attention Docket ID No. OW-2002-0027. Please include a total of 3 copies. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments, data and information to Docket ID No. OW-2002-0027. EPA's policy is that all comments, data and information received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the material includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the Federal [regulations.gov](http://www.regulations.gov) Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](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 docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 88102). For additional instructions on obtaining access to comments, go to Section I.C. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water Docket, EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC, 20460. 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 FURTHER INFORMATION CONTACT: Elwood H. Forsht, Engineering and Analysis Division, Office of Water, Mail code 4303T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202-566-1025; fax number 202-566-1053; and e-mail address: forsht.elwood@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially regulated by this action include facilities of the following types that discharge pollutants directly or indirectly to waters of the U.S.:

Category	Examples of regulated entities	NAICS Codes
Industry	Discharges from existing and new facilities engaged in metallurgical cokemaking, sintering, ironmaking, steelmaking, direct reduced ironmaking, briquetting, and forging.	3311, 3312

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definitions and applicability criteria in §§ 420.01, 420.10, 420.20, 420.30, 420.40, 420.50, 420.60, 420.70, 420.80, 420.90, 420.100, 420.110, 420.120, and 420.130, of title 40 of the Code of Federal Regulations. If you have questions about the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Submitting CBI.* Do not submit information that you consider to be CBI electronically through EPA’s electronic public docket or by e-mail. Send information claimed as CBI by mail only to the following address, Office of Science and Technology, Mailcode 4303T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Ahmar Siddiqui/Docket ID No. OW-2002-0027. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA’s electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA’s electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI,

please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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

- i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vii. Explain your views as clearly as possible.
- viii. Make sure to submit your comments by the comment period deadline identified.

C. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW-2002-0027. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426. To view these docket materials, please call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may

charge 15 cents a page for each page over the 266-page limit plus an administrative fee of \$25.00.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA’s electronic public docket. EPA’s policy is that copyrighted material will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA’s electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA’s electronic docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.C.1.

For public commenters, it is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA’s electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in

EPA's electronic docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

II. Legal Authority

The U.S. Environmental Protection Agency is proposing these regulations under the authorities of Sections 301, 304, 306, 308, 402 and 501 of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314, 1316, 1318, 1342 and 1361.

III. Overview of Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Industry

A. Legislative Background

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (section 101(a), 33 U.S.C. 1251(a)). To achieve this, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The CWA confronts the problem of water pollution on a number of different fronts. It relies primarily, however, on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the Nation's waters would not achieve the CWA's goals. Consequently, the CWA requires EPA to set nationally-applicable pretreatment standards that restrict pollutant discharges from those who discharge wastewater into sewers flowing to publicly-owned treatment works (POTWs) (section 307(b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which may pass through, interfere with, or are otherwise incompatible with the operation of POTWs. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. The General Pretreatment Regulations, which set forth the framework for the

implementation of national pretreatment standards, are found at 40 CFR Part 403.

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

B. Overview of 1982 Rule and 1984 Amendment

EPA promulgated effluent limitations guidelines and pretreatment standards for the Iron and Steel Point Source Category on May 27, 1982 (47 FR 23258), at 40 CFR Part 420, and amended these regulations on May 17, 1984 (49 FR 21024). These actions established limitations and standards for three types of steel-making operations: Cokemaking, hot-end and finishing operations. Regulations at Subpart A of Part 420 cover cokemaking operations. Regulations at Subpart B (sintering), Subpart C (ironmaking), Subpart D (steelmaking), Subpart E (vacuum degassing), Subpart F (continuous casting) and Subpart G (hot forming) cover hot-end operations. Subpart H (salt bath descaling), Subpart I (acid pickling), Subpart J (cold forming), Subpart K (alkaline cleaning) and Subpart L (hot coating) cover finishing operations. The 1984 amendment (49 FR 21028; May 17, 1984) also included a provision that would allow existing point sources to qualify for "alternative effluent limitations" for a particular pollutant that was different from the otherwise applicable effluent limitation. These "alternative" limitations represented a mass limitation that would apply to a combination of outfalls. Thus, a facility with more than one outfall would be subject to a combined mass limitation for the grouped outfalls rather than subject to mass limitations for each individual outfall. This provision allowed for in-plant trading under a "water bubble." The effect of this provision was to allow a facility to exceed the otherwise applicable effluent mass limitation for a particular outfall within a group of outfalls so long as the facility did not exceed the allowed mass limitations for the grouped outfalls. The provision prohibited establishing alternative effluent limitations for cokemaking (Subpart A) and cold forming (Subpart J) process wastewaters. See 40 CFR 420.03(b) (2001 ed.). The water bubble is a regulatory flexibility

mechanism that allows trading of identical pollutants at any existing, direct discharging steel facility with multiple compliance points.

C. The Water Bubble Provisions in the 2002 Rule

On October 17, 2002, EPA promulgated amendments to the iron and steel regulations (67 FR 64216). In that action, EPA revised effluent limitations guidelines and standards for Subpart A (cokemaking), Subpart B (sintering), Subpart C (ironmaking), and Subpart D (steelmaking), and promulgated new effluent limitations guidelines and standards for a new subpart, Subpart M (other operations), that is also considered a hot-end operation. Subparts E through L remained unchanged.

At that time, EPA also amended the scope of § 420.03—the water bubble provision—to allow establishment of alternative mass limitations for facilities subject to new source standards and for cold rolling operations. At the same time, EPA excluded oil and grease (O&G) trading under the water bubble. 40 CFR 420.03(c); 67 FR 64261 (October 17, 2002).

EPA allowed trades involving cold forming operations (Subpart J) because of process changes since promulgation of the 1984 amendments. The original prohibition of trades involving cold rolling operations was primarily based on concerns about discharges of naphthalene and tetrachloroethylene. Since the 1984 amendments, industry use of chlorinated solvents for equipment cleaning has virtually been eliminated and the use of naphthalene-based rolling solutions has been significantly reduced. [67 FR 64254] Consequently, EPA decided trading involving cold rolling operations could be authorized without adverse consequences to receiving waters.

Prior to the 2002 revision, described above, part 420 authorized the establishment of a single mass effluent limitation for O&G for multiple outfalls. There were three steel mills that had applied for and received alternative O&G limitations under § 420.03. In the 2002 rule, EPA explained that it had decided not to allow trades of O&G pollutant discharges among different outfalls because of differences in the types of O&G used among iron and steel operations. See 67 FR 64261, 64254 (October 17, 2002).

After publication of the 2002 amendment, representatives of steel mills affected by this change expressed concern about the prohibition on establishing alternative O&G effluent limitations under the water bubble and

requested EPA to revise § 420.03 to reinstate O&G trading. The representatives assert that EPA did not appropriately account for compliance costs for those facilities possessing permits with alternative O&G limitations. They also assert that these costs, due to the loss of the treatment flexibility provided by the water bubble, would be substantial. After a careful review of the rulemaking record, EPA agrees that it did not adequately consider the costs of compliance for the three known mills with NPDES O&G effluent limitations based on the provisions of the water bubble. EPA also determined that it should restore the regulatory flexibility related to O&G trading. Therefore, the Agency is proposing to modify the current rule.

IV. Proposed Water Bubble Amendment

Today, EPA proposes to amend § 420.03 to reinstate O&G as a pollutant for which alternative effluent limitations may be established with one exception. The proposed amendment would prohibit sintering process O&G trades unless one condition is met. In determining alternative O&G mass limitations for combined outfalls that include outfalls with sintering process wastewater, the allocation for sintering process wastewater must be at least as stringent as otherwise required by Subpart B. This restriction addresses the Agency's concern about the possibility of net increases in discharges of furans and dioxins. Sinter lines may receive wastes from all over the facility, from other facilities owned by the same company, and, in some cases, from other companies. Therefore, the sintering process O&G constituents are unpredictable and may contain solvents, a likely source material for furan and dioxin formation.

EPA also considered allowing O&G trading only among subcategories with "similar or like-kinds" of O&G, one of the bases for its earlier decision not to allow O&G trading. "Similar or like kinds" of O&G compounds are defined as O&G compounds originating from within the same category of manufacturing operations with similar O&G compositions. For example, a facility with multiple outfalls could trade O&G limitations within its hot-end operations with predominantly petroleum-based O&G or it could trade within its finishing operations with predominantly synthetic and animal O&G, but a facility could not trade O&G limitations between its hot-end and finishing operations.

EPA, however, recognizes that if it retained such a restriction, in certain circumstances, facilities discharging

process wastewaters from multiple subcategories through a single outfall would have greater flexibility than those discharging under a water bubble through multiple outfalls. At the present time, an iron and steel mill that discharges wastewater from multiple subcategories through a single outfall must comply with a single set of oil and grease limitations. In most cases, the limitations are based on the sum of the allowable pollutant loadings from each subcategory to arrive at a single set of oil and grease limitations for the outfall (*i.e.*, a "building block" approach). For compliance purposes, as long as the mill meets the oil and grease limitations at the single outfall, the mass discharge from each subcategory may vary above or below the otherwise applicable limitation that would apply if the particular wastestream would be discharged alone. Thus, adoption of a restriction on trading among finishing and hot-end operations would effectively penalize those discharging finishing and hot-end wastewater from multiple outfalls relative to those discharging the same wastestreams from a single outfall. As a result, EPA decided not to adopt such a restriction. The current regulations do contain one general restriction, first published as part of the 1984 water bubble, that would also apply to O&G trading. Section 420.03(f)(1) states that "(t)here shall be no alternate effluent limitations for cokemaking process wastewater unless the alternative limitations are more stringent than the limitations in Subpart A of this part."

EPA anticipates no additional compliance costs for the three steel mills that have applied for and received alternative O&G limitations for multiple outfalls if EPA decides to promulgate the rule with the proposed restriction. EPA anticipates that today's proposal would present opportunities for other facilities (through existing plant configurations or future expansions) to utilize the cost saving, regulatory flexibility provided by the provisions for establishing alternative O&G limitations under the water bubble.

EPA solicits comment on all aspects of this amendment.

V. Corrections to Part 420

EPA is also proposing to correct typographical errors contained in the October 17, 2002, final rule (68 FR 64215). The Code of Federal Regulations (2004 ed.) contains an error for the new source performance standards dates in §§ 420.14(a)(1), 420.16(a)(1), 420.24(a), and 420.26(a)(1). As published, the dates used to determine whether a facility must comply with new source

requirements do not make sense because the "beginning date" was later than the "ending date." The first sentence in each of these citations will be revised to read as follows: "Any new source subject to the provisions of this section that commenced discharging after November 18, 1992 and before November 18, 2002, must continue to achieve the standards specified in § 420.14 of title 40 of the Code of Federal Regulations, revised as of July 1, 2001 * * *." The November 18, 1992 date was incorrectly published as November 19, 2002.

In addition, the "Authority" citation is revised to conform with current guidance from the Office of the Federal Register.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 [58 FR 51735, (October 4, 1993)], the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (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 Executive Order 12866, it has been determined that this proposed rule is not a "significant regulatory action" and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This proposed action would not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The proposed amendment would re-instate O&G as a pollutant parameter for which alternative effluent limitations and standards under the

“water bubble” provision of the rule may be available and would correct a date for new source performance standards that was incorrectly transcribed from the version signed by the Administrator. Consequently, today’s proposed rule would not establish any new information collection burden on the regulated community.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today’s proposed rule on small entities, small entity is defined as: (1) A small business based on full time employees (FTEs) or annual revenues established by the Small Business Administration (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently

owned and operated and is not dominant in its field.

After considering the economic impacts of today’s proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The proposed amendment would re-instate O&G as a pollutant for which alternative effluent limitations and standards may be established. These proposed changes may reduce the economic impacts of the regulation on those entities, including small entities, that have already elected or may elect to use the trading provisions of the water bubble for alternative O&G effluent limitations. The proposed change in the compliance date for new source performance standards would result in no economic burden. The change would only correct a date for new source performance standards that was incorrectly transcribed from the version signed by the Administrator. EPA therefore has concluded that the proposed rule will relieve regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a

written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The proposed amendment would re-instate O&G as a pollutant for which alternative effluent limitations and standards may be established and would correct a date for new source performance standards that was incorrectly transcribed from the version signed by the Administrator. EPA has determined that the proposal if adopted will result in no additional costs. Thus, today’s rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule would not uniquely affect small governments because small and large governments are affected in the same way. Thus, today’s rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure

“meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This 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. The proposed amendment would re-instate O&G as a pollutant for which alternative effluent limitations and standards may be established and would correct a date for new source performance standards that was incorrectly transcribed from the version signed by the Administrator. EPA has determined that there are no iron and steel facilities owned and/or operated by State or local governments that would be subject to today’s rule. Further, the rule would only incidentally affect State and local governments in their capacity as implementers of CWA NPDES permitting programs and approved pretreatment programs. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on the proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The proposed amendment would re-

instate O&G as a pollutant for which alternative effluent limitations and standards may be established and would correct a date for new source performance standards that was incorrectly transcribed from the version signed by the Administrator. EPA has not identified any iron and steel facilities covered by today’s proposed rule that are owned and/or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits comments on the proposed rule from tribal officials.

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

Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to E.O. 13045 because it is not economically significant as defined under Executive Order 12866. Further, this regulation does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113, section 12(d), (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary

consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any new voluntary consensus standards.

List of Subjects in 40 CFR Part 420

Environmental protection, Iron, Steel, Waste treatment and disposal, Water pollution control.

Dated: August 4, 2005.

Stephen L. Johnson,
Administrator.

For reasons set out in the preamble, Title 40, Chapter I is proposed to be amended as follows:

PART 420—IRON AND STEEL MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for part 420 is revised to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

§ 420.03 [Amended]

2. Section 420.03 is amended by removing and reserving paragraph (c) and by adding paragraph (f)(3) to read as follows:

* * * * *
(f) * * *

(3) There shall be no alternate effluent limitations for O&G in sintering process wastewater unless the alternative limitations are more stringent than the otherwise applicable limitations in Subpart B of this part.

§ 420.14 [Amended]

3. Section 420.14 is amended in paragraph (a)(1) by removing the date “November 19, 2012” and replacing it with the date “November 18, 1992.”

§ 420.16 [Amended]

4. Section 420.16 is amended in paragraph (a)(1) by removing the date “November 19, 2012” and replacing it with the date “November 18, 1992.”

§ 420.24 [Amended]

5. Section 420.24 is amended in paragraph (a) by removing the date “November 19, 2012” and replacing it with the date “November 18, 1992.”

§ 420.26 [Amended]

6. Section 420.26 is amended in paragraph (a)(1) by removing the date "November 19, 2012" and replacing it with the date "November 18, 1992."

[FR Doc. 05-15834 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Slackwater Darter and Initiation of a 5-Year Review**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of 5-year review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the slackwater darter (*Etheostoma boschungii*) from the Federal List of Endangered and Threatened Wildlife and Plants pursuant to the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that delisting of the slackwater darter may be warranted. Accordingly, we are not required to take any further action in response to this petition. However, we believe the information in our files indicates a decline in the status of this species since its listing. Therefore, we ask the public to submit to us any new information that has become available concerning the status of or threats to the slackwater darter since it was listed in 1977. This information will help us more accurately assess its status and complete a 5-year review as required under section 4(c)(2)(A) of the Act.

DATES: The 90-day finding announced in this document was made on July 7, 2005. To allow us adequate time to conduct this 5-year review, we request any new information and comments to be submitted to us by October 11, 2005. However, we will continue to accept new information about this listed species at any time.

ADDRESSES: Data, information, written comments and materials, or questions concerning this petition, our finding, or our 5-year review should be submitted to the Field Supervisor, Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi, 39213. The petition

finding, supporting data, and comments or information received in response to this notice will be available for public review, by appointment, during normal business hours at the above address.

New information regarding the slackwater darter may be sent electronically to

daniel_drennen@fws.gov.

FOR FURTHER INFORMATION CONTACT:

Daniel J. Drennen, Fish and Wildlife Biologist, at the above address (telephone 601-321-1127; e-mail *daniel_drennen@fws.gov*).

SUPPLEMENTARY INFORMATION:**Public Information Solicited**

When we find that there is not substantial information indicating that the petitioned action may be warranted, initiation of a status review is not required by the Act. However, we continually assess the status of species listed as threatened or endangered to ensure that our information is complete and based on the best available scientific and commercial data. Therefore, we are soliciting new information for the slackwater darter.

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, the finding is to be made within 90 days of our receipt of the petition, and published promptly in the **Federal Register**. If we find that substantial information was presented in the petition, we are required to promptly commence a review of the status of the species to determine whether the action is warranted.

In making the 90-day finding, we rely on information provided by the petitioner and evaluate that information in accordance with 50 CFR 424.14(b). The contents of this finding summarize that information included in the petition and that which was available to us at the time of the petition review. Under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b), our review is limited to a determination of whether the information in the petition meets the "substantial information" threshold. "Substantial information" is defined in 50 CFR 424.14(b) as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." We do not conduct

additional research at this point, nor do we subject the petition to rigorous critical review. Rather, in accordance with the Act and regulations, we accept the petitioner's sources and characterizations of the information unless we have specific information to the contrary. As explained below, applying this standard we find that the petition does not state a reasonable case for delisting.

The factors for listing, delisting, or reclassifying species are provided at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction; (2) recovery; or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

Review of Petition

The petition to delist the slackwater darter (*Etheostoma boschungii*), dated February 3, 1997, was submitted by the National Wilderness Institute. The petitioner requested that we remove the slackwater darter from the List of Endangered and Threatened Wildlife and Plants on the basis of data error.

In response to the petitioner's request to delist the slackwater darter, we sent a letter to the petitioner on June 29, 1998, explaining our inability to act upon the petition due to low priorities assigned to delisting petitions in accordance with our Listing Priority Guidance for Fiscal Year 1997, which was published in the **Federal Register** on December 5, 1996 (61 FR 64475). That guidance identified delisting activities as the lowest priority (Tier 4). Due to the large number of higher priority listing actions and a limited listing budget, we did not conduct any delisting activities during the Fiscal Year 1997. On May 8, 1998, we published the Listing Priority Guidance for Fiscal Years 1998-1999 in the **Federal Register** (63 FR 25502) and, again, placed delisting activities at the bottom of our priority list. Subsequent to 1998, the delisting funding source was moved from the listing program to the recovery program, and delisting petitions no longer had to compete with other section 4 actions for funding. However, due to higher priority recovery workload, it has not been practicable to process this petition until recently.

The petitioner requested that we delist the slackwater darter on the basis of data error; however, the petition did not provide any information explaining how the data used to classify the slackwater

darter as a threatened species were in error. Rather, the petition cited our 1993 Fiscal Year Budget Justification as its supporting information. The 1993 Fiscal Year Budget Justification identified 33 species, including the slackwater darter, that appeared to be approaching the majority of their recovery objectives. The Justification stated the need to evaluate these species, including the slackwater darter, and determine the appropriateness of delisting them based on information obtained from status surveys. However, it did not contain any information showing that the original classification was in error, or that the darter had recovered to the point of delisting.

We listed the slackwater darter as a threatened species, and designated critical habitat for this fish, on September 9, 1977, due to threats associated with spreading urbanization, pollution, and stream channel modifications (42 FR 45526 and 42 FR 47840). The recovery objective of the slackwater darter recovery plan is to delist the species. Our criteria for delisting this fish include the establishment and protection of one or more specific habitats areas in three different tributaries of the Tennessee River system, and evidence that these populations are stable or increasing in size (U.S. Fish and Wildlife Service 1984).

Summary of Factors Affecting the Species as Presented in the Petition

Under section 4(a) of the Act, we may list, reclassify, or delist a species on the basis of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. A brief discussion of how each of the listing factors applies to the petition and the information in our files follows.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The slackwater darter is rare, sporadically distributed, and historically known from only five tributary streams to the south bend of the Tennessee River in the southwestern Highland Rim of the Nashville Basin in Tennessee and northern Alabama (Boschung and Neiland 1986; Etnier and Starnes 1993). In Tennessee, the populations were documented from

within the Buffalo River and Shoal Creek (Lawrence County) and Cypress Creek (Wayne County) watersheds. In Alabama, the slackwater darter has been found in the Flint River (Madison County), Swan Creek (Limestone County), and Cypress Creek (Lauderdale County).

The slackwater darter is a migratory species and occurs in non-breeding and breeding habitat (Boschung 1979; Boschung and Neiland 1986; U.S. Fish and Wildlife Service 1984) consisting of gentle riffles and slackwater (slow moving) areas of upland tributary streams (Williams and Robison 1980; Etnier and Starnes 1993). The non-breeding habitat must periodically flood to give the species access to the breeding habitat (slackwater) adjacent to the non-breeding habitat.

The petition stated that "other new scientific information gathered since the time of listing which is in possession of the Service, support delisting due to data error." We have no such information in our files that would support delisting. The petition did not include any detailed narrative justification for the delisting, provide information regarding the status of the species throughout all or a significant portion of its range, or include any supporting documentation for the recommended regulatory action of delisting the slackwater darter. We have found no evidence or data in the petition or in our files supporting the petitioned action or indicating an error was committed in listing the slackwater darter.

On the contrary, evidence in our files indicates that slackwater darters appear to have suffered a dramatic decline since the status surveys of Boshung (1976, 1979) and McGregor and Shepard (1992, 1995). Recent surveys indicate several historical spawning and breeding habitat sites have been destroyed or are not being used by slackwater darters, thus suggesting that reproductive success and recruitment may be declining (Dinkins and Dinkins 2003; Johnston and Hartup 2001, 2002).

Slackwater darters historically have been collected at a total of 31 sites within the five tributary streams. Numerous surveys and fish collections in the 1970s and mid-1980s in the south bend of the Tennessee River failed to document the presence of the slackwater darter outside these five drainages (U.S. Fish and Wildlife Service 1984; 42 FR 45526). At least 5 of the 31 original sites have been lost or degraded to point that they no longer provide suitable habitat for slackwater darters (U.S. Fish and Wildlife Service 1984; D. Drennen, U.S. Fish and

Wildlife Service, pers. observ., 2003; S. McGregor, Geological Survey of Alabama, pers. comm. 2004).

The slackwater darter is still sporadically present, in both breeding and non-breeding habitats, within the Buffalo River and Shoal Creek (Lawrence County) and Cypress Creek (Wayne County) watersheds of Tennessee (Johnson and Hartup 2001, 2002). However, recent surveys in 2001, 2002, and 2004 indicate declines both in the number of sites being utilized by the slackwater darter and in actual numbers of individuals (Johnson and Hartup 2001, 2002; S. McGregor, Geological Survey of Alabama, pers. comm., 2004). For example, in 2002, slackwater darters were only found in 2 of 14 historical localities sampled in tributary streams in Tennessee (Johnston and Hartup 2002). Further, sampling conducted in 2004 at three historical localities in the watersheds of Tennessee resulted in the collection of a single male slackwater darter in total; and sampling at four historic localities in Alabama resulted in collection of only two individuals in total (S. McGregor, Geological Survey of Alabama, pers. comm., 2004).

Furthermore, threats to the populations in Alabama and Tennessee have not decreased substantially and, in some cases, have increased. For example, Swan Creek in Alabama has been severely altered in the past decade. Much of the forest alongside the stream has been removed and heavy impacts to the stream bank continue to occur, resulting in channel modifications and the complete loss of in-stream aquatic vegetation. Repair and replacement of bridge crossings on the Natchez Trace Parkway, at sites known to have remnant populations of slackwater darters, have the potential to add significant sedimentation to Lindsey and Threet Creek in Lauderdale County, Alabama (Dinkins and Dinkins 2003). Cattle impacts on slackwater darter spawning habitat have increased significantly. For example, the "Dodd" site in Middle Cypress Creek, Tennessee, has been seriously impacted by cattle degrading bank sides and stream bottoms and consuming streamside vegetation (D. Drennen, U.S. Fish and Wildlife Service, pers. observ. 2003).

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition did not provide any information pertaining to Factor B. The original listing rule cited this factor as not applicable. No new information in our files suggests a change to this determination.

Factor C: Disease or Predation

The petition did not provide any information pertaining to Factor C. The original listing rule cited this factor as not applicable. No new information in our files suggests a change to this determination.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

The petition did not provide any information pertaining to Factor D. The original listing rule cited this factor as not applicable. No new information in our files suggests a change to this determination.

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

The petition did not provide any information pertaining to Factor E. The original listing rule cited this factor as not applicable. No new information in our files suggests a change to this determination.

Finding

We have reviewed the petition and its supporting documentation, as well as our agency files. On the basis of our review, we find that no substantial information has been presented or found that would indicate that delisting of the slackwater darter may be warranted.

Five-Year Review

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every five years. Under section 4(c)(2)(B), we are then required to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the slackwater darter.

The 5-year review for the slackwater darter will consider the best scientific and commercial data that has become available since the species was listed, such as:

A. Species biology, including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends;

E. Other new information, data, or corrections, including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

To fully understand the apparent dramatic decline of the slackwater darter and its impact on this fish's current status, we believe initiating this 5-year review is appropriate.

New information and comments should be sent to the Field Supervisor of the Jackson Field Office (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES** section).

References Cited

A complete list of all references is available, upon request, from the Jackson Field Office (see **ADDRESSES** section).

Author

The author of this document is Daniel J. Drennen (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 7, 2005.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.
[FR Doc. 05-15720 Filed 8-9-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist *Pedicularis furbishiae* (Furbish lousewort) and Initiation of a 5-Year Status Review**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of a 5-year status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to remove *Pedicularis furbishiae*, commonly referred to as Furbish lousewort, from the Federal List of Endangered and Threatened Plants, pursuant to the Endangered Species Act of 1973, as amended (ESA). We reviewed the petition and supporting documentation and find that there is not substantial information indicating that delisting of *P. furbishiae* may be warranted. Therefore, we will not be initiating a further 12-month status review in response to this petition.

However, we are initiating a 5-year review of this species under section 4(c)(2)(A) of the ESA that will consider new information that has become available since the listing of the species and that will offer the State, Tribes, agencies, university researchers, and the public an opportunity to provide information on the status of the species. We are requesting any new information on *P. furbishiae* since the original listing as an endangered species in 1978.

DATES: The finding announced in this document was made on August 10, 2005. To be considered in the 5-year review, comments and information should be submitted to us by October 11, 2005.

ADDRESSES: Data, information, comments, or questions concerning this finding and 5-year review should be submitted to the U. S. Fish and Wildlife Service, Maine Field Office, 1168 Main St., Old Town, ME 04468, or by facsimile 207/827-6099. The complete file for this finding is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mark McCollough, Ph.D., Endangered Species Specialist, (see **ADDRESSES**) (telephone 207/827-5938 ext. 12; facsimile 207/827-6099).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1531 et seq.) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)).

Petitioners need not prove that the petitioned action is warranted to support a "substantial" finding; instead, the key consideration in evaluating a petition for substantiality involves demonstration of the reliability of the information supporting the action advocated by the petition.

We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, at the 90-day finding stage, we accept the petitioner's sources and characterizations of the information, to the extent that they appear to be based on accepted scientific principles (such as citing published and peer reviewed articles, or studies done in accordance with valid methodologies), unless we have specific information to the contrary.

The factors for listing, delisting, or reclassifying species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction; (2) recovery; or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

Review of the Petition

The petition to delist *P. furbishiae*, dated February 3, 1997, was submitted by the National Wilderness Institute. The petition requested we remove *P. furbishiae* from the List of Endangered and Threatened Plants based on data error.

In response to the petitioner's request to delist *P. furbishiae*, we sent a letter to the petitioner on June 29, 1998,

explaining our inability to act upon the petition due to low priorities assigned to delisting petitions in accordance with our Listing Priority Guidance for Fiscal Year 1997, which was published in the **Federal Register** on December 5, 1996 (61 FR 64475). That guidance identified delisting activities as the lowest priority (Tier 4). Due to the large number of higher priority listing actions and a limited listing budget, we did not conduct any delisting activities during the Fiscal Year 1997. On May 8, 1998, we published the Listing Priority Guidance for Fiscal Years 1998–1999 in the **Federal Register** (63 FR 25502) and, again, we placed delisting activities at the bottom of our priority list. Subsequent to 1998, the delisting funding source was moved from the listing program to the recovery program, and delisting petitions no longer had to compete with other section 4 actions for funding. However, due to higher priority recovery workload, it has not been practicable to process this petition until recently.

The petition cited our 1993 Fiscal Year Budget Justification as its supporting information that the species should be removed from the List of Endangered and Threatened Plants based on data error. The 1993 Fiscal Year Budget Justification states that we would evaluate those species identified as approaching the majority of their recovery objectives. Our December 1990 Report to Congress, Endangered and Threatened Species Recovery Program, identified 33 species, including *P. furbishiae*, that were approaching their recovery objectives. The 1993 Fiscal Year Budget Justification identified the need to evaluate those species and determine the appropriateness of delisting them based on status surveys.

We listed *Pedicularis furbishiae* as endangered on April 26, 1978 (43 FR 17910). At the time of listing *P. furbishiae*, 880 individuals were known in 21 colonies from the St. John River Valley in Maine and New Brunswick, Canada. Critical habitat was not designated.

Summary of Factors Affecting the Species as Presented in the Petition

Under section 4(a) of the ESA, we may list, reclassify, or delist a species on the basis of any of the five factors, as follows: Factor (A), the present or threatened destruction, modification, or curtailment of its habitat or range; Factor (B), overutilization for commercial, recreational, scientific, or educational purposes; Factor (C), disease or predation; Factor (D), the inadequacy of existing regulatory mechanisms; and Factor (E), other

natural or manmade factors affecting its continued existence. A brief discussion of how each of the listing factors applies to the petition and the information in our files follows.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The final rule adding *Pedicularis furbishiae* to the List of Endangered and Threatened Plants, listed the following as threats to the species: dumping, natural landslides, and construction and lumbering near the banks of the St. John River Valley in Maine and New Brunswick, Canada. In addition, the final rule stated that the proposed Dickey-Lincoln School Lakes hydropower project threatened 13 colonies of *P. furbishiae*. If the project was completed as planned, 40 percent of the known individuals would be extirpated (43 FR 17910).

The petition did not provide any information pertaining to Factor A.

The 1991 Furbish Lousewort Recovery Plan, First Revision, (Plan) states that unnatural alteration to the St. John River ecosystem within the range of the species constitutes a direct threat to the continued existence of the species. According to the Plan, one of the possible sources of adverse effects is the change in land use within and along the banks above lousewort habitat. In addition, the Plan also states that the proposed Dickey-Lincoln School hydropower project named as a threat in the final listing rule was deauthorized by Congress on November 17, 1986 (Service 1991).

The Plan (Service 1991) states that until further data on the long-term population dynamics of *Pedicularis furbishiae* are available, a delisting objective is pending. According to the Plan, *P. furbishiae* could be reclassified from endangered to threatened when a reproducing population and its habitat are protected and maintained along the St. John River.

The Plan contains two reclassification objectives. The first objective is further discussed under Factor E below. The second reclassification objective, permanent protection of 50 percent of the species' essential habitat, has not been met. The recovery plan defines essential habitat as current and potential habitat used by the plant. The Plan recommends that habitat protection be distributed among the four major river segments (segment 1: 3 to 5 miles (4.8 to 8.0 kilometers (km)); segment 2 :2 to 4 miles (3.2 to 6.4 km); segment 3: at least 2 miles (3.2 km); and segment 4: an unknown, but small amount). Currently, approximately 4.8 miles (7.7

km) (25 percent) of 18.85 miles (29.8 km) of current and potential habitat is protected. Habitat protection has occurred only in river segment 1. Thus the amount and distribution of the protected habitat falls short of the recovery objective.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition did not provide any information pertaining to Factor B. The original listing rule cited this factor as not applicable. The Recovery Plan (Service 1991) said that "In lieu of legal protection of the plants, botanical collecting and/or vandalism could constitute threats to the species." However, there is no new information in our files that indicates collection or vandalism has become a problem.

Factor C: Disease or Predation

The petition did not provide any information pertaining to Factor C. The original listing rule cited this factor as not applicable. No new information in our files suggests a change to this determination.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

The petition did not provide any information pertaining to Factor D. The original listing rule cited this factor as not applicable. The Recovery Plan (Service 1991) discusses that the State of Maine does not have any laws protecting endangered plant species. However, there is no new information in our files that indicates that this lack of State law have been a problem for *P. furbishiae*.

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

The petition did not provide any information pertaining to Factor E.

According to the Plan, another possible source of adverse effects to the range of the *P. furbishiae*, besides the change in land use within and along the banks above lousewort habitat mentioned under Factor A above, is a change in hydrology of the St. John River.

The Plan states that the species will be considered for reclassification, in part, when a geometric mean of at least 7,000 flowering stems is maintained for a 6-year period, and 50 percent of the species' essential habitat is permanently protected. For the purposes of recovery planning, the St. John River was divided into 4 major river sections, each containing 10 to 16 river segments. In addition to meeting the total population

objective of 7,000 flowering stems, the Plan recommends that the population be distributed among the four major river segments (Segments 1, 2, and 3, each to contain 2,100 flowering stems; Segment 4, to contain 700 flowering stems).

The downlisting criteria were based on the 1989 survey of flowering stems, and that number, 6,889 flowering stems, was reflected in the 1990 Recovery Report to Congress. In 1991, one of the most formidable ice events in decades reshaped large portions of the river bank communities, and the *P. furbishiae* population was reduced by more than 50 percent to 3,065 flowering stems. Since the 1991 event, populations have increased to 5,647 flowering stems in 2002–2003, but still have not returned to the 1989 levels. Therefore, the population objective for reclassification has not been met.

The petitioner also stated that "other new scientific information gathered since the time of listing which is in the possession of the Service," supports delisting because of data error. However, the petition did not identify this new information. In addition, the petitioner did not include any detailed narrative justification for the delisting or provide information regarding the status of the species. While we have documented an increasing population trend, and habitat has been protected, the Plan criteria for downlisting have not been met. We have found no evidence or data in our files or in the petition that indicates a data error was committed in listing *Pedicularis furbishiae* or that otherwise indicates the petitioned action may be warranted.

Finding

We have reviewed the petition and its supporting documentation, information in our files, and other available information. We find that the petition does not present substantial information indicating that delisting of *Pedicularis furbishiae* may be warranted.

Five-Year Review

Under the ESA, the Service maintains a List of Endangered and Threatened Wildlife and Plants at 50 CFR 17.11 (for wildlife) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every five years. Then, on the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data

substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of *Pedicularis furbishiae*, currently listed as endangered.

Public Information Solicited

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting any additional information, comments, or suggestions on *Pedicularis furbishiae* from the public, other concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, or any other interested parties. Information sought includes any data regarding historical and current distribution, biology and ecology, ongoing conservation measures for the species, and threats to the species. We also request information regarding the adequacy of existing regulatory mechanisms.

The 5-year review considers all new information available at the time of the review. This review will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review, such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends; and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

If you wish to provide information for the status review, you may submit your comments and materials to the Supervisor, Maine Field Office (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for

public review during regular business hours. Respondents may request that we withhold a respondent's identity, to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Maine Field Office (see **ADDRESSES**).

References Cited

U.S. Fish and Wildlife Service (Service). 1991. Furbish Lousewort Recovery Plan, First Revision. U.S. Fish and Wildlife Service, Newton Corner, Massachusetts. 46pp.

Author

The primary author of this document is Mark McCollough, Ph.D., Endangered Species Specialist, Maine Field Office (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: July 19, 2005.

Marshall Jones,

Acting Director, Fish and Wildlife Service.
[FR Doc. 05-15570 Filed 8-9-05; 8:45 am]

BILLING CODE 4310-55-P

Notices

Federal Register

Vol. 70, No. 153

Wednesday, August 10, 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

Submission for OMB Review; Comment Request

August 4, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. 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: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. 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(s) may be obtained by calling (202) 720-8958.

An agency 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.

National Agricultural Statistics Service

Title: Agricultural Resource Management, Chemical Use, and Post-harvest Chemical Use Surveys.

OMB Control Number: 0535-0218.

Summary of Collection: The primary objectives of the National Agricultural Statistics Service (NASS) is to provide the public with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. Three surveys—the Agricultural Resource Management Study, the Fruit and Vegetable Chemical Use Surveys, and the Post-harvest Chemical Use Survey—are critical to NASS' ability to fulfill these objectives and to build the Congressionally mandated database on agricultural chemical use and related farm practices. NASS uses a variety of survey instruments to collect the information in conjunction with these studies.

Need and Use of the Information: The Agricultural Resource Management Study provides a robust data base of information to address varied needs of policy makers. There are many uses for the information from this study including an evaluation of the safety of the Nation's food supply; input to the farm sector portion of the gross domestic product; and to provide a barometer on the financial condition of farm businesses. Data from the Fruit and Vegetable Chemical Use Surveys is used to assess the environmental and economic implications of various program and policies and the impact on agricultural producers and consumers. The results of the Post-harvest Chemical Use Survey are used by the Environmental Protection Agency (EPA) to develop Food Quality Protection Act risk assessments. Other organizations use this data to make sound regulatory decisions.

Description of Respondents: Farms.

Number of Respondents: 76,433.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 58,345.

Title: Census of Aquaculture.

OMB Control Number: 0535-0237.

Summary of Collection: The primary objective of the 2005 Census of Aquaculture is to obtain a

comprehensive and detailed picture of the aquaculture sector of the economy. Authority to administer the census of aquaculture is covered by Public Law 105-113, the Census of Agriculture Act of 1997, and U.S. Code Title 7. The census of aquaculture will be the only source of data comparable and consistent at the national and State levels. It will cover all operations, commercial or noncommercial, from which \$1,000 or more of aquaculture products were sold or normally would have been sold during the census year. The census of aquaculture is one of a series of special study programs that comprise the follow-ons to the census of agriculture and is designed to provide more detailed statistics on the aquaculture industry.

Need and Use of the Information: The National Agricultural Statistics Service will collect data to provide a comprehensive inventory on the number of operations, water acreage, method of production, total production, sales outlets, sales by aquaculture species, products distributed for restoration or conservation by species, and farm employment. These data will provide information on the aquaculture industry necessary for farmers, government and various groups concerned with the aquaculture industry to evaluate policy and programs, make marketing decisions and determine the economic impact on the economy.

Description of Respondents: Farms.

Number of Respondents: 10,000.

Frequency of Responses: Reporting: One-time (Every 5-years).

Total Burden Hours: 4,222.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 05-15767 Filed 8-9-05; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service Notice of Intent To Extend a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations at 5 CFR part 1320, this notice announces the intent of the Cooperative State Research, Education, and Extension Service (CSREES) to request approval for an extension of the currently approved information collection for the CSREES proposal review process.

DATES: Written comments on this notice must be received by October 11, 2005, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments, by any of the following methods: Mail: CSREES, USDA, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250-2216; Hand Delivery/Courier: 800 9th Street, SW., Waterfront Centre, Room 4217, Washington, DC 20024; Fax: 202-720-0857; or e-mail: jhitchcock@csrees.usda.gov.

FOR FURTHER INFORMATION CONTACT: Jason Hitchcock, (202) 720-4343.

SUPPLEMENTARY INFORMATION:

Title: CSREES Proposal Review Process.

OMB Number: 0524-0041.

Expiration Date of Current Approval: 06/30/2006.

Type of Request: Intent to seek approval for the revision of a currently approved information collection for three years.

Abstract: CSREES is responsible for performing a review of proposals submitted to CSREES competitive award programs in accordance with section 103(a) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7613(a). Reviews are undertaken to ensure that projects supported by CSREES are of high quality and are consistent with the goals and requirements of the funding program.

Proposals submitted to CSREES undergo a programmatic evaluation to determine worthiness of Federal support. The evaluations consist of a peer panel review and may also entail an assessment by Federal employees and mail-in (ad-hoc) reviews.

Need and Use of the Information: The information collected from the evaluations is used to support CSREES grant programs. CSREES uses the results of each proposal evaluation to determine whether a proposal should be declined or recommended for award. When CSREES has rendered a decision, copies of reviews, excluding the names of the reviewers and summaries of review panel deliberations, if any, are

provided to the submitting Project Director.

Given the highly technical nature of many of these proposals, the quality of the peer review greatly depends on the appropriate matching of the subject matter of the proposal with the technical expertise of the potential reviewer. In order to obtain this information, an electronic questionnaire is used to collect information about potential panel and ad-hoc reviewers. If the reviewer is already in our database, the questionnaire asks potential reviewers to update their basic biographical information including address, contact information, professional expertise, and their availability to review for CSREES in the future. New reviewers are prompted to complete the questionnaire. This information has been invaluable in the CSREES review process, which has been recognized by the grantee and grantor community for its quality.

The applications and associated materials made available to reviewers, as well as the discussions that take place during panel review meetings are strictly confidential and are not to be disclosed to or discussed with anyone who has not officially been designated to participate in the review process. While each panelist certifies when preparing a review that they do not have a conflict of interest with a particular application and will maintain its confidentiality in the Peer Review System, CSREES collects a certification of the panelist intent at the time of the panel review proceedings to emphasize and reinforce confidentiality not only of applications and reviews but also panel discussions. On the Conflict of Interest and Confidentiality Certification Form, the panelists affirm they understand the conflict of interest guidelines and will not be involved in the review of the application(s) where a conflict exists. Panelists also affirm their intent to maintain the confidentiality of the panel process and not disclose to another individual any information related to the peer review or use any information for personal benefit.

Estimate of Burden: CSREES estimates that anywhere from one hour to twenty hours may be required to review a proposal. Approximately five hours are required to review an average proposal. Each proposal receives an average of four reviews, accounting for an annual burden of 20 hours per proposal. CSREES estimates it receives 4,600 proposals each year. The total annual burden in reviewing proposals is 92,000 hours. CSREES estimates that the potential reviewer questionnaire takes 10 minutes to complete. The database

consists of approximately 50,000 reviewers. The total annual burden on reviewers completing the questionnaire is 8,330 hours. CSREES estimates that the potential Conflict of Interest and Confidentiality Certification Form takes 10 minutes to complete. The agency has approximately 1,000 panelists each year. The total annual burden of the certification form is 167 hours. The total annual burden of these components of the entire review process is 100,497 hours.

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 will have practical utility; (b) the accuracy of the Agency 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 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.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Done in Washington, DC, this 1st day of August, 2005.

Merle D. Pierson,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 05-15768 Filed 8-9-05; 8:45 am]

BILLING CODE 3410-22-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Associated Electric Cooperative, Inc.; Notice of Intent To Hold Public Scoping Meetings and Prepare an Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold public scoping meetings and prepare an environmental impact statement (EIS).

SUMMARY: The Rural Utilities Service (RUS) intends to hold public scoping meetings and prepare an environmental impact statement (EIS) in connection with possible impacts related to a project proposed by Associated Electric Cooperative, Inc. (AECI), with headquarters in Springfield, Missouri. The proposal consists of the construction and operation of a nominal 660 megawatt coal-based electrical

generating plant and associated transmission facilities. A proposed and an alternate site both near the Missouri River in the northwest quadrant of Missouri have been identified by AECL. AECL is requesting RUS to provide financing for the proposed project.

DATES: RUS will conduct four public scoping meetings in an open-house format followed by a discussion period: August 22, 2005, Oregon, Missouri, at T.J. Hall Community Center, 104 S. Main; August 23, 2005, Sedalia, Missouri, at Missouri Electric Cooperatives Building, State Fair Grounds, 2503 W. 16th St.; August 24, 2005, Salisbury, Missouri, at Knights of Columbus Building, 311 E. Patterson Ave.; August 25, 2005, Norborne, Missouri, at Goppert Community Building, 201 S. Pine. The open house will be held from 4–6 p.m. with the discussion period from 6:30–7:30 p.m.

A Site Selection Study and Macro Corridor Study Report, prepared by Associated Electric Cooperative, will be presented at the public scoping meeting.

The Report is available for public review at RUS at the address provided in this notice, at Associated Electric Cooperative, 2814 S. Golden, Springfield, Missouri 65807 and at:

Cameron Public Library

312 N. Chestnut St.

Cameron, MO 64429

Phone: 816/632–2311

Concordia Library

709 S. Main St.

Concordia, MO 64020

Phone: 660/463–2277

Hale Library & Museum

321 Main St.

Hale, MO 64643

Phone: 660/565–2617

Mid-Continent Public Library, Kearney Branch

100 S. Platte-Clay Way

Kearney, MO 64060–7640

Phone: 816/628–5055

Macon Public Library

210 N. Rutherford St.

Macon, MO 63552

Phone: 660/385–3314

Carrollton Public Library

1 N. Folger St.

Carrollton, MO 64633

Phone: 660/542–0183

Mid-Continent Public Library, Excelsior Springs Branch

1460 Kearney Road

Excelsior Springs, MO 64024–1746

Phone: 816/630–6721

Robertson Memorial Library

19 W. 20th St.

Higginsville, MO 64037

Phone: 660/584–2880

Lexington Library

1008 Main St.

Lexington, MO 64067

Phone: 660/259–3071

Marshall Public Library

214 N. Lafayette

Marshall, MO 65340

Phone: 660/886–3391

Maryville Public Library

509 N. Main St.

Maryville, MO 64468

Phone: 660/582–5281

Little Dixie Regional Library

111 N. 4th St.

Moberly, MO 65270

Phone: 660/263–4426

Oregon Public Library

103 S. Washington St.

Oregon, MO 64473

Phone: 660/446–3586

Dulany Memorial Library

501 S. Broadway

Salisbury, MO 65281

Phone: 660/388–5712

Boonslick Regional Library, Sedalia Branch

219 W. 3rd St.

Sedalia, MO 65301

Phone: 660/827–7323

Carnegie Library

316 Massachusetts St.

St. Joseph, MO 64504

Phone: 816/238–0526

East Hills Library

502 N. Woodbine Road, Suite A

St. Joseph, MO 64506

Phone: 816/236–2136

Washington Park Library

1821 N. Third St.

St. Joseph, MO 64505

Phone: 816/232–2052

Boonslick Regional Library

950 E. Main St.

Warsaw, MO 65355

Phone: 660/438–5211

DeKalb County Public Library

201 N. Polk St.

Maysville, MO 64469

Phone: 816/449–5695

Mound City Public Library

205 E. 6th St.

Mound City, MO 64470

Phone: 660/442–5700

Ray County Library

219 S. College St.

Richmond, MO 64085

Phone: 816/470–3291

Rolling Hills Consolidated Library:

Savannah

514 W. Main St.

Savannah, MO 64485

Phone: 816/324–4569

Sedalia Public Library

311 W. Third St.

Sedalia, MO 65301

Phone: 660/826–1314

Downtown Library

927 Felix St.

St. Joseph, MO 64501

Phone: 816/232–7729

Rolling Hills Consolidated Library:

Eastside

1904 N. Belt Highway

St. Joseph, MO 64506

Phone: 816/232–5479

Sweet Springs Public Library

323 Spring St.

Sweet Springs, MO 65351

Phone: 660/335–4314

Norborne Public Library

109 East 2nd Street

Norborne, MO 64668

Voice: 816/594–3514

FOR FURTHER INFORMATION CONTACT:

Stephanie Strength, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571, telephone: (202) 720–0468 or e-mail: stephanie.strength@usda.gov, or Charles Means, Senior Regulatory Policy Analyst, Associated Electric Cooperative, Inc., P.O. Box 754, Springfield, Missouri 65801 or e-mail: cmeans@aeci.org.

SUPPLEMENTARY INFORMATION: AECL

proposes to construct and operate a nominal 660-megawatt coal-based electric generating facility at one of two sites in northwest Missouri. Its proposed site is just west of Norborne, Missouri, in Carroll County. The alternate site is west of Big Lake, Missouri, along the Missouri River and just south of U.S. Highway 159 in Holt County. Fuel will be supplied to the plant at either site by rail; competing rail options will be evaluated.

Construction of the project at either site will require the construction of new transmission facilities. Substation upgrades and approximately 135 miles of 345-kV transmission line would be required to connect the new plant to AECL's transmission system. For the proposed Norborne site, one line would go east to the existing Thomas Hill Substation, and one line would go south to Sedalia and then to a new substation in eastern Benton County. For the Holt County site, a double circuit 345-kV line would be required from the plant to the Fairport Substation in DeKalb County and a single circuit 345-kV line from the Fairport Substation to a new substation near Orrick, Missouri, in southwest Ray County. AECL's schedule calls for these facilities to be in commercial operation by May 2011.

Alternatives to be considered by RUS include no action, purchased power, renewable energy sources, distributed generation, and alternative site locations. Comments regarding the proposed project may be submitted (orally or in writing) at the public scoping meetings or in writing no later than September 26, 2005 to RUS at the address provided in this notice.

RUS will use input provided by government agencies, private organizations, and the public in the preparation of a Draft EIS. The Draft EIS will be available for review and comment for 45 days. A Final EIS will then be prepared that considers all comments received. The Final EIS will be available for review and comment for 30 days. Following the 30-day comment period, RUS will prepare a Record of Decision (ROD). Notices announcing the availability of the Draft and Final EIS and the ROD will be published in the **Federal Register** and in local newspapers.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations and completion of the environmental review requirements as prescribed in the RUS Environmental Policies and Procedures (7 CFR part 1794).

Dated: August 4, 2005.

Glendon D. Deal,

Director, Engineering and Environmental Staff, Water and Environmental Programs, Rural Utilities Service.

[FR Doc. 05-15766 Filed 8-9-05; 8:45 am]

BILLING CODE 3410-15-P

ANTITRUST MODERNIZATION COMMISSION

Request for Public Comment

AGENCY: Antitrust Modernization Commission.

ACTION: Request for public comment.

SUMMARY: The Antitrust Modernization Commission requests comments from the public regarding specific questions relating to the issues selected for Commission study.

DATES: Comments are due by September 30, 2005.

ADDRESSES: By electronic mail: comments@amc.gov. By mail: Antitrust Modernization Commission, Attn: Public Comments, 1120 G Street, NW., Suite 810, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission. Telephone: (202) 233-0701; e-mail: info@amc.gov. Internet: <http://www.amc.gov>.

SUPPLEMENTARY INFORMATION: The Antitrust Modernization Commission was established to "examine whether the need exists to modernize the antitrust laws and to identify and study related issues." Antitrust Modernization Commission Act of 2002, Pub. L. 107-

273, § 11053, 116 Stat. 1856. In conducting its review of the antitrust laws, the Commission is required to "solicit the views of all parties concerned with the operation of the antitrust laws." *Id.* By this request for comments, the Commission seeks to provide a full opportunity for interested members of the public to provide input regarding certain issues selected for Commission study. From time to time, the Commission may issue additional requests for comment on issues selected for study.

Comments should be submitted in written form. Comments should identify the topic to which it relates. Comments need not address every question within the topic. Comments exceeding 1500 words should include a brief (less than 250 word) summary. Commenters may submit additional background materials (such as articles, data, or other information) relating to the topic by separate attachment.

Comments should identify the person or organization submitting the comments. If comments are submitted by an organization, the submission should identify a contact person within the organization. Comments should include the following contact information for the submitter: an address, telephone number, and e-mail address (if available). Comments submitted to the Commission will be made available to the public in accordance with federal laws.

Comments may be submitted either in hard copy or electronic form. Electronic submissions may be sent by electronic mail to comments@amc.gov. Comments submitted in hard copy should be delivered to the address specified above, and should enclose, if possible, a CD-ROM or a 3½-inch computer diskette containing an electronic copy of the comment. The Commission prefers to receive electronic documents (whether by e-mail or on CD-ROM/diskette) in portable document format (.pdf), but also will accept comments in Microsoft Word format.

The AMC has issued this request for comments pursuant to its authorizing statute and the Federal Advisory Committee Act. Antitrust Modernization Commission Act of 2002, Pub. L. 107-273, § 11053, 116 Stat. 1758, 1856; Federal Advisory Committee Act, 5 U.S.C. App., § 10(a)(3).

Topic for Comment

The Commission requests comment on the following topic.

Criminal Remedies

1. In setting corporate fines for criminal Sherman Act violations,

should there be a means for differentiation based on differences in the severity or culpability of the behavior?

A. Do the Sentencing Guidelines provide an adequate method of distinguishing between violations with differing degrees of culpability? For example, should the Sentencing Guidelines provide distinctions between different types of antitrust crimes (e.g., price fixing versus monopolization)?

B. The Sentencing Guidelines use 20% of the volume of commerce affected as the starting point for computation of corporate antitrust fines. See United States Sentencing Commission, Guidelines Manual § 2R1.1 (2004). Does the volume of commerce provide an adequate measure for setting fines? If not, what other measure(s) or methods would provide a more appropriate way for the Guidelines to establish fine levels?

2. The Sherman Act provides for a maximum fine of \$100 million (or, previously, \$10 million). The government may seek criminal fines in excess of that maximum pursuant to 18 U.S.C. 3571(d).

A. Should "twice the gross gain or twice the gross loss" as provided in Section 3571(d) be calculated based on the gain or loss from all coconspirator sales or on only the defendant's sales?

B. Should fines above the statutory maximum, and thus limited by Section 3571(d), be based on 20% of gross sales as provided for in the Sentencing Guidelines, as they are for fines below the statutory maximum, or should they be calculated differently? If differently, how should they be calculated?

Dated: August 4, 2005.

By direction of the Antitrust Modernization Commission.

Andrew J. Heimert,

Executive Director & General Counsel, Antitrust Modernization Commission.

[FR Doc. 05-15806 Filed 8-9-05; 8:45 am]

BILLING CODE 6820-YM-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

(Docket 37-2005)

Foreign-Trade Zone 123 Denver, Colorado, Application For Subzone, the Eastman Kodak Company, (X-ray film, Color Paper, Digital Media, Inkjet Paper, and Entertainment Imaging), Windsor, Colorado

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City and County of

Denver, Colorado, grantee of FTZ 123, requesting special-purpose subzone status with manufacturing authority (X-ray film, color paper, digital media, inkjet paper, and entertainment imaging) for the facilities of the Eastman Kodak Company (Kodak), located in Windsor, Colorado. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 1, 2005.

The facilities for which subzone status is proposed are on one site (800 acres total; 3.2 million sq. ft. of enclosed space) located at 9952 Eastman Park Drive in Windsor, Colorado. The facilities (approximately 1650 full- and part-time employees) would be used initially under FTZ procedures for manufacturing, processing, warehousing, and distributing printer cartridges and thermal media, which have duty rates ranging from duty-free to 3.7% *ad valorem*. For Kodak's current manufacturing, foreign-sourced materials account for approximately 50 percent of finished-product value. The application lists thermal media (HTSUS category 3702.44) and film base (3920.62) as the primary material inputs which may be sourced from abroad initially, with duty rates ranging from 3.7% to 4.2%.

The application also requests authority to include a broad range of inputs and final products that the plant may produce under FTZ procedures in the future within the categories of X-ray film, color paper, digital media, inkjet paper, and entertainment imaging (i.e., motion picture film, consumer film and related chemicals). (New major activity in these inputs/products could require review by the FTZ Board.) General HTSUS categories of inputs include: 2620, 2710, 2803, 2804, 2806, 2811, 2812, 2815, 2825, 2827, 2832, 2833, 2836, 2838, 2842, 2843, 2846, 2851, 2901, 2902, 2903, 2904, 2906, 2907, 2908, 2909, 2911, 2914, 2915, 2916, 2917, 2918, 2920, 2921, 2922, 2924, 2925, 2926, 2928, 2930, 2931, 2933, 2934, 2935, 2942, 3004, 3402, 3503, 3507, 3701, 3702, 3703, 3704, 3705, 3706, 3707, 3824, 3901, 3903, 3905, 3906, 3907, 3910, 3912, 3917, 3919, 3920, 3921, 3923, 3924, 3926, 4008, 4009, 4010, 4016, 4017, 4202 (4202.12.6000, 4202.12.8030, 4202.91.0090, 4202.92.9026, 4202.92.9036, 4202.92.9060), 4203, 4415, 4504, 4703, 4802, 4805, 4808, 4811, 4818, 4819, 4820, 4821, 4823, 4901, 4902, 4905, 4906, 4908, 4909, 4910, 4911, 5906, 6804, 6909, 7003, 7004, 7005, 7006, 7007, 7008, 7013, 7014, 7020, 7106, 7108, 7112, 7412,

7419, 7606, 7607, 7609, 7616, 8101, 8108, 8302, 8306, 8308, 8309, 8405, 8412, 8413, 8414, 8415, 8418, 8419, 8420, 8421, 8422, 8423, 8428, 8431, 8439, 8441, 8443, 8466, 8467, 8470, 8471, 8472, 8473, 8476, 8477, 8479, 8480, 8481, 8485, 8501, 8503, 8504, 8505, 8506, 8507, 8511, 8512, 8513, 8514, 8515, 8516, 8518, 8521, 8523, 8524, 8525, 8528, 8529, 8531, 8532, 8533, 8534, 8535, 8536, 8537, 8538, 8539, 8540, 8541, 8542, 8543, 8544, 8545, 8546, 8547, 9001, 9002, 9005, 9006, 9007, 9008, 9009, 9010, 9011, 9013, 9015, 9016, 9017, 9018, 9022, 9023, 9024, 9025, 9026, 9027, 9028, 9029, 9030, 9031, 9032, 9033, 9106, 9402, 9405, 9612, and 9705. The duty rates on these products range from duty-free to 38%. Final products that may be produced from the inputs listed above include these general HTSUS categories: 2710, 2803, 2804, 2806, 2811, 2812, 2815, 2825, 2827, 2832, 2833, 2836, 2838, 2842, 2843, 2846, 2851, 2901, 2902, 2903, 2904, 2906, 2907, 2908, 2909, 2911, 2914, 2915, 2916, 2917, 2918, 2920, 2921, 2922, 2924, 2925, 2926, 2928, 2930, 2931, 2933, 2934, 2935, 2942, 3004, 3402, 3503, 3507, 3701, 3702, 3703, 3704, 3705, 3706, 3707, 3824, 3901, 3903, 3905, 3906, 3907, 3910, 3912, 3917, 3919, 3920, 3921, 3923, 3924, 3926, 4008, 4009, 4010, 4016, 4017, 4202 (4202.12.6000, 4202.12.8030, 4202.91.0090, 4202.92.9026, 4202.92.9036, 4202.92.9060), 4203, 4415, 4504, 4703, 4802, 4805, 4808, 4811, 4818, 4819, 4820, 4821, 4823, 4901, 4902, 4905, 4906, 4908, 4909, 4910, 4911, 5906, 6804, 6909, 7003, 7004, 7005, 7006, 7007, 7008, 7013, 7014, 7020, 7106, 7108, 7112, 7412, 7419, 7606, 7607, 7609, 7616, 8101, 8108, 8302, 8306, 8308, 8309, 8405, 8412, 8413, 8414, 8415, 8418, 8419, 8420, 8421, 8422, 8423, 8428, 8431, 8439, 8441, 8443, 8466, 8467, 8470, 8471, 8472, 8473, 8476, 8477, 8479, 8480, 8481, 8485, 8501, 8503, 8504, 8505, 8506, 8507, 8511, 8512, 8513, 8514, 8515, 8516, 8518, 8521, 8523, 8524, 8525, 8528, 8529, 8531, 8532, 8533, 8534, 8535, 8536, 8537, 8538, 8539, 8540, 8541, 8542, 8543, 8544, 8545, 8546, 8547, 9001, 9002, 9005, 9006, 9007, 9008, 9009, 9010, 9011, 9013, 9015, 9016, 9017, 9018, 9022, 9023, 9024, 9025, 9026, 9027, 9028, 9029, 9030, 9031, 9032, 9033, 9106, 9402, 9405, 9612, and 9705. The duty rates on these products range from duty-free to 38%.

Zone procedures would exempt Kodak from Customs duty payments on foreign components used in export production. On its domestic sales,

Kodak would be able to choose the lower duty rate that applies to the finished products for foreign components, when applicable. Kodak would also be able to avoid duty on foreign inputs which become scrap/waste, estimated at five percent of FTZ-related savings. Kodak may also realize logistical/procedural and other benefits from subzone status. All of the above-cited savings from zone procedures could help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building--Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or
2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB--Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is October 11, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 24, 2005.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above and at the Denver U.S. Export Assistance Center, 1625 Broadway, Suite 680, Denver, CO 80202.

Dated: August 2, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05-15823 Filed 8-9-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

(Docket 36-2005)

Foreign-Trade Zone 141 Rochester, New York, Expansion of Manufacturing Authority Subzone 141A, Eastman Kodak Company, (Printer Cartridges and Thermal Media)

An application has been submitted to the Foreign-Trade Zones Board (the

Board) by Monroe County, New York, grantee of FTZ 141, to expand the scope of manufacturing authority for the Eastman Kodak Company (Kodak) under zone procedures within Subzone 141A, at the Kodak plant located at sites in the Rochester, New York area. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 1, 2005.

Subzone 141A was approved by the Board in 1988 and is currently comprised of four sites in the Rochester, New York area. Authority was granted for the manufacture of: photographic film, paper and chemicals; photographic/video cameras, equipment and supplies; copiers, office machines, and computer equipment; medical instruments and equipment; and life science chemicals (Board Order 401, 53 FR 52456, 12/28/1988).

Kodak is now proposing to expand the scope of manufacturing activity conducted under zone procedures at Subzone 141A to include additional finished products (printer cartridges and thermal media). These finished products fall into categories which enter the United States at duty rates ranging from duty-free to 3.7% *ad valorem*. Kodak's application indicates that foreign-sourced materials under the proposed expanded scope (thermal media and film base HTSUS categories 3702.44 and 3920.62, respectively) have duty rates ranging from 3.7% to 4.2%.

Expanded subzone manufacturing authority would exempt Kodak from Customs duty payments on foreign components when used in export production of the new products. On its domestic sales, Kodak would be able to choose the lower duty rate that applies to the new finished products for foreign components, when applicable. Kodak would also be able to avoid duty on foreign inputs which become scrap/waste, estimated at five percent of FTZ-related savings. Kodak may also realize logistical/procedural and other benefits related to the proposed expanded scope of manufacturing. All of the above-cited savings from zone procedures could help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building--Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB--Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is October 11, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 24, 2005.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the Rochester U.S. Export Assistance Center, 400 Andrews St., Suite 710, Rochester, NY 14604.

Dated: August 3, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05-15822 Filed 8-9-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(A-570-847)

Persulfates from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from FMC Corporation (FMC), a domestic producer and an interested party in this proceeding, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on persulfates from the People's Republic of China (PRC). The period of review (POR) is July 1, 2003, through June 30, 2004. Upon completion of this review, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise that were exported by the company under review and entered during the POR. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 10, 2005.

FOR FURTHER INFORMATION CONTACT: Tisha Loeper-Viti at (202) 482-7425 or

Frances Veith at (202) 482-4295, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2004, the Department published a notice of opportunity to request an administrative review of this order (69 FR 39903). On July 30, 2004, in accordance with 19 CFR 351.213(b)(1), FMC requested that the Department conduct an administrative review of Shanghai AJ Import and Export Corporation (Shanghai AJ).

On September 22, 2004, the Department published a notice of initiation of this administrative review (69 FR 56745). On March 25, 2005, the Department extended the due date for the preliminary results of this review to August 1, 2005 (70 FR 15293).

On October 13, 2004, we issued an antidumping questionnaire to Shanghai AJ and its producer, Degussa-AJ (Shanghai) Initiators Co., Ltd. (Degussa-AJ), collectively Shanghai AJ/Degussa-AJ. Shanghai AJ/Degussa-AJ submitted timely responses to the questionnaire in November and December 2004. We issued supplemental questionnaires in March, April, May, and June 2005, and received timely responses to each from Shanghai AJ/Degussa-AJ.

On June 10, 2005, FMC submitted publicly available information for consideration in valuing the factors of production. Shanghai AJ/Degussa-AJ submitted information for this purpose on June 20 and 27, 2005. FMC submitted rebuttal comments on June 29 and July 8, 2005.

Scope of the Order

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(\text{NH}_4)_2\text{S}_2\text{O}_8$, $\text{K}_2\text{S}_2\text{O}_8$, and $\text{Na}_2\text{S}_2\text{O}_8$. Potassium persulfates are currently classifiable under subheading 2833.40.10 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we verified information provided by

Shanghai AJ/Degussa-AJ. We used standard verification procedures, including on-site inspection of the producer's and exporter's facilities, and examination of relevant sales and financial records. The Department conducted the verification at Degussa-AJ's facilities near Shanghai from July 4 through July 6, 2005, and at Shanghai AJ's facilities in Shanghai from July 7 through July 8, 2005. Our verification results are outlined in the verification reports for these two companies. See Memorandum to the File Re: Antidumping Duty Administrative Review: Persulfates from the People's Republic of China - Verification of Shanghai AJ Import & Export Corporation and Degussa-AJ (Shanghai) Initiators Co., Ltd., dated August 1, 2005.

Adverse Facts Available

Section 776(a)(1) and (2) of the Act provides that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or 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 and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (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 further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

For the reasons explained below, and pursuant to sections 776(a)(2)(A) and 776(b) of the Act, the Department has determined to apply partial AFA for certain U.S. sales that Shanghai AJ failed to report. On October 12, 2004, the Department requested that Shanghai AJ report all sales of persulfates to the United States during the POR. In section A(4)(a) of the October 12, 2004, questionnaire, the Department requested that Shanghai AJ describe the date selected as the date of sale to be used in the POR. In section C of the questionnaire, the Department also requested that Shanghai AJ report the

date of sale as defined in the Glossary of Terms at Appendix I, which states the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. On November 17, 2004, and December 1, 2004, Shanghai AJ submitted a questionnaire response to both sections A and C and responded that its date of sale is the date of invoice.

On March 17, 2005, the Department issued a supplemental questionnaire for section A, requesting an explanation for Shanghai AJ's reasons for not choosing the date of the short-term contract as the date of sale, given that Shanghai AJ's original submission stated that it used short-term contracts and that there were rarely changes made to the terms of sale after this date. Shanghai AJ's April 7, 2005, response to the March 17, 2005, supplemental first noted that it had incorrectly described Shanghai AJ as using short-term contracts and that sales were made pursuant to purchase orders. Second, Shanghai AJ's response noted that approximately 40 percent of sales transactions during the POR experienced changes to quantities, destinations, and/or shipping dates between the time of the purchase order and issuance of the invoice. Also, Shanghai AJ's response indicated that "substantial terms of sale, especially sales quantity, were finalized at the time the commercial invoice was issued. Thus, Shanghai AJ believes the invoice date is the most appropriate date of sale pursuant to the definition of the date of sale." On December 1, 2004, May 6, 2005, and June 7, 2005, Shanghai AJ submitted to the Department what it reported to be all sales of persulfates sold to the United States during the POR, based upon invoice date.

At the beginning of verification, Shanghai AJ provided the Department with its submission of clerical errors and minor corrections. However, during verification, the Department discovered three sales of persulfates to the United States during the POR which were not reported to the Department in either of Shanghai AJ's questionnaire responses or its minor corrections.¹ Shanghai AJ explained that it did not report these sales, which it deemed outside the POR, because the sales invoices were reissued to a customer who had requested that all of its sales invoices be issued the same month as the shipment date. In this case, the shipment dates for these three sales were outside the POR. However, the original sales invoices were clearly dated within the POR and Shanghai AJ

¹ Shanghai AJ/Degussa-AJ placed this submission on the record on July 6, 2005.

recorded these sales in its books and records based on the original invoice dates. Moreover, the Department verified that Shanghai AJ did not adjust its books and records for the reprinting of the sales invoices. Therefore, because Shanghai AJ withheld information the Department requested, that is the sales in question, pursuant to section 776(a)(2)(A) of the Act, the Department is applying facts available to those transactions.

Section 776(b) of the Act provides that, upon having determined to apply facts available pursuant to the statutory requirements of the Act, the Department may use adverse inferences in selecting among the facts otherwise available if the Department determines that the respondent failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department. We have determined that Shanghai AJ has not acted to the best of its ability to comply with our requests for information in this administrative review.

The U.S. Court of Appeals for the Federal Circuit has held that the "best of its ability" standard "requires the respondent to do the maximum it is able to do." See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed Cir. 2003) (*Nippon Steel*). The Department has determined that Shanghai AJ did not act to the best of its ability because it neither included nor notified the Department in a timely manner that it was not including these sales in its filing. This information was within Shanghai AJ's control. The company itself explained that the U.S. sales date should be based on invoice date. The company treated these sales as sales made pursuant to the original invoice date. Under these circumstances, it is fully reasonable for the Department to expect that Shanghai AJ would be forthcoming with this information, and that its failure to do so demonstrates that Shanghai AJ failed to put forth the maximum effort. *Nippon Steel*, 337 F.3d at 1382; see also *Neuberg Fertigung GmbH v. United States*, 797 F.Supp. 1020, 1024 (CIT 1992) ("ultimately it is the respondent's responsibility to make sure that {Commerce} understands, and correctly uses, any information provided by the respondent.")

Section 776(b) of the Act states that AFA may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As AFA for the preliminary results, and in accordance with section 776(b), the Department is applying the highest

transaction margin for Shanghai AJ from the current administrative review to Shanghai AJ's unreported sales for the preliminary results.

Separate Rates Determination

The Department has treated the PRC as a non-market-economy (NME) country in all past antidumping duty investigations and administrative reviews. See, e.g., *Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China*, 69 FR 34130 (June 18, 2004). A designation as an NME country remains in effect until it is revoked by the Department. See section 771(18)(C)(i) of the Act.

It is the Department's standard policy to assign all exporters of subject merchandise subject to review in an NME country a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*); and *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether an exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether an exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or the financing of losses; 3) whether an exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether an exporter has autonomy from the government regarding the selection of management.

See *Silicon Carbide*, 59 FR at 22587, and *Sparklers*, 56 FR at 20589.

Based on a review of its responses, and the results of verification, we have concluded that Shanghai AJ conducts its export activities independently of control from central, provincial or local governments in the PRC. Shanghai AJ was established in 1994 as a wholly owned subsidiary of Shanghai Ai Jian Corporation (AJ Corp.). AJ Corp is a public company listed and traded on the Shanghai Stock Exchange. Shanghai AJ has placed on the record documents to demonstrate the absence of *de jure* control including its business license and the business license and a list of the shareholders of AJ Corp., as well as copies of the *PRC Enterprise Legal Person Registration Administrative Regulations and the Foreign Trade Law of the People's Republic of China*. Other than limiting Shanghai AJ to activities referenced in its business license, we found no restrictive stipulations associated with its license. In addition, Article 16 of the *PRC Enterprise Legal Person Registration Administrative Regulations* expressly recognizes the independent legal status of every company that possesses its own business license, and grants to these enterprises the right to open bank accounts, conduct business activities, and sign contracts. The *Foreign Trade Law* grants autonomy to foreign trade operations in management decisions and establishes accountability for their own profits and losses. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control for Shanghai AJ.

With regard to *de facto* control, Shanghai AJ reported the following: (1) it sets prices to the United States through negotiations with customers and these prices are not subject to review by any government organization; (2) it does not coordinate with other exporters to set the price or determine to which market companies sell subject merchandise; (3) the PRC Chamber of Commerce does not coordinate the export activities of Shanghai AJ; (4) Shanghai AJ's managers have the authority to contractually bind the company to sell subject merchandise; (5) the general manager of Shanghai AJ is appointed by the managers of AJ Corp., Shanghai AJ's corporate parent; (6) there is no restriction on its use of export revenues; and (7) Shanghai AJ's managers ultimately determine the disposition of the company's profits and Shanghai AJ has not had a loss on export sales in the last two years. Additionally, Shanghai AJ's questionnaire responses do not suggest that pricing is coordinated among

exporters. Furthermore, our analysis of Shanghai AJ's questionnaire responses reveals no other information indicating government control of export activities. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control over Shanghai AJ's export functions and that Shanghai AJ has met the criteria for the application of separate rates.

Affiliation

In its November 7, 2004, submission, Shanghai AJ/Degussa-AJ requested clarification from the Department as to whether Degussa Initiators, LLC (Degussa USA), one of Shanghai AJ's U.S. customers, is considered an "affiliate" under the Department's regulations and whether it needed to report Degussa USA's sales of the subject merchandise during the POR. On March 17, 2005, the Department requested that Shanghai AJ/Degussa-AJ report Degussa USA's sales. Shanghai AJ/Degussa-AJ submitted Degussa USA's sales data on April 14 and May 11, 2005.

Based upon information on the record, we have determined that Shanghai AJ is affiliated with Degussa USA and we have included Degussa USA's sales in our margin calculations. For a full discussion of this issue, see Memorandum from Charles Riggle to Wendy J. Frankel Re: Administrative Review of the Antidumping Duty Order on Persulfates from the People's Republic of China Affiliation, dated August 1, 2005 (Affiliation Memo).

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, Export Price (EP) or Constructed Export Price (CEP) as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection 772(c) of the Act.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the

Act. We based CEP on the applicable terms of sale through Degussa USA, Shanghai AJ's affiliate in the United States. See Affiliation Memo.

We calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States. In accordance with section 772(c)(2) of the Act, we calculated the EP and CEP by deducting movement expenses, including inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. inland freight, warehousing, and duties, where appropriate. We valued those movement services provided by market-economy (ME) suppliers and paid for in a ME currency, using the actual expenses incurred. We valued those movement services provided by NME suppliers using surrogate Indian rates. For further discussion of our use of surrogate data in an NME proceeding, as well as selection of India as the appropriate surrogate country, see the *Normal Value* and *Surrogate Values* sections of this notice, below.

Section 772(d)(1) of the Act provides for additional adjustments to calculate CEP. Accordingly, where appropriate, we deducted indirect selling expenses (including inventory carrying costs) and direct selling expenses (credit) related to commercial activity in the United States. Pursuant to section 772(d)(3) of the Act, where applicable, we made an adjustment for CEP profit.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine normal value (NV) using a factors-of-production (FOP) methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home-market prices, third-country prices, or constructed value and no party has argued otherwise, we calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Because we are using surrogate country FOP prices to determine NV, section 773(c)(4) of the Act requires that the Department use values from an ME (surrogate) country that is at a level of economic development comparable to that of the PRC and that is a significant producer of comparable merchandise. We have determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are ME countries at a

comparable level of economic development to that of the PRC. For a further discussion of our surrogate selection, see the March 7, 2005, memorandum entitled Request for a List of Surrogate Countries, which is available in the Department's Central Records Unit (CRU), room B099 of the main Commerce building. In addition, according to United Nations export statistics, we found that India exported 555,210 kilograms of comparable merchandise (*i.e.*, persulfates based on HTS number 2833.40) in 2003 valued at USD 317,524. See <http://unstats.un.org/unsd/comtrade>. Therefore, India is a significant producer of comparable merchandise. Additionally, we are able to access Indian data that are contemporaneous with this POR. As in the previous review of this order, we have chosen India as the primary surrogate country and are using Indian prices to value the FOPs. See Memorandum from Tisha Loeper-Viti to Wendy J. Frankel, Preliminary Valuation of Factors of Production (August 1, 2005) (FOP Memo).

We selected, where possible, publicly available values from India that were average non-export values, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and tax-exclusive. Also, where we have relied upon import values, we have excluded imports from NME countries as well as from South Korea, Thailand, and Indonesia. The Department has found that South Korea, Thailand, and Indonesia maintain broadly available, non-industry-specific export subsidies. The existence of these subsidies provides sufficient reason to believe or suspect that export prices from these countries may be subsidized. See *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1. Our practice of excluding subsidized prices has been upheld in *China National Machinery Import and Export Corporation v. United States*, 293 F. Supp. 2d 1334, 1136 (CIT 2003).

Surrogate Values

To value certain material inputs, sulfuric acid and ammonium sulfate, we used per-kilogram values obtained from the Indian publication *Chemical Weekly*. We adjusted these values for taxes and to account for freight costs incurred between the suppliers and the factory. To value anhydrous ammonia, potassium hydroxide, and caustic soda,

we used per-kilogram import values obtained from the *Monthly Statistics of the Foreign Trade of India* (MSFTI), as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and available from *World Trade Atlas*, available at <http://www.gtis.com/wta.htm>. We adjusted these values to account for freight costs incurred between the suppliers and the factory.

To value electricity, we used the 2000 electricity price data from *International Energy Agency, Energy Prices and Taxes - Quarterly Statistics (Second Quarter 2003)*. To value water, we used the Revised Maharashtra Industrial Development Corporation water rates for June 1, 2003, available at http://www.midcindia.com/water_supply. To value coal, we used the per-kilogram values obtained from MSFTI and made adjustments to account for freight costs incurred between the suppliers and the factory.

For labor, we used the regression-based wage rate for the PRC in "Expected Wages of Selected NME Countries," available at <http://ia.ita.doc.gov/wages/index.html>.

For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, we used the financial statements of two Indian producers of hydrogen peroxide, Asian Peroxides Ltd. and National Peroxide Ltd.² From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (ML&E) costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. The Department also used financial statements from these two companies in the 2002-2003 administrative review of persulfates from the PRC. See *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (Feb. 9, 2005).

The respondent has placed on the record of the current review the financial statements of Gujarat Alkalies and Chemicals Ltd. (Gujarat) and Hindustan Organic Chemicals Ltd. (Hindustan), both producers of hydrogen peroxide. We have preliminary determined not to use these financial statements. With respect to Hindustan, this company's financial

² See *Notice of Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China*, 62 FR 27222, 27229 (May 19, 1997), where the Department determined that hydrogen peroxide production was comparable to persulfates production.

statements indicate that it meets the definition of a “sick” company under the Sick Industrial Companies Act of India. It is the Department’s policy to not use the financial statements of a “sick” company for calculating any of the surrogate financial ratios. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China*, 69 FR 20594 (April 16, 2004). Therefore, we are not using Hindustan’s financial statements in our calculations. With respect to Gujarat, we find that production of the comparable merchandise, hydrogen peroxide, comprises only 1.3 percent by volume of the company’s total production. The Department has not had sufficient time to determine whether the balance of Gujarat’s production is of merchandise that would also be considered comparable to persulfates. For these preliminary results, therefore, we have not used Gujarat’s financial statements in our calculation of surrogate financial ratios for the respondent.

For packing materials, we used the per-kilogram values obtained from the MSFTI and made adjustments to account for freight costs incurred between the suppliers and the factory.

To value foreign brokerage and handling, we used an average of the brokerage and handling data reported in Essar Steel’s February 28, 2005, public version response submitted in the 2003–2004 antidumping duty administrative review of Hot-Rolled Carbon Steel Flat Products from India and Pidilite Industries’ March 9, 2004, public version response submitted in the antidumping duty investigation of Carbazole Violet Pigment 23 from India. To value truck freight, we used the freight rates published by Indian Freight Exchange available at <http://www.infreight.com>. To value marine insurance, we used a price quote obtained from RJG Consultants and available at <http://www.rjgconstultants.com>.

Where necessary, we adjusted the surrogate values to reflect inflation/deflation using the Indian Wholesale Price Index (WPI) as published on the Reserve Bank of India (RBI) website, available at <http://www.rbi.org.in>. See FOP Memo.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Margin (percent)
Degussa–AJ (Shanghai) Initiators Co., Ltd./Shanghai AJ Import and Export Corporation	28.91

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. See 19 CFR § 351.224(b). Interested parties are invited to comment on the preliminary results. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities. Further, we would appreciate it if parties submitting written comments provided an additional copy of the public version of any such comments on a diskette. Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice or the first workday thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from publication of this notice.

Assessment

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. Within 15 days of the completion of this review, the Department will instruct CBP to assess antidumping duties on all appropriate entries of subject merchandise. We have calculated each importer’s duty–assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of sales examined. Where the assessment rate is above *de minimis*, the importer–specific rate will be assessed uniformly on all entries made during the POR.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of the final results for all shipments of persulfates from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for Shanghai AJ,

which has a separate rate, the cash deposit rate will be the company–specific rate established in the final results of the review; (2) the cash deposit rates for any other companies that have separate rates established in the investigation or a previous administrative review of this case, but were not reviewed in this proceeding, will not change; (3) for all other PRC exporters, the cash deposit rate will be the PRC rate, 119.02 percent, the PRC–wide rate established in the less than fair value investigation; and (4) for non–PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 1, 2005.
Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.
 [FR Doc. 05–15770 Filed 8–9–05; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–475–829

Stainless Steel Bar from Italy: Final Results of Antidumping Duty Administrative Review and Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 7, 2005, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on stainless steel bar from Italy. The period of review is March 1, 2003, through February 29, 2004. This review covers imports of stainless steel bar to the

United States from one producer/exporter. Based on our analysis of the comments received, we conclude that the final results do not differ from the preliminary results of review, in which we found that the respondent in this review did not make shipments of subject merchandise to the United States during the period of review. Therefore, we are rescinding the administrative review. In addition, we continue to find that UGITECH S.A. is the successor-in-interest to Ugine-Savoie Imphy S.A. for purposes of determining antidumping duty liability.

EFFECTIVE DATE: August 10, 2005.

FOR FURTHER INFORMATION CONTACT:

Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-1279.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the preliminary results of this review (see *Stainless Steel Bar from Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission of Review*, 70 FR 17656 (April 7, 2005) (“*Preliminary Results*”)), the following events have occurred:

We invited interested parties to comment on the preliminary results of this review. On May 9, 2005, we received a case brief from the Carpenter Technology Corp., Crucible Specialty Metals, Electralloy Corp., Empire Specialty Steel, Inc., Slater Steels Corp., and the United Steelworkers of America, AFL-CIO/CLC (collectively, “the petitioners”). On May 20, 2005, we received a rebuttal brief from UGITECH S.A. (“UGITECH”) (formerly known as Ugine Savoie-Imphy S.A.), an Italian exporter/producer of the subject merchandise. At the request of the petitioners, the Department held a public hearing on May 31, 2005.

Scope of the Order

For purposes of this order, the term “stainless steel bar” includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that

are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

The issue raised in the case and rebuttal briefs by parties to this review is addressed in the “Issues and Decision Memorandum for the Final Results in the Antidumping Duty Administrative Review of Stainless Steel Bar from Italy” from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 5, 2005 (“*Decision Memorandum*”), which is hereby adopted by this notice. Attached to this notice as an appendix is a listing of the issue which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of the issue raised in this review and the corresponding recommendation in this public memorandum which is on file in the Department’s Central Records Unit, Room B-099 of the main Department building (“CRU”). In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Rescission of Administrative Review

In accordance with 19 CFR 351.213(d)(3), and consistent with the *Preliminary Results*, we are rescinding this review with respect to UGITECH, which reported that it made no shipments of the subject merchandise to the United States during the POR. As stated in the *Preliminary Results*, we examined shipment data furnished by U.S. Customs and Border Protection (“CBP”) and analyzed UGITECH’s quantity and value of sales at verification. See *Memorandum to the File, “Verification of UGITECH S.A.’s No-Shipment Claim,”* (January 13, 2004) (“UGITECH VR”). Based on this information, and for the reasons set forth in the *Decision Memorandum*, we are satisfied that there were no U.S. shipments of subject merchandise from UGITECH during the POR.

Successor-in-Interest and Final Results of Review

Consistent with the *Preliminary Results*, we find that UGITECH is the successor-in-interest to Ugine-Savoie Imphy S.A. for antidumping duty cash deposit purposes. Therefore, UGITECH will be assigned the same cash deposit rate with respect to the subject merchandise as the predecessor company, Ugine-Savoie Imphy S.A. (*i.e.*, 33.00 percent). See *Stainless Steel Bar from Italy: Final Results of Antidumping Duty Administrative Review*, 69 FR 32984 (June 14, 2004).

Cash Deposit

The cash deposit requirement for this review will be effective upon publication of this notice of final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date in the **Federal Register**. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review involving UGITECH. We will instruct CBP accordingly.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These results of administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 4, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX I

List of Comments in the Issues and Decision Memorandum

Comment 1: Collapsing of UGITECH S.A. and Trafilerie Bedini S.p.A.

[FR Doc. E5-4329 Filed 8-8-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-427-820

Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 6, 2005, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on stainless steel bar from France. The review covers UGITECH S.A. (UGITECH), a manufacturer/exporter of the subject merchandise. The period of review is March 1, 2003, through February 29, 2004.

The Department preliminarily determined that UGITECH is the successor-in-interest to Ugine-Savoie Imphy S.A. for purposes of determining antidumping duty liability. The Department is now affirming its preliminary results.

Based on our analysis of the comments received, we have made changes in the margin calculations.

Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: August 10, 2005.

FOR FURTHER INFORMATION CONTACT:

Terre R. Keaton or David J. Goldberger, AD/CVD Operations, Office 2, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1280 or (202) 482-4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 2005, the Department of Commerce (the Department) published the preliminary results of the second administrative review of the antidumping duty order on stainless steel bar from France (70 FR 17411) (*Preliminary Results*). We invited parties to comment on the *Preliminary Results*. On May 20 and 27, 2005, the parties submitted case and rebuttal briefs, respectively. We have conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act").

Scope of the Order

For purposes of this order, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in

coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Successor-in-Interest Analysis

In the *Preliminary Results*, we determined that UGITECH is the successor-in-interest to Ugine-Savoie Imphy S.A. Neither party objected to our preliminary finding. Therefore, for the final results, we continue to find that UGITECH is the successor-in-interest to Ugine-Savoie Imphy S.A. for antidumping duty cash deposit purposes. We will notify U.S. Customs and Border Protection (CBP) accordingly.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the August 4, 2005, Issues and Decision Memorandum for the Final Results of Stainless Steel Bar from France (*Decision Memo*), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 of the main Department building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes from the Preliminary Results

Based on our analysis of the comments received, we have made certain changes to the margin calculations which are detailed in the *Decision Memo*.

Final Results of Review

We determine that the following weighted-average margin percentage exists:

Manufacturer/exporter	Margin (percent)
UGITECH S. A.	14.98

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisal instructions for the company subject to this review directly to CBP within 15 days of publication of these final results of review. In accordance with 19 CFR 351.106(c)(1), we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., is not less than 0.50 percent). We calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing this amount by the total entered value of the sales examined.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for UGITECH will be 14.98 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.90 percent. This rate is the "All Others" rate from the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement

could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only 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 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. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 4, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix List of Issues

Comment 1: The Treatment of the Impairment of Assets Recognized in UGITECH's 2003 Financial Statements

Comment 2: The Treatment of Certain Research and Development Expenses in the Total Cost of Production Calculation

Comment 3: The Treatment of Non-Realized Restructuring Expenses in the General Administrative Expense Calculation

Comment 4: Level of Trade in the Home Market

Comment 5: Whether to Combine Certain Grade Codes for Product Matching

Comment 6: The Treatment of Early Payment Discount for Unpaid Home Market Sales

Comment 7: The Date of Shipment for Certain U.S. Consignment Sales

Comment 8: The Date of Payment for Unpaid U.S. Sales

Comment 9: Alleged Additional Direct Expenses on Certain U.S. Sales
[FR Doc. E5-4330 Filed 8-9-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(C-533-825)

Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on polyethylene terephthalate film, sheet, and strip (PET film) from India. This CVD review covers two companies. The period of review (POR) is January 1, 2003, through December 31, 2003. For information on the net subsidy rate for the reviewed companies, see the "Preliminary Results of Administrative Review" section of this notice. If the final results remain the same as the preliminary results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties as detailed in the "Preliminary Results of Administrative Review" section of this notice. Interested parties are invited to comment on these preliminary results. (See the "Public Comment" section of this notice.)

EFFECTIVE DATE: August 10, 2005.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, at (202) 482-2769, or Howard Smith, at (202) 482-5193, AD/CVD Operations Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published a CVD order on PET film from India. See *Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India*, 67 FR 44179 (July 1, 2002) (*PET Film Order*). On July 1, 2004, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 39903 (July 1, 2004). On July 29, 2004, Jindal Polyester Limited/Jindal Poly Films Limited of India (Jindal) and Polyplex Corporation Ltd. (Polyplex),

Indian producers and exporters of subject merchandise, requested that the Department conduct an administrative review of the CVD order on PET film from India with respect to their exports to the United States. On July 30, 2004, Dupont Teijin Films, Mitsubishi Polyester Film of America, Toray Plastics (America), and SKC America, Inc. (petitioners), requested that the Department conduct an administrative review of the CVD order on PET film from India with respect to Polyplex, Jindal, Ester Industries Ltd. (Ester), Garware Polyester Limited (Garware), Flex Industries Ltd. (Flex), SRF Ltd. (SRF), and MTZ Polyesters Ltd. (MTZ). Also on July 30, 2004, Garware requested that the Department conduct an administrative review of the CVD order on PET film from India with respect to its exports to the United States. On August 30, 2004, the Department initiated an administrative review of the CVD order on PET film from India covering Polyplex, Jindal, Ester, Garware, Flex, SRF and MTZ, for the period from January 1, 2003, through December 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 52857 (August 30, 2004).

On July 29, 2004, Jindal also requested that the Department conduct a changed circumstances review of the CVD order on PET film from India in order to determine whether Jindal Poly Films Limited is the successor-in-interest to Jindal Polyester Limited. On September 13, 2004, the Department decided not to initiate the requested CVD changed circumstances review, and instead decided to examine the name change in the instant CVD administrative review of Jindal. *See* letter from the Department to Jindal regarding the request for a changed circumstances review, on file in the Central Records Unit (CRU), room B-099 of the main Commerce building.

The Department issued questionnaires to the Government of India (GOI) and all seven respondents. On September 24, 2004, petitioners withdrew their requests for reviews of all seven respondents. On November 1, 2004, Garware withdrew its request to be reviewed. The Department has rescinded its review of all of the named respondents except Jindal and Polyplex. *See* the "Partial Rescission of Review" section below.

On November 4, 2004, in accordance with 19 CFR § 351.301(d)(4)(i)(B), petitioners timely submitted a new subsidy allegation. Petitioners alleged that respondents received countervailable benefits in the form of

duty exemptions under the GOI's Advance License Program (ALP). The Department initially determined on December 10, 2004, that petitioners had failed to sufficiently support their allegation, but provided petitioners with an additional 10 days in which to provide further support of their allegation. *See* Memorandum to Holly A. Kuga, through Howard Smith, from the team regarding "New Subsidy Allegation" (December 10, 2004). On December 20, 2004, petitioners provided further support of their allegation. On January 4, 2005, Jindal submitted comments opposing the petitioners' allegation. On March 28, 2005, the Department determined that the petitioners had sufficiently supported their allegation, and initiated an investigation of the ALP. *See* Memorandum to Holly A. Kuga, through Howard Smith, from the team regarding "Advance License Program" (March 28, 2005) (ALP Initiation Memorandum). Throughout this administrative review, the Department has issued supplemental questionnaires to Jindal, Polyplex, and the GOI, and petitioners have submitted comments regarding the respondents' questionnaire responses.

Scope of the Order

For purposes of the order, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Partial Rescission of Review

As provided in 19 CFR § 351.213(d)(1), "the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." Petitioners withdrew their review request, in its entirety, within 90 days of the date of publication of the notice of initiation of the instant administrative review. Additionally, Garware filed a timely withdrawal of its request to be reviewed. Because no other interested parties requested an administrative review of Garware, Ester, MTZ, SRF, or

Flex, the Department is rescinding the instant administrative review of these companies. Although petitioners withdrew their request for a review of Jindal and Polyplex, these two companies timely requested reviews of their sales and thus, the Department has not rescinded its reviews of Jindal and Polyplex.

Subsidies Valuation Information

Allocation Period

Under 19 CFR § 351.524(d)(2)(i), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) prescribed by the Internal Revenue Service for renewable physical assets of the industry under consideration (as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, and as updated by the Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. Specifically, the party must establish that the difference between the AUL from the tables and the company-specific AUL or country-wide AUL for the industry under investigation is significant, pursuant to 19 CFR § 351.524(d)(2)(ii). For assets used to manufacture plastic film, such as PET film, the IRS tables prescribe an AUL of 9.5 years.

In the investigative segment of this proceeding, the Department used a company-specific AUL of 18 years for Polyplex. Because there is no new evidence on the record that would cause the Department to reconsider this decision, in this review, the Department will continue to use an AUL of 18 years in allocating Polyplex's non-recurring subsidies.

This is the first segment of this proceeding in which Jindal has participated. Since 1995, Jindal has depreciated its assets using a straight-line methodology over either 18 or 13.72 years. Pursuant to 19 CFR § 351.524(d)(2)(iii), Jindal calculated a company-specific AUL of 17 years. *See* Jindal's May 16, 2005, submission at exhibit 76. Absent any record evidence to the contrary, we have preliminarily determined to use an AUL of 17 years in allocating Jindal's non-recurring subsidies.

Benchmarks for Loans and Discount Rate

Benchmark for Short-Term loans

In accordance with 19 CFR § 351.505(a)(3)(i) and consistent with

the underlying investigation, for programs requiring the application of a short-term benchmark interest rate, we used as the benchmark the company-specific, weighted average short-term interest rate on comparable commercial loans, as reported by the respondents. Where the company did not report any comparable commercial short-term loans, we used a short term national average interest rate as our benchmark.

In calculating the benefit for rupee-denominated, pre- and post-shipment export financing loans, we used as a benchmark the weighted-average interest rate paid by the company on its inland bill discounting loans. In the most recently completed review of this proceeding, the Department determined that inland bill discounting loans are more comparable to pre- and post-shipment export financing loans than other types of short-term loans. See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 69 FR 51063 (August 17, 2004) (*First PET Film Review - Final*), and accompanying *Issues and Decision Memorandum*, in the section entitled "Benchmark Interest Rates for Short-term Loans," and the Department's position in Comment 3. There is no information on the record of this review that would cause the Department to reconsider its decision regarding the pre- and post-shipment export financing loan benchmarks.

For Jindal's and Polyplex's pre-shipment and post-shipment export financing loans that are denominated in U.S. dollars, we used a dollar-denominated short-term interest rate as our benchmark in accordance with 19 CFR § 351.505. This is consistent with the approach taken in the previous segment of this proceeding. See *First PET Film Review - Final* (where we used U.S. dollar-denominated working capital demand loans (WCDDL) as the benchmark).

Polyplex reported two types of company-specific commercial short-term U.S. dollar-denominated loans: (1) WCDDLs and (2) a short-term loan from the Industrial Development Bank of India (IDBI). WCDDLs and pre- and post-shipment export financing loans are used to finance both inventories and receivables, whereas the IDBI loan is not used in this manner. In accordance with our regulations, we have continued to use the weighted-average interest rate of the WCDDLs as the benchmark interest rate for Polyplex's pre-shipment and post-shipment export financing loans that are denominated in U.S. dollars.

Jindal did not report any U.S. dollar-denominated short-term loans for the

POR. As the Department has been unable to identify an appropriate national average dollar-denominated short-term interest rate for India, for this preliminary determination we have used as our benchmark a national average dollar-denominated short-term interest rate for the United States, as reported in the International Monetary Fund's publication *International Financial Statistics* (May 2004). This is consistent with the approach taken in *Bottle-Grade PET Resin Final*.

Determination

Discount Rates

For programs requiring a rupee-denominated discount rate, or the application of a rupee-denominated, long-term benchmark interest rate, we used, where available, a discount or benchmark rate equal to the company-specific, weighted-average interest rate on all comparable commercial long-term, rupee-denominated loans.

For those years for which we did not have company-specific information, we relied on a comparable rupee-denominated, long-term benchmark interest rate from the immediately preceding year as directed by 19 CFR § 351.505(a)(2)(iii). When there were no comparable rupee-denominated, long-term loans from commercial banks during either the year under consideration, or the preceding year, we used national average interest rates pursuant to 19 CFR § 351.505(a)(3)(ii) for private creditors as reported in the publication, *International Financial Statistics* (2003). This is consistent with the approach taken in this and other proceedings. See *First PET Film Review - Final* and the accompanying *Issues and Decision Memorandum*, in the section entitled "Benchmarks for Loans and Discount Rate." See also, *Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13460 (March 21, 2005) (*Bottle-Grade PET Resin Final Determination*). The Department applied rates from *International Financial Statistics* for 1995 for Jindal.

Programs Preliminarily Determined To Confer Subsidies

1. Pre-shipment and Post-shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or "packing credits," to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes, *i.e.*, for

purchasing raw materials, warehousing, packing, and transporting merchandise destined for exportation. Companies may also establish pre-shipment credit lines upon which they may draw as needed. Limits on credit lines are established by commercial banks and are based on a company's creditworthiness and past export performance. Credit lines may be denominated either in Indian rupees or in a foreign currency. Companies that have pre-shipment credit lines typically pay interest on a quarterly basis on the outstanding balance of the account at the end of each period. Commercial banks extending export credit to Indian companies must, by law, charge interest at rates determined by the RBI.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to the lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of the proceeds from the sale to the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize proceeds from their export sales within 180 days after the date of shipment. Post-shipment financing is, therefore, a working capital program used to finance export receivables. In general, post-shipment loans are granted for a period of no more than 180 days. If the loans are not repaid within the due date, the exporters lose the concessional interest rate on this financing.

In the investigation, the Department determined that the pre- and post-shipment export financing programs conferred countervailable subsidies on the subject merchandise because: (1) provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Tariff Act of 1930, as amended, (the Act); (2) provision of the export financing confers benefits on the respondents under section 771(5)(E)(ii) of the Act because the interest rates given under these programs are lower than commercially available interest rates; and, (3) these programs are specific under section 771(5A)(B) of the Act because they are contingent upon export performance. See *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film)*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*) and accompanying *Issues and Decision Memorandum (PET Film Final Determination - Decision Memorandum)*, at the section entitled

“Pre-shipment and Post-shipment Export Financing.” No new information or evidence of changed circumstances has been presented to warrant reconsideration of this determination. Therefore, for the purpose of these preliminary results, we continue to find this program countervailable.

The benefit conferred by the pre- and post-shipment loans is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan. Because pre-shipment loans are tied to a company's total exports, we calculated the subsidy rate for these loans by dividing the total benefit by the value of each respondent's total exports during the POR. Because post-shipment loans are tied to shipments to a particular country, we divided the total benefit from the post-shipment loans used in sales to the United States by the value of each respondent's total exports of subject merchandise to the United States during the POR. See 19 CFR § 351.525 (b)(4). On this basis, we preliminarily determine the net countervailable subsidy provided to Polyplex and Jindal from pre-shipment export financing to be 0.10 and 0.12 percent *ad valorem*, respectively. We also preliminarily determine the net countervailable subsidy provided to Polyplex and Jindal from post-shipment export financing to be 0.21 and 0.15 percent *ad valorem*, respectively.

2. Advance License Program

Under the Advance License Program (ALP), exporters may import, duty free, specified quantities of materials required to produce products that are subsequently exported. Companies, however, remain contingently liable for the unpaid duties until they have exported the finished products. The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI. See GOI response to question seven in the April 21, 2005, submission. During the POR, Polyplex and Jindal used advance licenses to import certain goods duty free.

In the underlying investigation, the Department found that the ALP contained the same features as the ALP examined in *Hot-Rolled from India*, where the Department determined that advance licenses, which provided for duty exemptions on imported inputs consumed in the production process, were not countervailable because the system was reasonable and effective for the purposes intended, as required under section 351.518 of the

Department's regulations. See *PET Film Investigation Final* at the section entitled “Programs Determined Not to Confer Subsidies;” see also *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 49635 (September 28, 2001) (*Hot-Rolled Final Determination*). Petitioners, however, filed a timely new subsidy allegation with respect to the ALP, claiming that the ALP has undergone a number of significant changes since the underlying investigation, and requested that the Department investigate the new version of the program. After considering petitioners' allegation, the Department initiated an investigation of the revised ALP. For a discussion of the Department's decision to initiate an investigation of this program, See ALP Initiation Memorandum.

During the course of investigating the ALP in this administrative review, the Department requested that the GOI submit information regarding both the *de jure* changes in the policies and procedures related to the ALP and the industry-specific SIONs that are used to determine the amount of imported material required to produce each unit of exported PET film. With respect to the overall program, the Department requested information on the ALP laws and procedures as well as information regarding auditing and tracking activities, domestic suppliers, and deemed exports. With respect to the SIONs, the Department requested that the GOI report the date on which the PET film SIONs were calculated, provide copies of the documents evidencing the calculation of the PET film SIONs, and identify any requirements that the GOI review or revise the SIONs.

While the GOI asserted that the changes between the old 1997–2002 and the new 2002–2007 Export/Import Policy guidelines (under which the ALP regulations are enumerated) were minor, our analysis of the provisions in effect during the POR indicate that there are a number of aspects of the system that undermine its reasonableness and effectiveness. For instance, the GOI could not provide the Department with requested information demonstrating that certain aspects of the ALP were implemented and monitored as intended. The Department requested information on whether the GOI has ever carried out an examination or verification of any producer receiving an Advance License to ensure that inputs listed in the SIONs are actually consumed in the production of exported goods (see question 31 in the GOIs April 21, 2005, submission). Moreover, the

Department noted that if the GOI has carried out such an examination, it should identify when the examination took place and the results of the examination. Despite the Department's request, the GOI did not cite to any specific examination or verification of a producer in any industry. The Department also asked whether the GOI conducts audits that track inputs and exports under the ALP. While the GOI indicated that it monitors certain movements of inputs, it did not demonstrate that a mechanism exists to evaluate SIONs to determine whether they remain reasonable over time (see question 35 in the GOIs April 21, 2005, submission). In fact, the GOI reported that there were no requirements that it review the SIONs and explained that if a company applies for the creation of a SION and the GOI fails to review the SION within four months of the application, the SION takes effect and all companies in the industry may use the untested SION. However, in its May 16, 2005, supplemental questionnaire response, the GOI stated that new regulations have been introduced as an attempt to address the lack of a requirement that the SIONs be reviewed periodically. See GOI response to questions one and five in the May 16, 2005, submission.

With respect to other systemic issues, the Department asked the GOI to provide information demonstrating that companies benefitting under the ALP are subject to penalties for claiming excessive credits or not meeting their export requirements. The GOI could not identify the number of companies in 2003 (or even one company) that either failed to meet export commitments under the ALP or was penalized for failing to meet the export requirements under the ALP. Additionally, the GOI was unable to provide any specific information regarding the number of companies that applied for, or received, an extension of time to meet their export commitment. In response to these systemic inquiries, the GOI acknowledged that it was unable to document that it had performed any such activities to ensure compliance with the program, noting that it does not maintain these sorts of records centrally. See the GOI's answers to questions 39 through 46 of its April 21, 2005, supplemental questionnaire response and its answers to questions 26 through 31 of its May 16, 2005, supplemental questionnaire response.

Furthermore, the record indicates that the ALP allows companies to meet their export requirements without physically exporting through the use of deemed exports. In reviewing the ten categories

of sales/transactions considered deemed exports, we note that several, if not most, of the allowable categories do not appear to have even a tangential link to exports. According to the GOI, eight of the deemed export categories are considered categories of sales "similar to those of physical exports for the purpose of the ALS" (Advance License System). See GOI's answers to questions 53–55 of the GOIs April 21, 2005, submission. However, these allowable categories under the ALP include sales to entities such as domestic fertilizer plants, power plants and refineries, UN-funded projects, nuclear power projects, and "any project or purpose in respect of which the Ministry of Finance, by a notification, permits the import of such goods at zero customs duty." See Exhibits 12 and 13 of the GOIs April 21, 2005, submission.

With respect to the PET film SIONs applied during the POR, the GOI could not produce documentation indicating: (1) when the PET film SIONs were originally calculated; (2) any documentation demonstrating that the process outlined in its regulations was actually applied in calculating the original PET film SIONs; or (3) any of the supporting documents used in calculating those SIONs. Further, the GOI reported that there were no requirements that it review the SIONs, although, as noted above, the GOI did provide information about possible changes to the ALP that took place after the POR, which may be relevant in subsequent administrative reviews.

Pursuant to 19 CFR § 351.519(a)(4), the Department will consider the entire amount of an exemption to confer a benefit unless: (1) the government in question applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable and effective for the purposes intended, or (2) absent a system that is reasonable and effectively applied, the government in question has carried out an examination to determine which inputs are consumed in the production of the exported products and in what amounts. As discussed above, in light of the changes to the ALP in the Export/Import Policy guidelines that affected this administrative review period, the Department has reevaluated the ALP in its entirety to determine whether it meets the regulatory requirements enumerated above. The evidence on the record of this review does not demonstrate that the GOI applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what

amounts, and that the ALP is reasonable and effective for the purposes intended. The GOI has failed to provide information demonstrating that the ALP was monitored and regulated effectively during the POR, as evidenced by the lack of information related to verification or implementation of extensions or penalties. In addition, the system allows for the availability of ALP benefits for a broad category of deemed exports that are not linked to the actual exportation of the subject merchandise, and provides for government discretion to bestow benefits under the program even more broadly. Finally, SIONs are a critical element of the ALP system, linking the amount of materials that may be imported duty-free to the exported finished products that have been produced with such inputs. The GOI could not provide the Department with its SION calculations for PET film or any documentation describing that the process outlined in its regulations was actually applied in calculating the original PET film SIONs. Thus, the Department cannot conclude that the system the GOI has in place with respect to the ALP is reasonable or is applied in a manner that is effective for the purposes intended.

Therefore, we preliminarily determine that the Advance License Program confers countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI provides the respondents with an exemption of import duties; (2) the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended under 19 CFR § 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products, and thus the entire amount of import duty exemption earned by the respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is contingent upon export and, therefore, is specific under section 771(5A)(B) of the Act. However, if a party in a future proceeding is able to provide information with respect to the systemic deficiencies identified above, the Department will reevaluate the ALP to determine whether those deficiencies have been overcome.

Pursuant to 19 CFR § 351.524(c), exemptions of import duties on imports consumed in production provide a recurring benefit. Thus, we treated the benefit provided under the ALP as a recurring benefit. To calculate the subsidy rate, we subtracted from the total amount of exempted duties under the ALP during the POR as an allowable

offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Act (in order to receive the benefits of the ALP, companies must pay application fees). We then divided the resulting net benefit by the total value of exports of PET film. We preliminarily determined the net countervailable subsidy provided to Polyplex and Jindal under the ALP to be 0.63 and 6.82 percent *ad valorem*, respectively.

3. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties on imports of capital goods used in the production of exported products. Under this program, producers may import capital equipment at reduced rates of duty by attempting to earn convertible foreign currency equal to four to five times the value of the capital goods within a period of eight years. If the company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

In the underlying investigation, we determined that the import duty reduction provided under the EPCGS is a countervailable export subsidy because (1) it provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act, (2) which also constitutes a benefit under section 771(5)(e). Because this program is contingent upon export performance, it is specific under section 771(5A)(B) of the Act. See *PET Film Final Determination*; see also *Hot-Rolled Final Determination*, and accompanying *Issues and Decisions Memorandum*, at the section entitled "Analysis of Programs." No new information or evidence of changed circumstances has been provided in this review to warrant a reconsideration of this determination.

In cases where the GOI has formally waived import duties on capital equipment, we treat the full amount of the waived duty as a grant received in the year in which the GOI officially granted the waiver.

Normally, exemptions and excessive rebates of indirect taxes are considered to be recurring benefits and are recognized in the year of receipt. See 19 CFR § 351.524(c)(1). However, the Department's regulations recognize that, under certain circumstances, it may be appropriate to allocate these types of benefits over a number of years. See 19 CFR § 351.524(c)(2). See also *Countervailing Duties; Final Rule*, 63 FR 65348, 65393 (November 25, 1998) (CVD

Preamble). In prior segments of this proceeding, we determined that the benefit received from the waiver of import duties under the EPCGS is tied to the purchase of capital assets and it is therefore appropriate to treat the waiver of duties as a non-recurring benefit. *See PET Film Final Determination; see also Hot-Rolled Final Determination*. No new information or evidence of changed circumstances have been presented in this administrative review to warrant reconsideration of these determinations.

In their questionnaire responses, Polyplex and Jindal reported all of their imports of capital equipment under EPCGS licenses and the application fees they paid to obtain those EPCGS licenses. In the investigation, we considered such fees to be an “. . . application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.” Therefore, these fees may be deducted from the value of the benefit when calculating the amount of the countervailable subsidy. *See* section 771(6)(A) of the Act. *See also Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India*, 66 FR 53389 (October 22, 2001) (unchanged by the final determination). Nothing has changed in this administrative review to warrant reconsideration of that determination.

Polyplex and Jindal reported that they imported machinery under the EPCGS in the years prior to and during the POR. For the imported machinery for which Polyplex has met its export requirements, the GOI has completely waived import duties. For some of its machinery imports, however, Polyplex has not yet completed its export requirements as required under the program. Further, Jindal has not yet completed its export requirements for any of its imports of capital machinery. Therefore, although Polyplex and Jindal received an exemption from paying import duties when the capital machinery was imported, for certain licenses the final waiver on the obligation to repay the duties has not yet been granted by the GOI.

To calculate the benefit received from the waiver of the respondents' import duties on their capital equipment imports where the company's export obligation had been met, we considered the total amount of duties waived (net of application fees) to be the benefit. Further, consistent with the approach

followed in the underlying investigation, we determined the year of receipt of the benefit to be the year in which the GOI formally waived the respondent company's outstanding import duties. *See PET Film Final Determination*. Next, we performed the “0.5 percent test,” as prescribed under 19 CFR § 351.524(b)(2) for each year in which the GOI granted the respondent an import duty waiver. Those waivers with face values in excess of 0.5 percent of each respondent's total export sales in the year in which the waivers were granted were allocated over Jindal's and Polyplex's company-specific AULs, while waivers with face values less 0.5 percent of each respondent's total export sales were expensed in the year of receipt. *See* “Subsidies Valuation Information” section above.

Although Polyplex submitted a notice to the GOI indicating that it may have met an export obligation on one of its EPCGS licenses, this notice was dated after the end of the POR. Consistent with our approach in the underlying investigation, the prior administrative review, and in the *Hot-Rolled Final Determination*, we will treat benefits under the EPCGS as a grant only when the GOI has issued a formal waiver applicable to the POR stating that the recipient has completed its export obligations and is waived from paying the outstanding import duties. *See PET Film Final Determination*. The statement from the GOI included in Exhibit 1 of Polyplex's March 21, 2005, questionnaire response is dated February 4, 2005. Because this date falls after the instant POR, the Department finds that the letter does not demonstrate that Polyplex met an export obligation with respect to the relevant license during the POR.

As noted above, import duty reductions that Polyplex and Jindal received on the imports of capital equipment for which they have not yet met export requirements, may have to be repaid to the GOI if the export requirements under the licenses are not met. Consistent with our practice and prior determinations, we will treat the unpaid import duty liability as an interest-free loan. *See* 19 CFR § 351.505(d)(1); *see also First PET Film Review - Final*.

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondent applied, but, as of the end of the POR, had not been finally waived by the GOI. Accordingly, we find the benefit to be the interest that Polyplex and Jindal would have paid during the POR had they borrowed the

full amount of the duty reduction or exemption at the time of importation. *See PET Film Final Determination; see also Hot-Rolled Final Determination*. Pursuant to 19 CFR § 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs at a point in time more than one year after the date of importation of the capital goods (*i.e.*, under the EPCGS program, the time period for fulfilling the export commitment expires eight years after importation of the capital good).

The benefit received under the EPCGS is the total amount of benefits received on waived duties and the total amount of benefits conferred on Polyplex and Jindal in the form of contingent liability loans. To calculate the net countervailable subsidy rate under this program, we divided the total benefits received by Jindal and Polyplex respectively on all EPCGS licenses containing imports of capital goods used in the production of subject merchandise during 2003 by the total value of each company's export sales of subject and non-subject merchandise PET film. On this basis, we preliminarily determine the net countervailable subsidy for Polyplex and Jindal under the EPCGS to be 3.86 and 2.23 percent *ad valorem*, respectively.

4. Income Tax Exemption Scheme 80HHC

Under section 80HHC of the Income Tax Act, the GOI allows exporters to exclude profits derived from export sales from their taxable income. In prior proceedings, the Department found this program to be a countervailable export subsidy, because it provided a financial contribution in the form of a tax exemption, which also constitutes a benefit. The program is specific because the subsidy is contingent upon export performance. *See* sections 771(5)(D) and (E) and 771(5A)(B) of the Act; *see also Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 65 FR 31515 (May 18, 2000) and *First PET Film Review - Final*. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

To calculate the benefit under this program, we first calculated the total amount of income tax each company would have paid had it not claimed a tax deduction under section 80HHC during the POR and subtracted from this amount the income taxes actually paid.

We then divided this benefit by the free-on-board (fob) value of each company's total exports consistent with 19 CFR § 351.525(b)(2). On this basis, we preliminarily determine the net countervailable subsidy for Polyplex and Jindal under section 80HHC to be 2.64 and 0.25 percent *ad valorem*, respectively.

5. Capital Subsidy

Polyplex received a capital infusion of Rs. 2,500,000 in 1989 from the GOI. This subsidy was discovered at verification during the investigation. See *PET Film Final Determination*. The Department determined at that time that there was insufficient time to establish whether the program is specific under section 771(5A)(D) of the Act. Thus, the Department stated its intention to reexamine the program in a future administrative review pursuant to 19 CFR § 351.311(c)(2). See *PET Film Final Determination - Decision Memorandum* at the section entitled "Programs Determined Not To Confer Subsidies." Based on the information obtained during verification in the investigation, the Department determined that a financial contribution was provided by the GOI, pursuant to section 771(5)(D)(i) of the Act, and a benefit, in the amount of the capital subsidy, was received by Polyplex under section 771(E) of the Act.

In the first administrative review, the Department sent questionnaires to the GOI, and Polyplex, seeking information that would allow it to determine whether the capital subsidy program is specific under section 771(5A) of the Act. Neither party was able to provide any information regarding the subsidy. As facts available, the Department determined that the subsidy was specific.

In the instant review, the Department again sent questionnaires to the GOI, and Polyplex, seeking information that would allow it to determine whether the program is specific under section 771(5A) of the Act. As in the first review, Polyplex and the GOI reported that they were unable to provide any information regarding the specificity of this program due to the considerable amount of time that has elapsed since the provision of the subsidy. As no new information or evidence of changed circumstances has been presented to warrant reconsideration of our determination in the previous segment of this proceeding, for the purpose of these preliminary results, we continue to find, as facts available, that the subsidy is specific under section 771(5A)(A) of the Act. See *First PET Film Review - Final*.

Because the benefit is provided through a capital infusion, pursuant to 19 CFR § 351.524 (c), this is a non-recurring benefit. Thus, in calculating the subsidy rate for this program, we performed the "0.5 percent test," as prescribed under 19 CFR § 351.524(b)(2). Because the grant exceeded 0.5 percent of Polyplex's total sales in 1989, the year in which the capital infusion was received, the benefits were allocated over 18 years, the company-specific AUL. In allocating the benefits, we used the Department's standard allocation methodology for non-recurring subsidies under 19 CFR § 351.524(d). To calculate the net subsidy to Polyplex from this capital subsidy, we divided the benefit allocated to the POR by the company's total sales during the same period. On this basis, we preliminarily determine the net countervailable subsidy provided to Polyplex under this program to be 0.01 percent *ad valorem*.

6. Benefits for Export Oriented Units

For the first time in this proceeding, one of the respondents in this review, Jindal, reported that it has been designated as an export oriented unit (EOU). Companies that are designated as an export oriented unit may receive the following types of assistance in exchange for committing to export all of the products they produce, excluding rejects and certain domestic sales, for five years: (1) duty-free importation of capital goods and raw materials; (2) reimbursement of central sales taxes (CST) paid on materials procured domestically; (3) purchase of materials and other inputs free of central excise duty; and (4) receipt of duty drawback on furnace oil procured from domestic oil companies. Jindal reported receiving benefits through the duty-free importation of capital goods, the reimbursement of CST paid on raw materials and capital goods procured domestically, and the purchase of materials and other inputs free of central excise duty. Jindal did not import raw materials or purchase furnace oil under the EOU program.

The Department previously determined that the EOU program is specific, within the meaning of section 771(5A)(B) of the Act, because the receipt of benefits under this program is contingent upon export performance.

a. Duty-Free Importation of Capital Goods

Under this program, an EOU is entitled to import, duty-free, capital goods used in the production of exported goods in exchange for committing to export all of the products

they produce with the exception of sales in the Domestic Tariff Area over five years. The Department previously determined that the duty-free importation of capital goods provides a financial contribution and confers benefits equal to the amount of exemptions and reimbursements of customs duties and certain sales taxes (see sections 771(5)(D) and (E) of the Act). See *Bottle-Grade PET Resin Final Determination*.

Jindal reported that it imported capital goods under this program, but as the EOU only commenced commercial production after the POR, Jindal had not yet been able to meet the export contingency and will owe the unpaid duties if the export requirements are not met. Upon Jindal meeting its export contingency, the Department will treat the unpaid duties as a grant. In the meantime, consistent with 19 CFR § 351.505(d)(1), until the contingent liability for the unpaid duties is officially waived by the GOI, we consider the unpaid duties to be an interest-free loan made to Jindal at the time of importation. We determined the benefit to be the interest that Jindal would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation. Pursuant to 19 CFR § 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods (*i.e.*, under the EOU program, the time period for fulfilling the export commitment is more than one year after importation of the capital good). We used the weighted-average interest rate on all comparable commercial long-term, rupee-denominated loans for the year in which the capital good was imported as the benchmark. See the "Benchmarks for Loans and Discount Rate" section above for a discussion of the applicable benchmark.

The benefit for each year is the total amount of non-payment of interest on the unpaid duties. To calculate the subsidy rate, we divided the total amount of benefits under the program during 2003 by Jindal's total value of export sales. We preliminarily determined the net countervailable subsidy provided to Jindal through duty-free importation of capital goods under the EOU program to be 6.68 percent *ad valorem*.

b. Reimbursement of CST Paid on Materials Procured Domestically

Jindal was reimbursed the CST paid on raw materials and capital goods procured domestically. The benefit associated with domestically purchased materials is the amount of reimbursed CST received by Jindal during the POR. Normally, tax benefits are considered to be recurring benefits. The benefit, however, associated with capital goods is tied to the capital assets of Jindal. Thus, we have determined that it is appropriate to treat the reimbursement of CST on capital goods as a non-recurring benefit pursuant to 19 CFR § 351.524 (c)(2)(iii). Consequently, the benefit associated with capital goods is either the CST reimbursements received during the POR, or an allocated portion thereof, if the amount received is 0.5 percent or more of total sales for the year in which the benefit was received. See 19 CFR § 351.524(b)(2). The Department previously determined that the reimbursement of CST paid on materials procured domestically provides a financial contribution and confers benefits equal to the amount of exemptions and reimbursements of customs duties and certain sales taxes (see sections 771(5)(D) and (E) of the Act). See *Bottle-Grade PET Resin Final Determination*.

To calculate the benefit for Jindal, we divided the total amount of benefits under the program by the total value of export sales during the POR. We preliminarily determined the countervailable subsidy provided to Jindal through the reimbursement of CST under the EOU program to be 0.08 percent *ad valorem* for Jindal.

State of Maharashtra Programs

1. Sales Tax Incentives

The State of Maharashtra (SOM) provides a package of incentives to privately-owned (*i.e.*, not 100% owned by the GOI) manufacturers to induce them to invest in certain areas of Maharashtra. One incentive is the exemption or deferral of state sales taxes. Specifically, companies are exempted from paying state sales taxes on purchases, and from collecting state sales taxes on sales, or, as an alternative, they may defer payment of the collected state sales tax for ten to twelve years. After the deferral period expires, companies are required to remit the deferred sales taxes to the SOM in equal installments over five or six years. The total amount of the sales tax exempted or deferred is based upon the size of the capital investment, and the area in which the capital is invested.

During the investigation, the Department determined that this program is specific, within the meaning of sections 771(5A)(D)(i) and (iv) of the Act, because benefits under this program are limited to privately-owned companies that are located within designated geographical regions within the SOM. In addition, the Department determined that the SOM provided a financial contribution under section 771(5)(D)(ii) of the Act through the taxes not collected on purchases. Finally, in accordance with section 771(5)(E) of the Act, a benefit was conferred to the extent that the taxes paid as a result of this program are less than the taxes that would have been paid in the absence of the program. See *PET Film Final Determination*; see also 19 CFR § 351.510(a)(1). No new information or evidence of changed circumstances has been provided in this review to warrant a reconsideration of these determinations.

Jindal reported that, under this program, it was exempted from paying sales taxes on purchases and from collecting sales taxes on sales. Given, however, that the exemption from collecting sales taxes on sales did not result in Jindal paying any less taxes from its own funds, we determined that the only benefit and financial contribution conferred was the amount of sales taxes exempted on purchases. This is consistent with the approach taken in the investigation segment of this proceeding. See *PET Film Final Determination - Decision Memorandum* at the section entitled "State of Maharashtra Programs: Sales Tax Incentives."

Because tax exemptions are considered recurring benefits, pursuant to 19 CFR § 351.524(c), we treated the benefit provided under this program as a recurring benefit. We calculated the subsidy rate by dividing the total amount of exempted sales taxes on purchases during the POR by the value of Jindal's total sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy provided to Jindal through this program to be 1.35 percent *ad valorem*.

2. Electricity Duty Exemption Scheme

Another incentive provided by the SOM is the refund of taxes on electricity charges. This refund is available to manufacturers located in certain regions of Maharashtra. During the investigation segment of this proceeding, the Department determined that this program is specific, within the meaning of section 771(5A)(D)(iv) of the Act, given that the benefits of this program are limited to companies located within

designated geographical regions within the SOM. See *PET Film Final Determination - Decision Memorandum* at the section entitled "State of Maharashtra Programs: Electricity Duty Exemption Scheme." In addition, the Department determined that the SOM provided a financial contribution under section 771(5)(D)(ii) of the Act, because it has forgone revenue that otherwise would be due. Finally, in accordance with section 771(5)(E) of the Act, a benefit was conferred in the amount of the refund of taxes on electricity for which Jindal was eligible during the POR. No new information or evidence of changed circumstances has been provided in this review to warrant a reconsideration of these determinations.

We treated the benefit that Jindal received under this program as a recurring benefit and calculated the subsidy rate by dividing the total amount of tax refunds for which Jindal was eligible during the POR by the total value of Jindal's sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy provided to Jindal through this program to be 0.01 percent *ad valorem*.

State of Uttar Pradesh Programs

Sales Tax Incentives The State of Uttar Pradesh (SUP), like the SOM, provides a sales tax incentive for manufacturers that make capital investments in the state. This incentive, established by section 4-A of the Uttar Pradesh Trade Tax Act, consists of either an exemption or deferral of state sales taxes. Specifically, companies are exempted from paying state sales taxes on purchases, and from collecting state sales taxes on sales, or, as an alternative, they may defer payment of the collected state sales tax. Eligibility for this program is also based on companies employing certain percentages of specific castes, tribes, classes, and minorities, while thirteen specified industries are not eligible for any benefits under this program.

During the investigation, the Department determined that this program is specific, within the meaning of sections 771(5A)(D)(iv) of the Act, given that the benefits of this program are limited to industries not otherwise excluded, and the benefits are based, in part, on the area in which companies invest capital. In addition, the Department determined that the SUP provided a financial contribution under section 771(5)(D)(ii) of the Act, and that a benefit exists under section 771(5)(E) of the Act to the extent that the taxes paid as a result of this program are less than the taxes that would have been paid in the absence of the program. See

PET Film Final Determination. No new information or evidence of changed circumstances has been provided in this review to warrant a reconsideration of these determinations.

Polyplex reported that, under this program, it was exempted from paying sales taxes on purchases and collecting sale taxes on sales. Given, however, that the exemption from collecting sales taxes on sales did not result in Polyplex paying any less taxes from its own funds, we determined that the only financial contribution and benefit conferred was the amount of sales taxes exempted on purchases. This is consistent with the approach taken in the investigation phase of this proceeding. *See PET Film Final Determination - Decision Memorandum* at the section entitled "State of Uttar Pradesh Programs: Sales Tax Incentives."

We calculated the subsidy rate by dividing the total amount of exempted sales taxes on purchases during the POR by the total value of Polyplex's sales during the POR. We preliminarily determined the net countervailable subsidy provided to Polyplex through this program to be 0.21 percent *ad valorem*.

Programs for Which Additional Information Is Needed

A. Sales Tax Incentive Programs

Aside from the sales tax incentive programs for which the Department initiated reviews, it came to the Department's attention during this review segment that Polyplex also did not pay sales taxes on purchases under other sales tax incentive programs. Pursuant to 19 CFR § 351.311(b) we sought additional information regarding these other sales tax incentive programs from Polyplex.¹ While Polyplex was able to supply the names of some of the sales tax incentive programs in question, the value of the purchases on which it paid no taxes, and the sales tax rate it would have paid, Polyplex stated that it was unable to provide further details regarding the programs because it is the seller, not Polyplex, that requests and applies for the sales tax incentives. The Department has requested further details regarding the programs from the GOI. However, as the existence of these programs only came to the attention of the Department shortly prior to these preliminary

results, the GOI is unable to provide the information necessary in time to allow the Department to make a preliminary determination of whether the programs are countervailable.

Programs Preliminarily Determined Not To Be Used

- A. Export Oriented Units Programs not used
 - 1. Duty-Free Import of Raw Materials
 - 2. Duty Drawback on Furnace Oil Procured from Domestic Oil Companies
- B. Duty Entitlement Passbook Scheme (DEPS)
- C. The Sale and Use of Special Import Licenses (SILs) for Quality and SILs for Export Houses, Trading Houses, Star Trading Houses, or Superstar Trading Houses (GOI Program)
- D. Exemption of Export Credit from Interest Taxes
- E. Loan Guarantees from the GOI
- F. Capital Incentive Schemes (SOM and SUP Program)
- G. Waiving of Interest on Loan by SICOM Limited (SOM Program)
- H. Infrastructure Assistance Schemes (State of Gujarat Program)

Preliminary Results of Administrative Review

In accordance with 19 CFR § 351.221(b)(4)(i), we calculated individual subsidy rates for Polyplex and Jindal for 2003. We preliminarily determine the total net countervailable subsidy rate is 7.67 percent *ad valorem* for Polyplex, and 17.69 percent *ad valorem* for Jindal.

If the final results of this review remain the same as these preliminary results, the Department will instruct CBP, within 15 days of publication of the final results, to liquidate shipments from Polyplex and Jindal of PET film from India entered, or withdrawn from warehouse, for consumption from January 1, 2003, through December 31, 2003, at 7.67 percent *ad valorem* of the free on board (f.o.b.) invoice price for Polyplex and 17.69 percent *ad valorem* of the f.o.b. invoice price for Jindal. Also, the rate of cash deposits of estimated countervailing duties will be set at 7.67 percent and 17.69 percent *ad valorem* for all shipments of PET film made by Polyplex and Jindal, respectively, from India entered or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review.

Because the Uruguay Round Agreements Act (URAA) replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and

reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided in section 777A(e)(2)(B) of the Act. A requested review will normally cover only those companies specifically named. *See* 19 CFR § 351.213(b). Pursuant to 19 § 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR § 353.22(e), the pre-URAA antidumping regulation on automatic assessment, which was identical to 19 CFR § 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged in the results of this review.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA involving those companies. *See PET Film Order*. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Name Change

In determining whether Jindal Polyester Limited changed its name to Jindal Poly Films Limited, we reviewed documents submitted on the record, including: (1) Jindal's Annual Report for 2003-2004, which shows that the name was changed to reflect the increased share of film business in the company's sales; (2) the official certification of name change registration issued by the Registrar of Companies in India; and (3) the "Certified True Copy of the Resolution Passed by the Members of Jindal Poly Films Limited." Based upon our review of the information on the record, we preliminarily determine that Jindal Polyester Limited has changed its name to Jindal Poly Films Limited.

If the final results of this review remain unchanged, we intend to update our instructions to CBP to reflect this

¹ 19 CFR § 351.311(b) provides that where the Department discovers a practice that appears to be countervailable and the practice was not alleged or examined in the proceeding, the Department will examine the practice if sufficient time remains prior to the final results of review.

name change; Jindal Poly Films Limited will receive Jindal Polyester Limited's cash deposit ad valorem rate.

Public Comment

Pursuant to 19 CFR § 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR § 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department with copies of the public version of those comments on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR § 351.303(f). Also, pursuant to 19 CFR § 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing regarding arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due under 19 CFR § 351.309(c)(ii). The Department will publish the final results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 1, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-4331 Filed 8-9-05; 8:45 am]

BILLING CODE: 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) is seeking applicants for both primary and alternate members of the following seats on its Sanctuary Advisory Council (Council): Education, Fishing, Hawaii County, Honolulu County, Kauai County, Maui County, Native Hawaiian, and Research. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in Hawaii. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the Council's Charter.

DATES: Applications are due by September 15, 2005.

ADDRESSES: Application packets may be obtained from Keeley Belva (888) 55-WHALE or via e-mail at: Kelley.Belva@noaa.gov. Applications are also available online at <http://hawaiihumpbackwhale.noaa.gov>. Completed applications should be mailed to Keeley Belva, Hawaiian Islands Humpback Whale National Marine Sanctuary, 6600 Kalaniana'ole Highway, Suite 301, Honolulu, Hawaii 96825, faxed to (808) 397-2650, or returned via e-mail.

FOR FURTHER INFORMATION CONTACT: Keeley Belva (see above for contact information).

SUPPLEMENTARY INFORMATION: The HIHWNMS Advisory Council was established in March 1996 to assure continued public participation in the

management of the Sanctuary. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The Council's twenty-four voting members represent a variety of local user groups, as well as the general public, plus ten local, State, and Federal governmental jurisdictions.

The Council is supported by three committees: A Research Committee chaired by the Research Representative, an Education Committee chaired by the Education Representative, and a Conservation Committee chaired by the Conservation Representative, each respectively dealing with matters concerning research, education, and resource protection.

The Council represents the coordination link between the Sanctuary and the State and Federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat around the main Hawaiian Islands.

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary Program within the context of Hawaii's marine programs and policies.

Authority: 16 U.S.C. 1431 *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 3, 2005.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 05-15756 Filed 8-9-05; 8:45 am]

BILLING CODE 3510-NK-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072805C]

Endangered Species; File No. 1538

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that National Marine Fisheries Service, Southeast Fisheries Science Center (SEFSC), 75 Virginia Beach Drive, Miami, Florida 33149, has applied in due form for a permit to take smalltooth sawfish (*Pristis pectinata*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 9, 2005.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427-2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824-5312; fax (727)824-5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427-2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is NMFS.Pr1Comments@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: File No. 1538.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Jennifer Skidmore, (301)713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of 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).

The applicant proposes to annually capture up to 5 smalltooth sawfish using bottom longline gear. Animals would be sexed, measured, and tagged with a pop-up satellite archival tag. The research

would provide information on the survival rates of smalltooth sawfish captured and released from commercial fishing gear; habitat for adult sawfish; and daily and seasonal movement patterns and migration corridors that could aid in reducing further fishery interactions. The research would be concentrated in areas offshore of the Marquesas Keys, Florida Keys, Florida. The permit would be issued for 5 years.

Dated: August 4, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05-15824 Filed 8-9-05; 8:45 am]

BILLING CODE 3510-22-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Notice Regarding Pending Requests for Textile and Apparel Safeguard Action on Imports from China

August 5, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Notice

SUMMARY: The Committee is notifying the public that there is no need for further action on certain pending requests for Textile and Apparel Safeguard Action based upon allegations of actual (i.e., existing) market disruption at this time regarding imports of men's and boys' cotton and man-made fiber shirts, not knit (Category 340/640), man-made fiber knit shirts and blouses (Category 638/639), and man-made fiber trousers (Category 647/648).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

Background:

On October 13, 2004, the Committee received requests from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, SEAMS and UNITE HERE requesting that the Committee impose textile safeguard actions on imports from China of men's and boys' cotton and man-made fiber shirts, not knit (Category 340/640), man-made fiber knit

shirts and blouses (Category 638/639), and man-made fiber trousers, slacks and shorts (Category 647/648), based on a threat of market disruption.

The Committee determined these requests provided the information necessary for the Committee to consider these requests and solicited public comments for a period of 30 days. **See Solicitation of Public Comment on Request for Textile and Apparel Safeguard Action on Imports from China**, 69 FR 64913 (Category 340/640), 64911 (Category 638/639) & 64915 (Category 647/48) (Nov. 9, 2004).

On December 30, 2004, the United States Court of International Trade preliminarily enjoined the members of the Committee from considering or taking any further action on these requests and any other requests "that are based on the threat of market disruption". **U.S. Association of Importers of Textiles and Apparel v. United States**, 350 F. Supp. 2d 1342 (CIT 2004). On April 27, 2005 the United States Court of Appeals for the Federal Circuit granted the U.S. government's motion for a stay of that injunction and ultimately reversed the preliminary injunction. **U.S. Association of Importers of Textiles and Apparel v. United States**, Ct. No. 05-1209, 2005 U.S. App. LEXIS 12751 (Fed. Cir. June 28, 2005). Thus, the Committee resumed consideration of these cases.

The public comment period for these three requests had closed prior to December 30, 2004. The Committee did not solicit additional comments for these requests when it published a notice in the Federal Register inviting public comments for other requests with comment periods interrupted by the litigation. **See Rescheduling of Consideration of Request for Textile and Apparel Safeguard Action on Imports from China and Solicitations of Public Comments**, 70 FR 24397 (May 9, 2005).

On April 6, 2005, the Committee received requests from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of men's and boys' cotton and man-made fiber shirts, not knit (Category 340/640), man-made fiber knit shirts and blouses (Category 638/639), and man-made fiber trousers, slacks and shorts (Category 647/648) due to the existence of market disruption ("market disruption cases"). The Committee determined these requests provided the information necessary for the Committee to consider the requests and solicited public

comments for a period of 30 days. See **Solicitation of Public Comment on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 23100 (Category 340/640), 23130 (Category 638/639) & 23136 (Category 647/48) (May 4, 2005).

On May 18, 2005, the Committee announced its determination that imports of Chinese origin men's and boys' cotton and man-made fiber shirts, not knit, man-made fiber knit shirts and blouses, and man-made fiber trousers, slacks and shorts are, due to a threat of market disruption, threatening to impede the orderly development of trade in these products. See **Announcement of Request for Bilateral Textile Consultations with the Government of the People's Republic of China and the Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products in Categories 301, 340/640, 638/639, and 647/648, Produced or Manufactured in the People's Republic of China**, 70 FR 30930 (May 31, 2005).

The Committee's Procedures (68 FR 27787, May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China with a view to easing or avoiding market disruption. This 60-day period for the three market disruption cases expired on August 2, 2005. Based on the threat of market disruption, however, the Committee has already requested consultations with China with respect to the categories of products covered by these three cases. See **Announcement of Request for Bilateral Textile Consultations with the Government of the People's Republic of China and the Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products in Categories 301, 340/640, 638/639, and 647/648, Produced or Manufactured in the People's Republic of China**, 70 FR 30930 (May 31, 2005). Thus, there is no need for any further action based on allegations of actual market disruption at this time as to these categories.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. E5-4328 Filed 8-9-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete systems of records; F031 DOD A-Joint Personnel Adjudication System (JPAS).

SUMMARY: The Department of the Air Force is deleting an exempt system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The system of records, F031 DoD A, entitled Joint Personnel Adjudication System (JPAS), was transferred to the Defense Security Service and assigned the system identifier V5-05, entitled Joint Personnel Adjudication System (JPAS) and was published in the **Federal Register** on July 1, 2005 (70 FR 38120).

DATES: Effective August 10, 2005.

ADDRESSES: Department of the Air Force, ATTN: SAF/XCISI, 1800 Air Force Pentagon, Washington, DC 20330-1800.

FOR FURTHER INFORMATION CONTACT: Ms. Novella Hill at (703) 588-7855.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The deletion of the system notice from the Department of Air Force's inventory is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 4, 2005.

Jeannette Owings-Ballard,
OSD Federal Register Liaison Officer,
Department of Defense.

F031 DOD A

SYSTEM NAME:

Joint Personnel Adjudication System (JPAS) (November 29, 2002, 67 FR 71152).

REASON:

The system of records was transferred to the Defense Security Service, and was assigned the system identifier V5-05, entitled Joint Personnel Adjudication System (JPAS).

[FR Doc. 05-15786 Filed 8-9-05; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to delete systems of records; HDTRA012-Carpooling Program.

SUMMARY: The Defense Threat Reduction Agency is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 9, 2005, unless comments are received which result in a contrary determination.

ADDRESSES: Freedom of Information Act/Privacy Act Officer, Defense Threat Reduction, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060-6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 325-1205.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 4, 2005.

Jeannette Owings-Ballard,
OSD Federal Register Liaison Officer,
Department of Defense.

HDTRA012

SYSTEM NAME:

Carpooling Program (December 14, 1998, 63 FR 68736).

REASON:

The system of records is maintained under the Department of Transportation (DOT) system of records notice DOT/ALL 8, entitled "Employee Transportation Facilitation", a Government-wide system notice.

[FR Doc. 05-15789 Filed 8-9-05; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE**Defense Contract Audit Agency****Privacy Act of 1974; System of Records**

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice to alter a system of records; RDCAA 590.8—DCAA Management Information System (DMIS)

SUMMARY: The Defense Contract Audit Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 9, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Senior Advisor, Defense Contract Audit Agency, Information and Privacy, CM, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Teer at (703) 767–1002.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a (r), of the Privacy Act of 1974, as amended, were submitted on August 3, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, “Federal Agency Responsibilities for Maintaining Records About Individuals,” dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 4, 2005.

Jeannette Owings-Ballard,
OSD Federal Register Liaison Officer,
Department of Defense.

RDCAA 590.8**SYSTEM NAME:**

DCAA Management Information System (DMIS) (April 29, 2004, 69 FR 23497).

CHANGES:

* * * * *

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the following: “and contractors”.

CATEGORY OF RECORDS IN THE SYSTEM:

Delete entry and replace with “Records relating to audit work performed in terms of hours expended by individual employees, dollar amounts audited, exceptions reported, and net savings to the government as a result of those exceptions; records containing employee data; records containing reimbursable billing information; name, Social Security Number, time and attendance, and work schedule; and records containing office information, e.g., duty station address and telephone number.”

* * * * *

PURPOSE(S):

Delete entry and replace with “To provide managers, supervisors and team members with timely, on-line information regarding audit requirements, programs, and performance. To provide timekeepers with access to time and attendance records.”

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with “Individual employees, supervisors, time keepers, audit reports and working papers.”

* * * * *

RDCAA 590.8**SYSTEM NAME:**

DCAA Management Information System (DMIS)

SYSTEM LOCATION:

Defense Contract Audit Agency, Information Technology Division, System Design and Development Branch, 4075 Park Avenue, Memphis, TN 38111–7492.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to audit work performed in terms of hours expended by individual employees, dollar amounts audited, exceptions reported, and net savings to the government as a result of those exceptions; records containing employee data; records containing reimbursable billing information; name, Social Security Number, time and attendance, and work schedule; and records containing office information, e.g., duty station address and telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To provide managers, supervisors, and team members with timely, on-line information regarding audit requirements, programs, and performance. To provide timekeepers with access to time and attendance records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ‘Blanket Routine Uses’ that appear at the beginning of DCAA’s compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Records are maintained in an on-line database and on magnetic tape at secure offsite storage.

RETRIEVABILITY:

Records are retrieved by organizational levels, name of employee, Social Security Number, office symbol, audit activity codes, or any other combination of these identifiers.

SAFEGUARDS:

Automated records are protected by restricted access procedures. Access to records is strictly limited to authorized officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Technology Division, System Design and Development Branch, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111–7492.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Information Technology Division, System Design and Development Branch, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111–7492.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified. Official mailing addresses are published as an appendix to the DCAA's compilation of systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Information Technology Division, System Design and Development Branch, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111-7492.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual employees, supervisors, time keepers, audit reports and working papers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05-15788 Filed 8-9-05; 8:45 am]

BILLING CODE 5001-06-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 available for licensing by the Department of the Navy. U.S. Patent No. 6,731,922: Optical Image Reject Down Converter, Navy Case No. 82,545.//U.S. Patent No. 6,733,838: Robust Nontoxic Antifouling Elastomers, Navy Case No. 83,029.//U.S. Patent No. 6,734,043: Pressure-bonded Heat Sink Method, Navy Case No. 83,954.//U.S. Patent No. 6,737,793: Apparatus for Emitting Electrons Comprising a Subsurface Emitter Structure, Navy Case No. 80,023.//U.S.

Patent No. 6,744,035: Passive, Temperature Compensated Techniques for Tunable Filter Calibration in Bragg-grating Interrogation Systems, Navy Case No. 82,373.//U.S. Patent No. 6,744,947: High Power, Low Noise, Fluorescent Device and Methods Related Thereto, Navy Case No. 79,056.//U.S. Patent No. 6,744,986: Tunable Wavelength Add/Drop Multiplexer Based on Integrated Optic Devices, Navy Case No. 82,310.//U.S. Patent No. 6,746,510: Processing of Nanocrystalline Metallic Powders and Coatings Using the Polyol Process, Navy Case No. 82,810.//U.S. Patent No. 6,750,031: Displacement Assay on a Porous Membrane, Navy Case No. 77,298.//U.S. Patent No. 6,756,470: Oligomeric Hydroxy Arylether Phthalonitiles and Synthesis Thereof, Navy Case No. 83,013.//U.S. Patent No. 6,763,271: Tracking Sustained Chaos, Navy Case No. 80,021.//U.S. Patent No. 6,764,561: Palladium-boron Alloys and Methods for Making and Using Such Alloys, Navy Case No. 79,391.//U.S. Patent No. 6,764,860: Ultrasonic Force Differentiation Assay, Navy Case No. 79,227.//U.S. Patent No. 6,764,861: Method of Making High Efficiency Magnetic Sensor for Magnetic Particles, Navy Case No. 79,585.//U.S. Patent No. 6,766,070: High Power Fiber Optic Modulator System and Method, Navy Case No. 80,245.//U.S. Patent No. 6,767,749: Method for Making Piezoelectric Resonator and Surface Acoustic Wave Device Using Hydrogen Implant Layer Splitting, Navy Case No. 79,598.//U.S. Patent No. 6,767,981: Thermoset and Ceramic Containing Silicon and Boron, Navy Case No. 77,642.//U.S. Patent No. 6,770,583: Transistion Metal Containing Ceramic with Metal Nanoparticles, Navy Case No. 77,712.//U.S. Patent No. 6,771,201: Hybrid Photonic Analog to Digital Converter using Superconducting Electronics, Navy Case No. 83,865.//U.S. Patent No. 6,771,798: Hyperspectral Visualization Extensible Workbench, Navy Case No. 79,087.//U.S. Patent No. 6,772,182: Signal Processing Method for Improving the Signal-to-noise Ratio of a Noise-dominated Channel and a Matched-phase Noise Filter for Implementing the Same, Navy Case No. 76,854.//U.S. Patent No. 6,773,865: Anti-charging Layer for Beam Lithography and Mask Fabrication, Navy Case No. 82,897.//U.S. Patent No. 6,777,753: CMOS Devices Hardened against Total Dose Radiation Effects, Navy Case No. 79,812.//U.S. Patent No. 6,777,835: Electrical Power Cooling Technique, Navy Case No. 78,465.//U.S. Patent No. 6,777,937: Nuclear

Quadrupole Resonance Method and Apparatus, Navy Case No. 82,481.//U.S. Patent No. 6,780,307: Ion Selective Electrodes for Direct Organic Drug Analysis in Saliva, Sweat, and Surface Wipes, Navy Case No. 83,326.//U.S. Patent No. 6,784,259: High Temperature Elastomers from Linear Poly (silylene-siloxane-acetylene), Navy Case No. 84,545.//U.S. Patent No. 6,784,270: Polymer Containing Borate and Alkynyl Groups, Navy Case No. 77,641.//U.S. Patent No. 6,787,615: Synthesis of Oligomeric Poly(silylene-siloxane-acetylene)'s and their Conversion to High Temperature Plastics, Elastomers, and Coatings, Navy Case No. 82,942.//U.S. Patent No. 6,787,882: Semiconductor Varactor Diode with Doped Heterojunction, Navy Case No. 80,070.//U.S. Patent No. 6,787,885: Low Temperature Hydrophobic Direct Wafer Bonding, Navy Case No. 83,684.//U.S. Patent No. 6,787,972: Piezoelectric Rotary Pump, Navy Case No. 82,332.//U.S. Patent No. 6,788,794: Thin, Lightweight Acoustic Actuator Tile, Navy Case No. 83,842.//U.S. Patent No. 6,800,913: Hybrid Hall Vector Magnetometer, Navy Case No. 80,025.//U.S. Patent No. 6,802,907: Removing Radar Absorbing Coatings, Navy Case No. 83,976.//U.S. Patent No. 6,803,208: Automated Epifluorescence Microscopy for Detection of Bacterial Contamination in Platelets, Navy Case No. 80,218.//U.S. Patent No. 6,803,598: Si-based Resonant Interband Tunneling Diodes and Method of Making Interband Tunneling Diodes, Navy Case No. 79,496.//U.S. Patent No. 6,805,918: Laser Forward Transfer of Rheological Systems, Navy Case No. 79,702.//U.S. Patent No. 6,806,721: Digital Envelope Detector, Navy Case No. 82,540.//U.S. Patent No. 6,807,343: Reconfigurable Optical Beamformer for Simplified Time Steered Arrays, Navy Case No. 82,546.//U.S. Patent No. 6,809,506: Corrosion Sensor Loudspeaker for Active Noise Control, Navy Case No. 79,597.//U.S. Patent No. 6,818,924: Pulsed Laser Deposition of Transparent Conducting Thin Films on Flexible Substrates, Navy Case No. 80,122.//U.S. Patent No. 6,819,984: LOST 2—A Positioning System for Under Water Vessels, Navy Case No. 83,099.//U.S. Patent No. 6,820,230: Self Synchronous Scrambler Apparatus and Method for Use in Dense Wavelength Division Multiplexing, Navy Case No. 82,350.//U.S. Patent No. 6,824,776: Silica Mesoporous Aerogels Having Three-dimensional Nanoarchitecture with Colloidal Gold-protein Superstructures Nanoglued Therein, Navy Case No. 84,500.//U.S. Patent No. 6,826,223: Surface-emitting

Photonic Crystal Distributed Feedback Laser Systems and Methods, Navy Case No. 84,107.//U.S. Patent No. 6,826,480: Similarity Transformation Method for Data Processing and Visualization, Navy Case No. 82,482.//U.S. Patent No. 6,830,728: Device and Method for Pneumatic Gas Sampling for Gas Sensors, Navy Case No. 82,338.//U.S. Patent No. 6,833,019: Microwave Assisted Continuous Synthesis of Nanocrystalline Powders and Coatings Using the Polyol Process, Navy Case No. 83,975.//U.S. Patent No. 6,833,027: Method of Manufacturing High Voltage Schottky Diamond Diodes with Low Boron Doping, Navy Case No. 83,260.//U.S. Patent No. 6,846,345: Synthesis of Metal Nanoparticle Compositions from Metallic and Ethynyl Compounds, Navy Case No. 83,778.//U.S. Patent No. 6,847,446: Chemical Analysis and Detection by Selective Adsorbent Sampling and Laser Induced Breakdown Spectroscopy, Navy Case No. 83,965.//U.S. Patent No. 6,847,449: Method and Apparatus for Reducing Speckle in Optical Coherence Tomography Images, Navy Case No. 83,094.//U.S. Patent No. 6,852,289: Methods and Apparatus for Determining Analytes in Various Matrices, Navy Case No. 82,575.//U.S. Patent No. 6,854,058: Low-interference Communications Device using Chaotic Signals, Navy Case No. 82,613.//U.S. Patent No. 6,856,520: Double Sided IGBT Phase Leg Architecture and Clocking Method for Reduced Turn on Loss, Navy Case No. 83,914.//U.S. Patent No. 6,858,372: Resist Composition With Enhanced X-ray and Electron Sensitivity, Navy Case No. 82,940.//U.S. Patent No. 6,861,914: Monolithic Vibration Isolation and an Ultra-High Q Mechanical Resonator, Navy Case No. 83,287.//U.S. Patent No. 6,862,387: Low-loss Compact Reflective Turns in Optical Waveguides, Navy Case No. 83,158.//U.S. Patent No. 6,867,281: Highly Conducting and Transparent Thin Films Formed from New Fluorinated Derivatives of 3,4-ethylenedioxythiophene, Navy Case No. 84,103.//U.S. Patent No. 6,867,444: Semiconductor Substrate Incorporating a Neutron Conversion Layer, Navy Case No. 84,785.//U.S. Patent No. 6,868,107: Method for Designing Photonic-crystal Distributed-feedback and Distributed Bragg-reflector Lasers, Navy Case No. 84,592.//U.S. Patent No. 6,869,784: Passivation of Nerve Agents by Surface Modified Enzymes Stabilized by Non-covalent Immobilization on Robust, Stable Particles, Navy Case No. 79,212.//U.S. Patent No. 6,873,893: Missile Warning and Protection System for Aircraft Platforms, Navy Case No.

82,499.//U.S. Patent No. 6,884,861: Metal Nanoparticle Thermoset and Carbon Compositions from Mixtures of Metallocene-aromatic-acetylene Compounds, Navy Case No. 82,591.//U.S. Patent No. 6,888,660: Magnetic Organic Light Emitting Device and Method for Modulating Electroluminescence Intensity, Navy Case No. 84,307.//U.S. Patent No. 6,890,233: Method of Making Low Gate Current Multilayer Emitter with Vertical Thin-film-edge Multilayer Emitter, Navy Case No. 79,853.//U.S. Patent No. 6,890,504: Polymeric and Carbon Compositions with Metal Nanoparticles, Navy Case No. 82,460.//U.S. Patent No. 6,900,633: Substance Detection by Nuclear Quadrupole Resonance using at Least Two Different Excitation Frequencies, Navy Case No. 82,977.//U.S. Patent No. 6,904,444: Pseudo-median Cascaded Canceller, Navy Case No. 82,774.//U.S. Patent No. 6,904,722: Elongated Truss Boom Structures for Space Applications, Navy Case No. 80,124 and any continuations, continuations-in-part divisionals or re-issues thereof.

ADDRESS: Requests for copies of the inventions 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: August 3, 2005.

I.C. Le Moyne Jr.,
Lieutenant, Judge Advocate General's Corps,
U.S. Navy, Alternate Federal Register Liaison
Officer.

[FR Doc. 05-15805 Filed 8-9-05; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of 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 available

for licensing by the Department of the Navy. Navy Case Number 73962 entitled "Lightweight Thermal Heat Transfer Apparatus", Inventors Thoman *et al.*, U.S. Application Number 10/056,812 filed on January 24, 2002. Navy Case Number 82261 entitled "Global Visualization Process (GVP) and System for Implementing a GVP", Inventors Dunn *et al.*, U.S. Application Number 10/255,413 filed on September 26, 2004. Navy Case Number 97040 entitled "Composition and Process for Removing and Preventing Mildew and Fungal Growth", Inventors Arafat *et al.*, U.S. Application Number 11/115,170 filed on June 10, 2005. Navy Case Number 82987 entitled "Hybrid Lidar Radar for Medical Diagnostics", Inventors Mullen *et al.*, U.S. Application Number 10/207,642 filed on July 29, 2002. Navy Case Number 83683 entitled "Method for Comparing Tabular Data", Inventors Spodaryk *et al.*, U.S. Application Number 10/956,522 filed on September 23, 2004. Navy Case Number 83822 entitled "Helicopter Messenger Cable Illumination", Inventor Kaolliopoulos, U.S. Application Number 10/834,154 filed on April 23, 2004. Navy Case Number 84051 entitled "Rapid Release Mechanism for Textile Apparel Pockets (receptacles) and Packs (stowage receptacles)", Inventor Todd, U.S. Application Number 11/001,599 filed on November 30, 2004. Navy Case Number 84380 entitled "Spray Array Apparatus", Inventors Foianini *et al.*, U.S. Application Number 10/956,525 filed on September 23, 2004.

ADDRESSES: Request for data and inventor interviews should be directed to Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670, (301) 342-5586, or e-mail: Paul.Fritz@navy.mil.
DATES: Request for data and inventor interviews should be made prior to August 21, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Hans Kohler, Office of Research and Technology Applications, Building 150/2, Naval Air Warfare Center Aircraft Division, Lakehurst, NJ 08733-5060, (732) 323-2948, e-mail: Hans.Kohler@navy.mil, or Mr. Paul Fritz, Office of Research and Technology Applications, Building 304, Room 107, Naval Air Warfare Center Aircraft Division, 22541 Millstone Road, Patuxent River, MD 20670, (301) 342-5586, e-mail: Paul.Fritz@navy.mil.

SUPPLEMENTARY INFORMATION: The U.S. Navy intends to move expeditiously to license these inventions. All licensing

application packages and commercialization plans must be returned to Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670.

The Navy, in its decisions concerning the granting of licenses, will give special consideration to existing licensee's, small business firms, and consortia involving small business firms. The Navy intends to ensure that its licensed inventions are broadly commercialized throughout the United States.

PCT applications may be filed for each of the patents as noted above. The Navy intends that licensees interested in a license in territories outside of the United States will assume foreign prosecution and pay the cost of such prosecution.

Authority: 35 U.S.C. 207, 37 CFR 404.

Dated: August 3, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05-15807 Filed 8-9-05; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On August 5, 2005, the Department of Education published a notice in the **Federal Register** (Page 45372, Column 2) for the information collection, "Program for International Student Assessment (PISA)." Because of a 60-day comment period waiver by the Office of Management and Budget (OMB), the 60-day comment period is hereby corrected to 30 days. Interested persons are invited to submit their comments by September 9, 2005. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: August 5, 2005.

Angela C. Arrington,

Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

[FR Doc. 05-15810 Filed 8-9-05; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 30, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: August 4, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: Impact Evaluation of Mandatory-Random Student Drug Testing: Baseline Data Collection Instruments.

Frequency: On occasion.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 6,000.

Burden Hours: 3,000.

Abstract: Initial data collection for an impact evaluation of a Department program that provides grants to districts to implement student drug testing.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2757. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Bennie Jessup at her e-mail address, Bennie.Jessup@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 05-15811 Filed 8-9-05; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services, Rehabilitation Act of 1973, as Amended

ACTION: Notice of a public meeting; correction.

SUMMARY: On July 26, 2005, we published in the **Federal Register** (70 FR 43132) a notice announcing plans to hold a public meeting to seek comments and suggestions about the Rehabilitation

Services Administration's (RSA's) monitoring process.

On page 43132, third column, under **ADDRESSES**, the location of the meeting is corrected to read, "The meeting will be held at the Marriott Wardman Park Hotel, 2660 Woodley Rd., NW., Washington, DC 20008."

FOR FURTHER INFORMATION CONTACT:

David Esquith, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, SW., room 5175, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245-7336.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2005 RSA published a notice in the **Federal Register** (70 FR 43132) announcing a public meeting to provide an opportunity for stakeholders in the vocational rehabilitation process to provide RSA with their input on the RSA monitoring process.

In order to accommodate the participation of more individuals and to offer more rooms to participants from out of town at a reduced rate, RSA has changed the location of the meeting to the Marriott Wardman Park Hotel.

Individuals who wish to register for the public meeting should do so at the following Web site: <http://www.dtiassociates.com/rsamonitoring>.

Individuals who need accommodations for a disability in order to attend the meetings (*i.e.*, interpreting services, assistive listening devices, or material in alternative formats) should notify the contact person listed under **FOR FURTHER INFORMATION CONTACT**. The meeting locations will be accessible to individuals with disabilities.

Electronic Access to this Document: You may view this document, as well as all other documents this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code

of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: August 5, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05-15785 Filed 8-9-05; 8:45 am]

BILLING CODE 4000-01-P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATES AND TIME: Tuesday, August 23, 2005, 10 a.m.-12 noon.

PLACE: Adam's Mark Hotel, 1550 Court Place, Denver, CO 80202, (303) 893-3333.

AGENDA: The Commission will receive updates on the following items: Title II Requirements Payments; public comments received regarding the proposed Voluntary Voting System Guidelines; and updates on other administrative matters. The Commission will receive presentations on the Voting System Certification and Laboratory Accreditation Processes.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, telephone: (202) 566-3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 05-15972 Filed 8-8-05; 3:17 pm]

BILLING CODE 6820-UF-M

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public hearing agenda.

DATE AND TIME: Tuesday, August 23, 2005, 1-5 p.m.

PLACE: Adam's Mark Hotel, 1550 Court Place, Denver, CO 80202, (303) 893-3333.

AGENDA: The Commission will conduct a public hearing on the proposed voluntary voting system guidelines. The Commission will receive presentations regarding the proposed guidelines from local election officials, community interest groups and accessibility specialists.

EAC will provide a public comment period to receive comments from the public regarding the voluntary voting system guidelines. Members of the public who wish to speak should contact EAC via e-mail at testimony@eac.gov, or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, NW., Suite 1100, Washington, DC 20005, or by fax at (202) 566-3127. Comments will be strictly limited to 3 minutes per person or organization to assure that all constituent or stakeholder groups are represented. All speakers will be contacted prior to the hearing. EAC also encourages members of the public to submit written testimony via e-mail, mail or fax. All public comments will be taken in writing via e-mail at testimony@eac.gov, or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, NW., Suite 1100, Washington, DC 20005, or by fax at (202) 566-3127.

This hearing will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, telephone: (202) 566-3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 05-15973 Filed 8-8-05; 3:17 pm]

BILLING CODE 6820-KF-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-509-002]

Granite State Gas Transmission, Inc.; Notice of Negotiated Rate

August 2, 2005.

Take notice that on July 22, 2005, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of August 21, 2005:

First Revised Sheet No. 339A, Original Sheet No. 339B.

Granite State hereby states that it is submitting tariff sheets to reflect the principal elements of a negotiated rate agreement entered into between Granite State and Bay State Gas Company for transportation service under Rate Schedule FT-NN.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and

Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E5-4322 Filed 8-9-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-439-001]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

August 2, 2005.

Take notice that on July 21, 2005, High Island Offshore System, L.L.C. (HIOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Eighth Revised Sheet No. 170, to become effective September 1, 2005.

Any person desiring to protest this filing must file in accordance with Rule

211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. eastern time on August 9, 2005.

Magalie R. Salas,
Secretary.

[FR Doc. E5-4320 Filed 8-9-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES05-36-000]

Platte-Clay Electric Cooperative, Inc.; Notice of Application

August 2, 2005.

Take notice that on July 25, 2005, Platte-Clay Electric Cooperative, Inc. (Platte-Clay) submitted an application pursuant to section 204 of the Federal Power Act requesting that: (1) The commission issue a no action order with regard to Platte-Clay's issuance of securities to the National Rural Utilities Cooperative Finance Corporation (CFC) that occurred without prior authorization; and (2) that the Commission authorize Platte-Clay to continue to make long-term borrowings under a loan agreement with the National Rural Utilities Cooperative

Finance Corporation (CFC) in an amount not to exceed \$75 million.

Platte-Clay also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. eastern time on August 23, 2005.

Magalie R. Salas,
Secretary.

[FR Doc. E5-4317 Filed 8-9-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[RT01-99-000, RT01-99-001, RT01-99-002; RT01-99-003, RT01-86-000, RT01-86-001, RT01-86-002, RT01-95-000, RT01-95-001, RT01-95-002, RT01-2-000, RT01-2-001, RT01-2-002, RT01-2-003, RT01-98-000, and RT02-3-000]

Regional Transmission Organizations, Bangor Hydro-Electric Company, et al., New York Independent System Operator, Inc., et al., PJM Interconnection, L.L.C., et al., PJM Interconnection, L.L.C., ISO New England, Inc., New York Independent System Operator, Inc.; Notice of Filing

August 2, 2005.

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their internet Web sites charts and information updating their progress on the resolution of ISO seams.

Any person desiring to file comments on this information should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. eastern time on August 23, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5-4316 Filed 8-9-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 2984]

S.D. Warren Company; Notice of Filings

August 3, 2005.

S.D. Warren Company is the licensee for the Eel Weir Hydroelectric Project No. 2984 at Sebago Lake, Maine.¹ The licensee maintains the level of the dam's

reservoir pursuant to a Lake Level Management Plan (Plan).²

Commission staff received several telephone reports from local residents concerning high lake levels at the Eel Weir Project during April and May of 2005. Commission staff responded by sending a letter to the licensee on May 3, 2005. The letter directed the licensee to provide: (1) Information concerning project operations in late April and early May 2005, (2) schedules of releases from Sebago Lake for the same period, (3) precipitation data for the period in question, (4) a description of observed or reported adverse impacts and proposed actions to ensure future compliance; and (5) copies of any correspondence from Federal or State resource agencies. On May 31, 2005, the licensee filed a timely response.

The Commission has since received filings from several individuals or groups³ reiterating concerns over high lake levels. Commission staff is already in the process of investigating these matters, and the recent filings, which are in the public record for this project, will be considered in any order resulting from staff's investigation.

Magalie R. Salas,

Secretary.

[FR Doc. E5-4319 Filed 8-9-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP05-522-000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

August 2, 2005.

Take notice that on July 27, 2005, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 247B.01, to be effective August 27, 2005.

TransColorado states that it proposes to revise section 12.9(d) of its FERC Gas Tariff in order to add a receipt and delivery combination to the currently effective list of receipt and delivery

² Order Approving Settlement and Amending License, 79 FERC ¶ 61,064 (1997). The Plan was amended in Order Amending Lake Level Management Plan, 92 FERC ¶ 62,180 (2000), and was further amended in Order Granting Rehearing and Amending Lake Level Management Plan, 94 FERC ¶ 61,034 (2001).

³ Filings have been made by Stephen M. Kasprzak; Roger Wheeler, President of the Friends of Sebago Lake; Charles Bragdon, Jr.; Diana Wheeler; and Matthew Anderson, Ph.D.

point combinations which do not consume fuel and which are only to be assessed the lost or gained and unaccounted-for component of TransColorado's FGRP.

TransColorado states that a copy of this filing has been served upon TransColorado's customers and affected State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5-4321 Filed 8-9-05; 8:45 am]

BILLING CODE 6717-01-P

¹ 26 FERC ¶ 61,241 (1984).

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission****Combined Notice of Filings #1**

August 04, 2005.

Take notice that the Commission received the following electric rate filings

Docket Numbers: ER01-2214-005.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc. (Entergy) submits its response to the Commission's 7/19/05 letter requesting additional information regarding Entergy's January 24, 2005 filing of a refund report, in particular information relating to the calculation of refunds Entergy's Schedule (Energy Imbalances Service).

Filed Date: 07/29/2005.

Accession Number: 20050802-0001.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER05-1262-000.

Applicants: Flat Rock Windpower LLC.

Description: Application of Flat Rock Windpower, LLC requesting blanket approval of market-based rates for the wholesale sale of electric energy, capacity and ancillary services from its new wind farm located in Lewis County, New York.

Filed Date: 07/29/2005.

Accession Number: 20050803-0070.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER05-1263-000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, L.L.C. submits amended network integration transmission service agreements with Southeastern Power Administration & Virginia Electric & Power Company d/b/a Dominion Virginia Power to become effective July 1, 2005.

Filed Date: 07/29/2005.

Accession Number: 20050803-0071.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER05-1265-000.

Applicants: Mid American Energy Company.

Description: MidAmerican Energy Company submits a revised Interconnection Agreement with Central Iowa Power Cooperative.

Filed Date: 07/29/2005.

Accession Number: 20050803-0074.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER05-1266-000.

Applicants: Ontelaunee Power Operating, Company, LLC.

Description: Ontelaunee Power Operating Company, LLC submits a Notice of Succession to notify the Commission that, as a result of a name change, it adopts the CES Marketing VI, LLC FERC Rate Schedule 1 as its own; and an amendment to the Rate Schedule to include changes to reflect the name change and corrections in the reporting requirement for changes in status and in Market Behavior Rule 2(b).

Filed Date: 07/29/2005.

Accession Number: 20050803-0064.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER05-1270-000.

Applicants: Allegheny Energy Supply Company, LLC; Monongahela Power Company.

Description: Allegheny Energy Supply Company, LLC and Monongahela Power Company submit rate schedules which specify their revenue requirement for providing cost-based Reactive Support and Voltage Control from Generation Sources Service from Bath County Generating plant located in the Dominion Virginia Power Zone within the PJM control area administered by the PJM Interconnection, L.L.C.

Filed Date: 07/29/2005.

Accession Number: 20050803-0057.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER05-1271-000.

Applicants: Lake Benton Power Partners II, LLC.

Description: Lake Benton Power Partners II, LLC submits revised Code of Conduct tariff sheets.

Filed Date: 07/29/2005.

Accession Number: 20050803-0056.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER05-1272-000.

Applicants: Duke Power, a division of Duke Energy Corporation.

Description: Duke Power, a Division of Duke Energy Corporation, submits First Revised Sheet 2 and 3 to Duke Power's Wholesale Cost-Based Rate Tariff providing for the sales of capacity and energy within the Duke Power control area, to become effective 7/30/05.

Filed Date: 07/29/2005.

Accession Number: 20050803-0055.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER05-1273-000.

Applicants: Mid-Continent Area Power Pool.

Description: Mid-Continent Area Power Pool on behalf of its public utility members submits revisions to a component of charges for scheduling and tariff administration service under MAPP Schedule F.

Filed Date: 07/29/2005.

Accession Number: 20050803-0075.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER05-1279-000.

Applicants: PJM Interconnection, L.L.C.; Progress Energy Carolinas, Inc.

Description: PJM Interconnection L.L.C. and Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. submit their Joint Operating Agreement executed on 7/27/05.

Filed Date: 07/29/2005.

Accession Number: 20050803-0063.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER05-534-002; ER05-365-004; ER03-296-004; ER01-3121-003; ER02-418-002; ER03-416-005; ER05-332-002; ER03-951-004; ER04-94-002; ER02-417-002; ER05-481-002.

Applicants: Eastern Desert Power LLC; Elk River Windfarm, LLC; Flying Cloud Power Partners, LLC; Klamath Energy LLC; Klamath Generation LLC; Klondike Wind Power LLC; Klondike Wind Power II LLC; Moraine Wind LLC; Mountain View Power Partners III, LLC; Phoenix Wind Power LLC; Trimont Wind I LLC.

Description: The above-listed subsidiaries of PPM Energy, Inc. submit a joint triennial market power update in compliance with the Commission's Order issued 5/31/05, 111 FERC ¶ 61,295 (2005).

Filed Date: 07/29/2005.

Accession Number: 20050803-0051.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER05-718-003.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation, in compliance with the Commission's 4/7/05 order (111 FERC ¶ 61,008 (2005)), submits its proposal to maintain the "as-bid" settlement rules for setting intertie transactions (import/export bids) as the longer-term solution to remain in effect beyond the 9/30/05 sunset date specified in the 4/7/05 order.

Filed Date: 07/26/2005.

Accession Number: 20050728-0050.

Comment Date: 5 p.m. eastern time on Tuesday, August 16, 2005.

Docket Numbers: ER96-795-012.

Applicants: Gateway Energy Marketing.

Description: Gateway Energy Marketing submits its Triennial Updated Market Power Analysis in compliance with the Commission's order issued 5/31/05, 111 FERC ¶ 61,295.

Filed Date: 07/29/2005.

Accession Number: 20050729-5051.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER97-3428-008.

Applicants: Tri-Valley Corporation.

Description: Tri-Valley Corporation submits its Triennial Updated Market Power Analysis in compliance with the Commission's order issued 5/13/05, 111 FERC ¶ 61,295.

Filed Date: 07/29/2005.

Accession Number: 20050729-5052.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER99-1773-005; ER99-2284-005.

Applicants: AES Eastern Energy, L.P.; AES Creative Resources, L.P., AEE 2, L.L.C.

Description: AES Eastern Energy LP and AES Creative Resources, L.P. and AEE 2, L.L.C. submit proposed revisions to their market-based rate tariffs to incorporate the new change in status reporting requirements and conform to language ordered by the Commission for other affiliates of the AES Parties.

Filed Date: 07/29/2005.

Accession Number: 20050803-0061.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER99-1773-006; ER99-2284-006.

Applicants: AES Eastern Energy, L.P.; AES Creative Resources, L.P.; AEE2, L.L.C.

Description: AES Eastern Energy LP; AES Creative Resources, L.P.; and AEE2, L.L.C. submits their joint triennial market power update.

Filed Date: 07/29/2005.

Accession Number: 20050803-0062.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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. E5-4315 Filed 8-9-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2696-000]

Town of Stuyvesant and Stuyvesant Falls Hydro Corporation; Notice of Intent To File an Application for a New License

August 2, 2005.

a. *Type of Filing:* Notice of intent to file an application for a new license.

b. *Project No.:* P-2696-000.

c. *Date Filed:* July 22, 2005.

d. *Submitted by:* Town of Stuyvesant and Stuyvesant Falls Hydro Corporation—current licensees.

e. *Name of Project:* Stuyvesant Falls Hydroelectric Project.

f. *Location:* On Kinderhook Creek, partly within the Town of Stuyvesant, in Columbia County, New York. The project does not utilize Federal lands.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act

h. *Licensee Contact:* James A. Besha, P.E., Albany Engineering Corporation, 447 New Karner Road, Albany, NY 12205, (518) 456-7712.

i. *FERC Contact:* Stefanie Harris, stefanie.harris@ferc.gov, (202) 502-6653.

j. *Effective date of current license:* May 1, 1965.

k. *Expiration date of current license:* July 31, 2005.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 13-foot-high, 240-foot-long masonry gravity dam with a Taintor gate and trash sluice near the south abutment; (2) a 46-acre reservoir with a normal pool elevation of 174.3 feet USGS; (3) two 7.5-foot-diameter, 2,860-foot-long, riveted-steel pipelines; (4) a 25-foot-diameter surge tank; (5) two 200-foot-long steel penstocks; (6) a powerhouse containing a single 2.8-megawatt generating unit; and (7) other appurtenances.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. However, as a result of Public Law No. 108-137, which was signed by President Bush on December 1, 2003, the Commission issued an order on December 30, 2003 (105 FERC ¶ 62,231) that reinstated the previously-surrendered project license, with its original expiration date of July 31, 2005, and transferred the license to the current co-licensees, Town of Stuyvesant and Stuyvesant Falls Hydro Corporation.

Under normal circumstances, the relicensing process would have commenced with the licensee filing, by at least five years prior to the end of the license term (July 2000), a notice of intent to seek or not to seek a new license. However, the surrender of the original license for the project became effective on February 17, 1999, prior to the notice of intent deadline. The co-licensees filed the notice of intent on July 22, 2005, stating their intent to seek relicensing of the project and their intent to use the Traditional Licensing Process in preparing their relicensing application. The December 30, 2003 Commission Order stated that the Commission would issue a notice establishing a relicensing schedule for the project, and given these unusual circumstances, the Commission will proceed in accordance with the following schedule.

n. The relicensing process will proceed according to the following schedule. Revisions to the schedule will be made as appropriate.

Activity	Deadline
Distribution of Initial Consultation Package	September 30, 2005.
Stage One Consultation Joint Meeting	November 30, 2005.
Distribution of Draft New License Application (inclusive of any study results and the applicant's responses to any consulted entities comments and recommendations made during stage one consultation).	August 31, 2006.
Filing of New License Application and Competing License Applications	January 31, 2007.

o. After the filing of the new license application, a copy of the application will be available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy will be also available for inspection and reproduction at the address in item h above.

p. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support as shown in the paragraph above.

q. By this notice, the Commission is seeking corrections and updates to the attached mailing list for the Stuyvesant Falls Project. Updates should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Magalie R. Salas,
Secretary.

Attached Mail List for P-2696

Stuyvesant Falls Project

Office of Project Review, Advisory Council on Historic Pres., The Old Post Office Building, 1100 Pennsylvania Ave, NW., Ste 809, Washington, DC 20004-2501.

Andrew Fahlund, Director of Hydropower Dev., American Rivers, 1025 Vermont Ave, NW., Ste 720, Washington DC 20005-3577.
Town Official, Colonie, New York, Town of, Colonie Memorial Town Hall, Newtonville, NY 12128.

Donald T. La Valley, Director, Columbia County Sportmans Federation, 318 Union St, Hudson, NY 12534-2412.

County Clerk, Columbia, County of, Board of County Legislators, 401 State St, Hudson, NY 12534-1915.

State of New York, Geologist, Cultural Education Center, Geological Survey, Albany, NY 12230-0001.

Executive Director, Delaware River Basin Commission, PO Box 7360, West Trenton, NJ 08628-0360.

Orion Power New York, Erie Boulevard Hydropower, L.P., 225 Greenfield Pkwy, Ste 201, Liverpool, NY 13088-6656.

Jacob S Niziol, Coordinator, Orion Power New York, 225 Greenfield Pkwy, Ste 201, Liverpool, NY 13088-6656.

Jerry L Sabattis, Coordinator, Orion Power New York, 225 Greenfield Pkwy, Ste 201, Liverpool, NY 13088-6656.

Mitchell F Hertz, Esquire, Kirkland & Ellis, 655 15th St, NW., Ste 1200, Washington, DC 20005-5720.

William J Madden Jr., Winston & Strawn LLP, 1400 L Street, NW., Washington, DC 20005.

Regional Engineer, New York Regional Office, 19 W 34th St., Rm 400, New York, NY 10001-3006.

James A Beshia, Director, Fourth Branch Assoc (Mechanicville), 447 New Karner Road, Albany, NY 12205-3821.

Frances E Francis, Esquire, Spiegel & McDiarmid, 1333 New Hampshire Ave, NW., Washington, DC 20036-1511.

Joseph M. Aiello, City Admin., Fulton, City of, 141 S 1st St, Fulton, NY 13069-1772.

Donald W. Bullard, Mayor, Fulton, City of, 141 S 1st St, Fulton, NY 13069-1772.

Paul V Nolan, 5515 17th St, N., Arlington, VA 22205-2722.

County Clerk, 300 Taconite St, Ste 101, Hurley, WI 54534-1546.

State of New York, Director, Marine Sciences Research Center, State University of New York, Stony Brook, NY 11794-0001.

Regional Director, National Marine Fisheries Service, Northeast Regional Office-DOC/NOAA 1 Blackburn Dr, Gloucester, MA 01930-2237.

Michael Ludwig, National Marine Fisheries Service, 212 Rogers Ave, Milford, CT 06460-6478.

Tim Goodger, National Marine Fisheries Service, 904 S Morris St, Oxford, MD 21654-1323.

C. Wilkerson, National Park Service, Northeast Region-U.S. Custom House, 200 Chestnut St, Philadelphia, PA 19106-2912.

Director, Environ. Protection-Science Section, Justice Bldg.-The Capital, Albany, NY 12224.

Program Manager, Regional Planning, 333 E Washington St, Syracuse, NY 13202-1422.

Mark E Frechette, P.E., New York Department of Transportation, Dulles State Office Building, 317 Washington St., Watertown, NY 13601-3744.

Director, Region 4, 1530 Jefferson Rd, Rochester, NY 14623-3110.

State of New York, Director, New York Dept. of Public Service, 3 Empire State Plz, Albany, NY 12223-1000.

Janet Hand Deixler, Secretary, New York Public Service Commission, 3 Empire State Plz, Albany, NY 12223-1000.

Bruce R Carpenter, Executive Director, New York Rivers United, PO Box 1460, Rome, NY 13442-1460.

Richard Roos-Collins, Senior Attorney, Natural Heritage Institute, 100 Pine St Ste 1550, San Francisco, CA 94111-5117.

Lawrence J Frame, Director, New York State Canal Corporation, Office of Canals—Thruway Admin. Hdqtrs., 200 Southern Blvd, Albany, NY 12209-2018.

William Clarke, Manager, New York State Dept. of Environ. Conserv., 1150 N Westcott Rd, Schenectady, NY 12306-2014.

Mark S. Woythal, New York State Dept. of Environ. Conserv., Instream Flow Unit, 625 Broadway, Albany, NY 12233-4756.

Lenore Kuwik, Bureau Chief, New York State Dept. of Environ. Conserv., 625 Broadway, 4th Floor, Division of Environmental Permits, Albany, NY 12233-0001.

Unit Director, New York State Dept. of Environ. Conserv., Dam Safety Unit, Division of Water, 625 Broadway, Albany, NY 12233-0001.

William G Little, Associate Attorney, New York State Dept. of Environ. Conserv., 625 Broadway, Floor 14, Albany, NY 12233-1500.

John J Gosek, Mayor, Oswego, City of, Office of the Mayor, City Hall, 11 West Oneida Street, Oswego, NY 13126.

Tod A Greci, Stuyvesant Falls, Town of, 3571 Route 21, Stuyvesant Falls, NY 12173.

Robert D Kuhn, New York State Historic Preservation Off., PO, Box 189, Waterford, NY 12188-0189.

Stephen C Palmer, Swidler Berlin Shereff Friedman, LLP, 3000 K St, NW., Ste 300, Washington, DC 20007-5101.

District Engineer, US Army Corps of Engineers, NY District—Jacob Javits Fed. Bldg., 26 Federal Plz, New York, NY 10278-0004.

Regulatory Branch, US Army Corps of Engineers, Buffalo District, 1776 Niagara St, Buffalo, NY 14207-3111.

Commander, North Atlantic Division—CENAD-ET-P, 405 Gen. Lee Ave., Fort Hamilton Mil. Com., Brooklyn, NY 11252-6700.

Chief Engineer, US Army Corps of Engineers, North Central Office, 111 N Canal St, Lobby 6, Chicago, IL 60606-7291.

Dr. James T Kardatzke, Ecologist, US Bureau of Indian Affairs, Eastern Regional Office, Nashville, TN 37214-2751.

Fred Allgaier, U.S. Bureau of Indian Affairs, 3000 Youngfield St., Ste. 130, Lakewood, CO 80215-6562.

Commanding Officer, U.S. Coast Guard, MSO Long Island Sound, 120 Woodward Ave., New Haven, CT 06512-3628.

Commanding Officer, U.S. Coast Guard, MSO Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203-3105.

Sherry W. Morgan, U.S. Fish and Wildlife Service, 3817 Luker Rd., Cortland, NY 13045-9385.

Alexander R. Hoar, U.S. Fish and Wildlife Service, 300 Westgate Center Dr., Hadley, MA 01035-9587.

Lydia T Grimm, U.S. Department of the Interior, 1849 C St. NW., # MS6456, Office of the Solicitor, Washington, DC 20240-0001.

Judith M. Stolfo, U.S. Department of the Interior, 1 Gateway Ctr., Ste. 612, Newton, MA 02458-2881.

Director, Control & Planning Division, 1220 Washington Ave., Albany, NY 12232-0002.

Director, Water Quality Branch (WQB), JFK Federal Building, Boston, MA 02203-0002.

Grace Musumeci, Section Chief, U.S. Environmental Protection Agency, Region 2, 290 Broadway, Fl. 25, New York, NY 10007-1823.

David A Stilwell, Supervisor, U.S. Fish and Wildlife Service, 3817 Luker Rd., Cortland, NY 13045-9385.

Hillary Rodham Clinton, Honorable, U.S. Senate, Washington, DC 20510.

Charles Schumer, Honorable, U.S. Senate, Washington, DC 20510.

[FR Doc. E5-4318 Filed 8-9-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02-1656-000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

August 2, 2005.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on August 2, 2005, members of its staff will attend stakeholder meetings on the California Independent System Operator's (CAISO) new stakeholder process. The meeting will take place in the CAISO Boardroom, 151 Blue Ravine Road, Folsom, CA.

Sponsored by the CAISO, these meetings are open to all market participants, and staff's attendance is part of the Commission's ongoing outreach efforts. The meetings may discuss matters at issue in Docket No. ER02-1656-000.

For further information, contact Katherine Gensler at katherine.gensler@ferc.gov; (916) 294-0275.

Magalie R. Salas,
Secretary.

[FR Doc. E5-4323 Filed 8-9-05; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7950-4]

Environmental Laboratory Advisory Board; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Charter Renewal.

The Charter for the Environmental Protection Agency's (EPA) Environmental Laboratory Advisory Board (ELAB) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 § 9(c). The purpose of ELAB is to provide advice and recommendations to the Administrator of EPA on issues associated with the systems and standards of accreditation for environmental laboratories.

It is determined that ELAB is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Lara P. Autry, NELAC/NELAP Director, U.S. Environmental Protection Agency, Office of Research and Development, 109 T W Alexander Drive (E243-05), Research Triangle Park, NC 27709 or by e-mail: autry.lara@epa.gov.

Dated: August 2, 2005.

E. Timothy Oppelt,

Acting Assistant Administrator, Office of Research and Development.

[FR Doc. 05-15835 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[Docket Number ORD-2005-0009; FRL-7950-3]

Board of Scientific Counselors, Drinking Water Subcommittee Meeting—Fall 2005

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, the Environmental Protection Agency, Office of Research and Development (ORD), announces one meeting of the Board of Scientific Counselors (BOSC) Drinking Water Subcommittee.

DATES: One teleconference call meeting will be held on Wednesday, September

7, 2005, from 1 p.m. to 3 p.m., eastern standard time. The meeting may adjourn early if all business is completed.

ADDRESSES: Conference calls:

Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the teleconference meeting from Edie Coates, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Document Availability

The draft agenda for the meeting is available from Edie Coates, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for the draft agenda will be accepted up to 2 business days prior to the conference call. The draft agenda also can be viewed through EDOCKET, as provided in Unit I.A. of the **SUPPLEMENTARY INFORMATION** section.

Any member of the public interested in making an oral presentation at the conference call may contact Edie Coates, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for making oral presentations will be accepted up to 2 business days prior to the conference call date. In general, each individual making an oral presentation will be limited to a total of three minutes.

Submitting Comments

Written comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B. of this section. Written comments will be accepted up to 2 business days prior to the conference call date.

FOR FURTHER INFORMATION CONTACT: Edie Coates, Designated Federal Officer, Environmental Protection Agency, Office of Research and Development, Mail Code B105-03, Research Triangle Park, NC 27711; telephone (919) 541-3508; fax (919) 541-3335; e-mail coates.edie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

This notice announces one meeting of the BOSC Drinking Water Subcommittee. The purpose of the meeting is to discuss the Subcommittee's draft report on EPA's Drinking Water Research Program. Proposed agenda items for the conference call include, but are not limited to: discussion of the Subcommittee's draft responses to the

charge questions, and approval of the final draft report prior to its submission to the BOSC Executive Committee. The conference call is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Edie Coates at 919-541-3508 or coates.edie@epa.gov. To request accommodation of a disability, please contact Edie Coates, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

A. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. ORD-2005-0009. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Documents in the official public docket are listed in the index in EPA's electronic public docket and comment system, EDOCKET. Documents are available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copies of the draft agendas may be viewed at the Board of Scientific Counselors, Drinking Water Meetings Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the ORD Docket is (202) 566-1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgrstr/>.

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number (ORD-2005-0009).

For those wishing to make public comments, it is important to note that EPA's policy is that comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public

docket as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks mailed or delivered to the docket will be transferred to EPA's electronic public docket. Written public comments mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number (ORD-2005-0009) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and it allows EPA to contact you if further information on the substance of the comment is needed or if your comment cannot be read due to technical difficulties. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EDOCKET.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EDOCKET at <http://www.epa.gov/edocket/>, and follow the online instructions for

submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, <http://www.epa.gov>, select "Information Sources," "Dockets," and "EDOCKET." Once in the system, select "search," and then key in Docket ID No. ORD-2005-0009. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to ORD.Docket@epa.gov, Attention Docket ID No. ORD-2005-0009. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM mailed to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in Word, WordPerfect or rich text files. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: U.S. Environmental Protection Agency, ORD Docket, EPA Docket Center (EPA/DC), Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. ORD-2005-0009.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. ORD-2005-0009 (note: this is not a mailing address). Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

Dated: August 4, 2005.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. 05-15836 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2005-0198; FRL-7724-3]

Pesticide Product; Registration Applications**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP-2005-0198, must be received on or before September 9, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT:

Sharlene R. Matten, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-0514; e-mail address: matten.sharlene@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Does this Action Apply to Me?

I. General Information

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

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

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

this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2005-0198. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still

access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or

CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2005-0198. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP-2005-0198. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2005-0198.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB),

Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2005-0198. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. Registration Applications

EPA received an application as follows to register a pesticide product containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

File Symbol: 71927-R. *Applicant:* Arcadis Geraghty and Miller, 14497 North Dale Mabry Highway, Suite 240, Tampa, FL 33618. *Product Name:* DutchTrig. Microbial pesticide. *Active ingredient:* Verticillium dahliae isolate WCS 850. *Proposed classification/Use:* Non-food use only involving the American elm.

List of Subjects

Environmental protection, Pesticides and pest.

Date: August 3, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05-15838 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2005-0197; FRL-7724-2]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 264-EUP-RUN from Bayer CropScience LP requesting an experimental use permit (EUP) for the plant incorporated-protectant *Bacillus thuringiensis* subsp. *berliner* Cry1Ab insecticidal protein and the genetic material necessary for its production in cotton plants. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket identification (ID) number OPP-2005-0197, must be received on or before September 9, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sharlene R. Matten, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-0514; e-mail address: matten.sharlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in agricultural biotechnology or may be required to conduct testing of pesticidal substances under the Federal

Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2005-0197. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made

available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this

unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2005-0197. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP-2005-0197. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office

of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2005-0197.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2005-0197. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Bayer CropScience LP is proposing to test 370 acres of the plant-incorporated protectant *Bacillus thuringiensis* subsp. *berliner* Cry1Ab protein and the genetic material necessary for its production in cotton plants from February 2006 to March 2007. The Cry1Ab protein is effective in controlling lepidopteran larvae such as bollworm (*Helicoverpa zea*) and tobacco budworm (*Heliothis virescens*) larvae, which are common pests of cotton. In total, the proposed program will be carried out in Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, and Texas on 370 acres for a total of 4 to 32 g of Cry1Ab protein (or 0.008 to 0.071 pounds of Cry1Ab protein). The planned experimental program includes the following: insect efficacy trials, agronomic performance evaluation, breeding studies, herbicide efficacy evaluations, dissemination studies, production of sample material for regulatory feeding and analytical studies, and seed production trials.

III. What Action is the Agency Taking?

Following the review of the Bayer CropSciences LP application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The specific legal authority for EPA to take this action is under FIFRA section 5.

List of Subjects

Environmental protection,
Experimental use permits.

Dated: July 25, 2005.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05-15603 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2005-0122; FRL-7726-7]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8715; e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2005-0122. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>.

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

II. EUP

EPA has issued the following EUPs:
 524–EUP–96. Amendment/Extension. Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. This EUP allows the use of 3.63 pounds of the insecticides *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (vector ZMIR39) in corn and *Bacillus thuringiensis* Cry1Ab delta-endotoxin and the genetic material necessary for its production (vector PV–ZMCT01) in corn on 4,683 acres of corn for breeding and observation, inbred seed increase production, line *per se*, hybrid yield and herbicide tolerance trials, insect efficacy trials, product characterization and performance trials, insect resistance management trials, nontarget organisms and benefit trials, seed treatment trials, swine growth and feed efficiency trials, dairy cattle feed efficiency trials, beef cattle growth and feed efficiency trials, and cattle grazing feed efficiency trials. The program is authorized only in the States of Alabama, California, Colorado, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin. The EUP is effective from February 18, 2005 to March 1, 2006, and allows associated activities such as collection of field data; harvesting and processing of seed after last planting. A tolerance has been established for residues of the active ingredient in or on corn.

No comments were submitted in response to the notice of receipt for this permit application, which was published in the **Federal Register** on

January 12, 2005 (70 FR 2160) (FRL–7688–8).

68467–EUP–7. Amendment/Extension. Mycogen Seeds, c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. This EUP allows the use of 2,734.85 grams Cry34Ab1 and 10.88 grams Cry35Ab1 of the insecticides Cry34/35Ab1 proteins and the genetic material necessary for their production (from the insert of plasmid PHP17662) in corn on 3,096 acres of corn for breeding and observation nursery, agronomic observation trials, glufosinate herbicide tolerance study, efficacy trial, and insect resistance management studies. The program is authorized only in the States of Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New York, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Texas, and Wisconsin. The EUP is effective from January 21, 2005 to April 30, 2006, and allows associated activities such as collection of field data; harvesting and processing of seed after last planting. A tolerance has been established for residues of the active ingredient in or on corn.

29964–EUP–5. Amendment/Extension. Pioneer Hi-Bred International, Inc., P.O. Box 552, Johnston, IA 50131–0552. This EUP allows the use of 1,813.6 grams Cry34Ab1 and 47.2 grams Cry35Ab1 of the insecticides Cry34/35Ab1 proteins and the genetic material necessary for their production (from the insert of plasmid PHP17662) in corn on 5,115 acres of corn for breeding and observation nursery, agronomic observation trials, herbicide tolerance study, efficacy trial, insect resistance management studies, non-target organism studies, regulatory studies, research seed production, and inbred seed increase. The program is authorized only in the States of Arkansas, California, Colorado, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Washington, and Wisconsin. The EUP is effective from January 25, 2005 to April 30, 2006, and allows associated activities such as collection of field data; harvesting and processing of seed after last planting. A tolerance has been established for residues of the active ingredient in or on corn.

One comment was submitted in response to the notice of receipt for these permit applications, which was published in the **Federal Register** on

March 10, 2004 (69 FR 11431) (FRL–7346–6). This comment was addressed in the notice of issuance relating to the first year of these permits which was published in the **Federal Register** of December 22, 2004 (69 FR 76732) (FRL–7688–7).

67979–EUP–3. Issuance. Syngenta Seeds, Inc., P.O. Box 12257, Research Triangle Park, NC 27709–2257. This EUP allows the use of 2.91 grams of the Cry1Ab *Bacillus thuringiensis* Cry1Ab protein and the genetic material necessary for its production (via elements of p2062) in corn on 294 acres of corn to evaluate the control of various lepidopteran insect pests. The program is authorized only in the States of Arizona, Arkansas, California, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Ohio, Puerto Rico, South Dakota, Texas, and Wisconsin. The EUP is effective from May 6, 2004 to August 15, 2005, and allows associated activities such as collection of field data; harvesting and processing of seed after last planting. A tolerance has been established for residues of the active ingredient in or on corn.

Fourteen comments were submitted in response to the notice of receipt for this permit application, which was published in the **Federal Register** on November 5, 2003 (68 FR 62586) (FRL–7325–9). Commenters included private citizens and regional non-governmental organizations. All commenters objected to an EUP issuance. Commenters expressed concern regarding human health; unapproved corn in the food supply; non-target organisms; genetic stability of the plant-incorporated protectant; invasive species; endangered species; *Bt* protein in soil; insect resistance management and the impact of this EUP on the use of foliar *Bt*; impacts on organic crops and farmers; identity preservation, the labeling of products and consumer choice in avoiding genetically engineered crop consumption; legal liability of the permittee, the need of informing nearby farmers of testing and the secrecy of test sites; and the need for post-approval monitoring.

The Agency understands the commenter’s concerns and recognizes that some individuals believe that genetically modified crops and food should be banned completely. Pursuant to its authority under the Federal Food, Drug, and Cosmetic Act (FFDCA), EPA conducted a comprehensive reassessment of the Cry1Ab protein and the genetic material necessary for their production in all crops, which is located

at http://www.epa.gov/pesticides/biopesticides/pips/bt_brad.htm. EPA has concluded that there is a reasonable certainty that no harm will result from dietary exposure to this protein as expressed in genetically modified corn. The Cry1Ab tested under this permit is covered by the tolerance exemption under 40 CFR 180.1173. No human health, environmental, or insect resistance management adverse effects are anticipated as a result of Cry1Ab expression in transgenic corn and the proposed testing which is of limited scope and duration.

The Agency recognizes the commenter's concerns regarding test plot location information and is currently considering this issue. EPA sponsored a workshop with broad public participation and input to identify best approaches to regulatory improvements pertaining to plant-incorporated protectant (PIP) EUPs. The workshop, titled Plant-Incorporated Protectant Experimental Use Permit: Process and Compliance, was held at the Crystal City Hilton in Arlington, Virginia on February 10 and 11, 2004. Proceedings can be found at <http://www.epa.gov/pesticides/biopesticides/pips/pip-eup-workshop.htm>.

Regarding comments pertaining to organic agriculture, the National Organic Program (NOP) prohibits use of genetically modified organisms in the production of organic crops. A farmer who wishes to produce organic crops, must follow the rules of the NOP which essentially means only organic inputs or approved synthetic inputs can be used. If an organic farmer purchased and grew *Bt* corn, the resulting crop could not be certified organic. However, if this farmer purchased approved corn varieties and followed the other requirements for organic products under NOP, the fact that some portion of the crop was pollinated by *Bt* corn from a crop planted outside the boundaries of an appropriately segregated organic crop would not adversely impact the farmer's ability to sell the crop as organic.

Under 7 CFR 205.202(c) of the NOP final rule, "any field or farm parcel from which harvested crops are intended to be sold, labeled or represented as "organic" must have distinct, defined boundaries and buffer zones to prevent the unintended application of a prohibited substance applied to adjoining land that is not under organic management." The supplementary information published with the NOP final rule discusses this issue:

"Drift has been a difficult issue for organic producers from the beginning. Organic operations have always had to worry about the potential for drift from neighboring

operations, particularly drift of synthetic chemical pesticides. As the number of organic farms increases, so does the potential for conflict between organic and nonorganic operations.

It has always been the responsibility of organic operations to manage potential contact of organic products with other substances not approved for use in organic production systems, whether from the nonorganic portion of a split operation or from neighboring farms. The organic system plan must outline steps that an organic operation will take to avoid this kind of unintentional contact.

When we are considering drift issues, it is particularly important to remember that organic standards are process based. Certifying agents attest to the ability of organic operations to follow a set of production standards and practices that meet the requirements of the Act and the regulations. This regulation prohibits the use of excluded methods in organic operations. The presence of a detectable residue of a product of excluded methods alone does not necessarily constitute a violation of this regulation. As long as an organic operation has not used excluded methods and takes reasonable steps to avoid contact with the products of excluded methods as detailed in their approved organic system plan, the unintentional presence of the products of excluded methods should not affect the status of an organic product or operation.

Issues of pollen drift are also not confined to the world of organic agriculture. For example, plant breeders and seed companies must ensure genetic identity of plant varieties by minimizing any cross-pollination that might result from pollen drift. Under research conditions, small-scale field tests of genetically engineered plants incorporate various degrees of biological containment to limit the possibility of gene flow to other sexually compatible plants. Federal regulatory agencies might impose specific planting requirements to limit pollen drift in certain situations. Farmers planting nonbiotechnology-derived varieties may face similar kinds of questions if cross-pollination by biotechnology-derived varieties alters the marketability of their crop. These discussions within the broader agricultural community may lead to new approaches to addressing these issues. They are, however, outside the scope of this regulation by definition" (65 FR 80556 December 21, 2000).

67979-EUP-4. Issuance. Syngenta Seeds, Inc., P.O. Box 12257, Research Triangle Park, NC 27709-2257. This EUP allows the use of 15.53 grams of the insecticide Modified Cry3A *Bacillus thuringiensis* protein and the genetic material necessary for its production (via elements of pZM26) in Event MIR604 corn (SYN-IR604-5) on 575 acres of corn for breeding and observation, efficacy field trials, agronomic observation, inbred and hybrid production, regulatory field trials (e.g. IRM and non-target insect field trials). The program is authorized only in the States of Colorado, Hawaii,

Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Ohio, Puerto Rico, South Dakota, Texas, and Wisconsin. The EUP is effective from March 23, 2005 to October 15, 2006, and allows associated activities such as collection of field data; harvesting and processing of seed after last planting. A tolerance has been established for residues of the active ingredient in or on corn.

Three comments were submitted in response to the notice of receipt for this permit application, which was published in the **Federal Register** on September 1, 2004 (69 FR 53440) (FRL-7370-7). Two comments were received from private citizens who objected to an EUP issuance. The commenters were concerned with pollen flow and biodiversity, organic farming, neighbors to the test plots, and potential impacts on the sale of commodities in foreign agricultural markets.

The Agency understands the commenter's concerns and recognizes that some individuals believe that genetically modified crops and food should be banned completely. Pursuant to its authority under the FFDCA, EPA conducted a comprehensive reassessment of the modified Cry3A protein and the genetic material necessary for its production in corn. EPA has concluded that there is a reasonable certainty that no harm will result from dietary exposure to this protein as expressed in genetically modified corn. The modified Cry3A tested under this permit is covered by the tolerance exemption under 40 CFR 174.456. No human health, environmental, or insect resistance management adverse effects are anticipated as a result of modified Cry3A expression in transgenic corn and the proposed testing which is of limited scope and duration.

Regarding comments pertaining to organic agriculture, as discussed in EUP 67979-EUP-3, the NOP prohibits use of genetically modified organisms in the production of organic crops. A farmer who wishes to produce organic crops, must follow the rules of the NOP which essentially means only organic inputs or approved synthetic inputs can be used. If an organic farmer purchased and grew *Bt* corn, the resulting crop could not be certified organic. However, if this farmer purchased approved corn varieties and followed the other requirements for organic products under the NOP, the fact that some portion of the crop was pollinated by *Bt* corn from a crop planted outside the boundaries of an appropriately segregated organic crop would not adversely impact the farmer's

ability to sell the crop as organic. The United States Department of Agriculture (USDA) discussed the issue of drift onto organic fields in the **Federal Register** of December 21, 2000 (65 FR 80556), which is quoted in EUP 67979–EUP–3 in response to a comment on application. USDA's discussion of this issue is also relevant and responsive to the related comment on application 67979–EUP–4.

The third comment was submitted by a grower group in support of issuing the EUP. The grower group cited corn farmers' need for new products and technology, IRM benefits, reduction in chemical inputs, environmental benefits, and improved farmer profitability. They also cited the need for market competition for *Bt* corn rootworm products to provide more choice and lower costs.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection,
Experimental use permits.

Dated: July 26, 2005.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–15602 Filed 8–9–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0041; FRL–7730–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 21, 2005 to July 22, 2005, consists of the PMNs

pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2004–0041 and the specific PMN number or TME number, must be received on or before September 9, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0041. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA

Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide

a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT-2004-0041. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT-2004-0041 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT-20040041 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside

of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish

periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 21, 2005 to July 22, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 70 PREMANUFACTURE NOTICES RECEIVED FROM: 06/21/05 TO 07/22/05

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-05-0626	06/21/05	09/18/05	Arkema Inc.	(S) Chemical intermediate for sulfuric acid production	(S) Thiols, C ₁₁₋₁₃ -tertiary, C ₁₂ -rich, manufacture. of, C ₁₂ -rich C ₁₁₋₁₃ alkene-based, distn. residues, high-boiling fraction
P-05-0627	06/21/05	09/18/05	Arkema Inc.	(S) Chemical intermediate for sulfuric acid production	(S) Thiols, C ₁₁₋₁₃ -tertiary, C ₁₂ -rich, manufacture. of, propylene tetramer-based, distn. residues, high-boiling fraction
P-05-0628	06/21/05	09/18/05	Arkema Inc.	(S) Chemical intermediate for sulfuric acid production	(S) Thiols, C ₁₁₋₁₃ -tertiary, C ₁₂ -rich, manufacture of, C ₁₂ -rich C ₁₁₋₁₃ alkenes-based, distn. residues, middle-boiling fraction
P-05-0629	06/21/05	09/18/05	Arkema Inc.	(S) Chemical intermediate for sulfuric acid production	(S) Thiols, C ₁₁₋₁₃ -tertiary, C ₁₂ -rich, manufacture. of, propylene tetramer-based, distn. residues, middle-boiling fraction
P-05-0630	06/21/05	09/18/05	Arkema Inc.	(S) Chemical intermediate for sulfuric acid production	(S) Thiols, C ₁₁₋₁₃ -tertiary, C ₁₂ -rich, manufacture. of, C ₁₂ -rich C ₁₁₋₁₃ alkenes-based, distn. residues, low-boiling fraction
P-05-0631	06/21/05	09/18/05	Arkema Inc.	(S) Chemical intermediate for sulfuric acid production	(S) Thiols, C ₁₁₋₁₃ -tertiary, C ₁₂ -rich, manufacture of, propylene tetramer-based, distn. residues, low-boiling fraction
P-05-0632	06/22/05	09/19/05	The Dow Chemical Company	(S) Flame retardant for epoxy resins to be used for printed circuit boards	(G) Cresole novolac, methyl-phosphinate substituted
P-05-0633	06/22/05	09/19/05	BASF Corporation	(S) Component of multipurpose additive in gasoline	(G) Alkylsubstituted polyalkene glycol monoalkylether
P-05-0634	06/23/05	09/20/05	CBI	(G) Toner additive	(G) Metal silicate
P-05-0635	06/23/05	09/20/05	CBI	(G) A component used in an industrial coating for plastic	(S) Silica, [[dimethoxy[3-[[[[[1,3,3-trimethyl-5-[[[3-[(1-oxo-2-propenyl)oxy]2,2bis[[[(oxopropenyloxy)methyl]propoxy]carbonyl]amino]cyclohexyl]methyl]amino]carbonyl]thio]propyl]silyloxy]-modified
P-05-0636	06/27/05	09/24/05	CBI	(S) Acrylic-modified alkyd resin is used as a coating component for automotive applications	(S) Fatty acids, C ₁₆₋₁₈ , polymers with bu acrylate, 2-hydroxyethyl methacrylate, phthalic anhydride, styrene, 3,5,5-trimethylhexanoic acid and trimethylolpropane
P-05-0637	06/27/05	09/24/05	CBI	(S) Alkyd resin solution is used as a coating component for finishing of automobiles	(S) Fatty acids, C ₈₋₁₈ and C ₁₈ -unsaturated, polymers with ethylene glycol, glycerol, maleic anhydride and phthalic anhydride
P-05-0638	06/27/05	09/24/05	CBI	(S) Alkyd resin solution is used as a component for automotive applications	(S) Castor oil, dehydrated, polymer with benzoic acid, phthalic anhydride and trimethylolpropane

I. 70 PREMANUFACTURE NOTICES RECEIVED FROM: 06/21/05 TO 07/22/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-05-0639	06/27/05	09/24/05	CBI	(S) Solution acrylic resin is used as a component in an industrial coating	(S) 2-propenoic acid, 2-methyl-, polymer with butyl 2-methyl-2-propenoate, ethenylbenzene, methyl 2-methyl-2-propenoate, 2-methylpropyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), tert-butyl benzenecarboxperoxyate-initiated
P-05-0640	06/24/05	09/21/05	CBI	(G) Pigment dispersant	(G) Polyether amido acid polyamine derivative
P-05-0641	06/27/05	09/24/05	CBI	(G) Cosmetic applications	(G) Copolymer of alkyl methacrylates, methacrylic acid, alkyl acrylates, dimethyl aminomethyl methacrylate and polyethoxy modified acrylic and methacrylic acid
P-05-0642	06/28/05	09/25/05	CBI	(G) Metal working fluid additive	(G) Amides, tall-oil fatty, substituted, ethoxylated
P-05-0643	06/29/05	09/26/05	CBI	(G) Water treating chemical	(G) Phosphonomethylated amine
P-05-0644	06/30/05	09/27/05	CIBA Specialty Chemicals Corporation	(S) High molecular weight dispersant for pigment deflocculation in coatings and inks	(G) 2-propenoic acid ester polymer, compound with substituted aromatic derivative
P-05-0645	06/30/05	09/27/05	CBI	(S) Polymer viscosity depressant for use in garment industry	(G) Diamide additive
P-05-0646	07/05/05	10/02/05	Seppic, Inc.	(S) Surfactant in industrial soaps; surfactants in industrial degreasers; emulsifiers in soaps, degreasers, metalworking fluids; lubricant in metalworking fluids	(G) Rape oil fatty acids
P-05-0647	07/06/05	10/03/05	The Dow Chemical Company	(G) Stabilizer	(G) Substituted oxidized piperidyl derivative
P-05-0648	07/06/05	10/03/05	Dover Chemical Corporation	(S) Stabilizer component for flexible pvc	(S) Phosphorus acid, mixed C ₁₀ -rich C ₉₋₁₁ -isoalkyl and 4-(1-methyl-1-phenylethyl)phenyl triesters
P-05-0649	07/06/05	10/03/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive	(G) Benzene, 1,1'-methylenebis[isocyanato-, polymer with 2-propenoic acid, 2-hydroxyethyl ester and lexorez 1180-35 and lexorez 1640-35
P-05-0650	07/06/05	10/03/05	CBI	(S) Sealant formulations	(G) Silylated polyalkyleneoxide
P-05-0651	07/07/05	10/04/05	Cognis Corporation	(G) Polyalkylene glycol polymer, lubricant for refrigeration compressors (contained use)	(S) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-methyl-.omega.-[(tetrahydro-2-furanyl)methoxy]-
P-05-0652	07/08/05	10/05/05	CBI	(S) A component in ultraviolet-, visible light and electron beam curable formulations	(G) Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-, polymers with hydroxy-terminated unsaturated hydrocarbon chain, 2-hydroxyethyl acrylate-blocked
P-05-0653	07/08/05	10/05/05	CBI	(G) Printing and packaging	(G) Acrylic copolymer
P-05-0654	07/11/05	10/08/05	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier precursor	(G) Amines, polyethylenepoly-, reaction products with 5 (or 6) -carboxy-4-hexyl-2-cyclohexene-1-octanoic acid, substituted ethyleneamines and pentaethylenhexamine, hydrochlorides
P-05-0655	07/11/05	10/08/05	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier precursor	(G) Amines, polyethylenepoly-, reaction products with 5 (or 6) -carboxy-4-hexyl-2-cyclohexene-1-octanoic acid, substituted polyamines and pentaethylenhexamine, hydrochlorides
P-05-0656	07/11/05	10/08/05	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier precursor	(G) Amines, polyethylenepoly-, reaction products with 5 (or 6) -carboxy-4-hexyl-2-cyclohexene-1-octanoic acid, substituted ethyleneamines and pentaethylenhexamine

I. 70 PREMANUFACTURE NOTICES RECEIVED FROM: 06/21/05 TO 07/22/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-05-0657	07/11/05	10/08/05	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier precursor	(G) Amines, polyethylenepoly-, reaction products with 5 (or 6) -carboxy-4-hexyl-2-cyclohexene-1-octanoic acid, substituted polyamines and pentaethylenehexamine
P-05-0658	07/11/05	10/08/05	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Hydrocarbon resin for lithographic inks	(G) Rosin modified aromatic acid, polymer with phenols, petroleum naphtha hydrocarbons and petroleum distillates
P-05-0659	07/11/05	10/08/05	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Hydrocarbon resin for lithographic inks	(G) Rosin modified aromatic acid, polymer with phenols, petroleum naphtha and petroleum distillates
P-05-0660	07/11/05	10/08/05	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Hydrocarbon resin for lithographic inks	(G) Rosin modified aromatic acid, polymer with phenols, aromatic hydrocarbons and petroleum distillates
P-05-0661	07/11/05	10/08/05	CBI	(G) Lubricating grease thickening system	(G) Bis-n-octyl mdi diureide
P-05-0662	07/11/05	10/08/05	CBI	(G) Lubricating grease thickening system	(G) N-octyl,n-octadecyl mdi diureide
P-05-0663	07/11/05	10/08/05	CBI	(G) Lubricating grease thickening system	(G) Bis-n-octadecyl mdi diureide
P-05-0664	07/12/05	10/09/05	CBI	(G) Viscosity enhancer for water-soluble polymers	(G) Halogenated n,n,n-trialkylalkylamminium, n-aminocarbonylalkenyl
P-05-0665	07/07/05	10/04/05	CBI	(G) Catalyst	(S) Phosphoric acid, bis(2-ethylhexyl) ester, neodymium(3+) salt
P-05-0666	07/13/05	10/10/05	CBI	(G) Adhesive / sealant component	(G) Polymer of substituted carbomonocyclic isocyanates and polyalkylene ether polyols
P-05-0667	07/14/05	10/11/05	Bedoukian Research, Inc.	(S) Fragrance uses as per the Federal Food, Drug, and Cosmetic Act FFDC (FFDCA); fragrance uses; scented papers, detergents, candles, etc	(S) Phenol, 2-ethoxy-4-(4,4,6-trimethyl-1,3-dioxan-2-yl)-
P-05-0668	07/14/05	10/11/05	CBI	(G) Additive, open, non-dispersive use	(G) Maleic anhydride, adipic acid, propylene glycol, polyglycol copolymer
P-05-0669	07/14/05	10/11/05	CBI	(G) Additive, open, non-dispersive use	(G) Maleic anhydride, adipic acid, propylene glycol, polyglycol copolymer
P-05-0670	07/14/05	10/11/05	CBI	(G) Additive, open, non-dispersive use	(G) Maleic anhydride, adipic acid, propylene glycol, polyglycol copolymer
P-05-0671	07/15/05	10/12/05	DIC International (USA) LLC	(G) Additive	(G) Alkyl imide condensate of chloro triaryl diamine dione
P-05-0672	07/14/05	10/11/05	CBI	(G) Consumer use - highly dispersive use as an ingredient in personal care products; industrial use - open non-dispersive use for the manufacture of products containing pmn substance; commercial use - open dispersive use when products used by professionals on clients	(S) Cyclohexadecanone, .beta.(or 9)-methyl-, didehydro derivative
P-05-0673	07/14/05	10/11/05	CBI	(G) Additive, open, non-dispersive use	(G) Siloxane coated silica nanoparticles
P-05-0674	07/13/05	10/10/05	CBI	(S) Component of aqueous tackifier dispersion for pressure sensitive labels	(G) Polymerized rosin amine salt
P-05-0675	07/15/05	10/12/05	CBI	(G) Component of coating for decorative applications	(G) Aliphatic acrylated, aliphatic amine
P-05-0676	07/15/05	10/12/05	CBI	(G) Component of coating for decorative applications	(G) Aliphatic acrylated, aliphatic amine
P-05-0677	07/15/05	10/12/05	BASF Corporation	(G) Additive	(G) Dialkyl carbonate epoxy polymer with substituted triol
P-05-0678	07/15/05	10/12/05	CBI	(G) Component in the manufacture of paper	(G) Modified polyacrylamide
P-05-0679	07/14/05	10/11/05	CBI	(G) Additive, open, non-disperive use	(G) Alkoxy modified polydimethylsiloxane

I. 70 PREMANUFACTURE NOTICES RECEIVED FROM: 06/21/05 TO 07/22/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-05-0680	07/14/05	10/11/05	CBI	(G) Additive, open, non-disperive use	(G) Alkoxy modified polydimethylsiloxane
P-05-0681	07/18/05	10/15/05	CBI	(G) Processing aid	(G) Polyoxyethylene alkyl phosphoether salt
P-05-0682	07/18/05	10/15/05	CIBA Specialty Chemicals Corpation	(S) A pretreatment for ink jet printing of nylon fabrics	(G) Substituted alkyl sulfonic acid amino oxy homopolymer potassium salt
P-05-0683	07/20/05	10/17/05	CBI	(S) Component of inks	(G) Phenolic modified rosin resin
P-05-0684	07/20/05	10/17/05	CBI	(S) Component of inks	(G) Phenolic modified rosin resin
P-05-0685	07/20/05	10/17/05	CBI	(S) Component of inks	(G) Phenolic modified rosin resin
P-05-0686	07/18/05	10/15/05	CBI	(G) Textile colorant	(G) Substituted sulfonated phenyl azo naphthalene
P-05-0687	07/20/05	10/17/05	CBI	(G) Additive, open, non-dispersive use	(G) Siloxane coated alumina nanoparticles
P-05-0688	07/20/05	10/17/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) .beta.-ketoester, polymer with (chloromethyl)oxirane polymer with 4,4'-(1-methylethylidene)bis[phenol] 2-propenoate, 1,6-hexanediyl di-2-propenoate, .alpha.-hydro-.omega.-[(1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl) ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol (3:1), and 2-phenoxyethyl 2-propenoate, reaction products with alkylamine
P-05-0689	07/20/05	10/17/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) .beta.-ketoester, polymer with (chloromethyl)oxirane polymer with 4,4'-(1-methylethylidene)bis[phenol] 2-propenoate, 1,6-hexanediyl di-2-propenoate, .alpha.-hydro-.omega.-[(1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl) ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol (3:1), and 2-phenoxyethyl 2-propenoate, reaction products with alkanolamine
P-05-0690	07/20/05	10/17/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) 2-propenoic acid, 1,6 hexanediyl ester, polymer with (chloromethyl)oxirane polymer with 4,4'-(1-methylethylidene)bis[phenol] 2-propenoate, .alpha.-hydro-.omega.-[(1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl) ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol (3:1), .beta.-diketone and 2-phenoxyethyl 2-propenoate, reaction products with alkylamine
P-05-0691	07/20/05	10/17/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) 2-propenoic acid, 1,6 hexanediyl ester, polymer with (chloromethyl)oxirane polymer with 4,4'-(1-methylethylidene)bis[phenol] 2-propenoate, .alpha.-hydro-.omega.-[(1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl) ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol (3:1), .beta.-diketone and 2-phenoxyethyl 2-propenoate, reaction products with alkanolamine

I. 70 PREMANUFACTURE NOTICES RECEIVED FROM: 06/21/05 TO 07/22/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-05-0692	07/20/05	10/17/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) .beta.-ketoester, polymer with (chloromethyl)oxirane polymer with 4,4'-(1-methylethylidene)bis[phenol] 2-propenoate, 1,6-hexanediyl di-2-propenoate, .alpha.-hydro.-omega.-[(1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl) ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol (3:1), .beta.-diketone and 2-phenoxyethyl 2-propenoate, reaction products with alkylamine
P-05-0693	07/20/05	10/17/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) .beta.-ketoester, polymer with (chloromethyl)oxirane polymer with 4,4'-(1-methylethylidene)bis[phenol] 2-propenoate, 1,6-hexanediyl di-2-propenoate, .alpha.-hydro.-omega.-[(1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl) ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol (3:1), .beta.-diketone and 2-phenoxyethyl 2-propenoate, reaction products with alkanolamine
P-05-0694	07/20/05	10/17/05	CBI	(G) Antistatic agent for resin (polymer additives)	(G) Polyalkylene glycol aryl ether, reaction products with formaldehyde
P-05-0695	07/21/05	10/18/05	CBI	(G) Raw material used in the manufacture of photographic products	(G) Copolymer of acrylonitrile, methyl methacrylate and monosubstituted acrylamide
P-05-0696	07/22/05	10/19/05	Tremco Inc.	(G) Waterproof sealant and filler for construction use in industrial and commercial applications	(G) Polyether polyurethane derivative polymer
P-05-0697	07/22/05	10/19/05	Tremco Inc.	(G) Waterproof sealant and filler for construction use in industrial and commercial applications	(G) Polyether polyurethane derivative polymer
P-05-0698	07/22/05	10/19/05	Tremco Inc.	(G) Waterproof sealant and filler for construction use in industrial and commercial applications	(G) Polyether polyurethane derivative polymer
P-05-0699	07/22/05	10/19/05	Tremco Inc.	(G) Waterproof sealant and filler for construction use in industrial and commercial applications	(G) Polyether polyurethane derivative polymer

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 44 NOTICES OF COMMENCEMENT FROM: 06/21/05 TO 07/22/05

Case No.	Received Date	Commencement Notice End Date	Chemical
P-01-0906	06/28/05	06/18/05	(G) Saturated and unsaturated fatty acids, esters with a polyalcohol
P-02-0880	06/21/05	06/15/05	(G) Castor oil, mixed esters with carboxylic acid anhydrides
P-02-0934	07/13/05	06/17/05	(G) Magnesium sulfonate
P-04-0046	07/08/05	05/03/05	(G) Polyether carboxylate
P-04-0136	06/23/05	10/20/04	(G) Polyetherimide polymer
P-04-0155	07/07/05	06/30/05	(S) Glycine, n,n'-(1r,2r)-1,2-cyclohexanediylbis[n-(carboxymethyl)-, rel-
P-04-0512	07/01/05	05/19/05	(G) Polyurethane resin
P-04-0523	07/18/05	06/14/05	(G) Condensation polymer of anhydride, polyol and terminating agent
P-04-0665	07/06/05	06/16/05	(G) Water dispersible polyurethane polymer
P-04-0666	07/06/05	05/28/05	(G) Polyurethane prepolymer
P-04-0679	06/21/05	06/08/05	(S) 1,3-isobenzofurandione, polymer with 1,3-diisocyanatomethylbenzene and 2,2'-oxybis[ethanol], 2-hydroxyethyl acrylate-blocked
P-04-0819	07/18/05	06/28/05	(G) Oil / phenolic modified resin
P-04-0881	06/21/05	06/15/05	(G) Quaternary amino modified silicone-polyether copolymer
P-04-0946	07/13/05	06/23/05	(G) Multifunctional acrylate oligomer resin
P-05-0032	07/07/05	06/15/05	(S) Silicic acid (h4sio4), tris(1,1-dimethylpropyl) ester
P-05-0102	07/13/05	07/01/05	(G) Polyether polyurethane
P-05-0150	06/22/05	06/16/05	(S) Siloxanes and silicones, di-me, lauryl me
P-05-0210	07/05/05	06/07/05	(G) Vegetable oil, modified products

II. 44 NOTICES OF COMMENCEMENT FROM: 06/21/05 TO 07/22/05—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P-05-0211 P-05-0218	07/05/05 07/18/05	06/07/05 07/07/05	(G) Hydrogenated modified vegetable oil (S) Fatty acids, coco, polymers with adipic acid, pentaerythritol, succinic anhydride monopolyisobutylene derivs. and trimethylolpropane
P-05-0241 P-05-0250 P-05-0288 P-05-0289 P-05-0302 P-05-0316 P-05-0327 P-05-0340 P-05-0341 P-05-0343	06/24/05 07/13/05 07/12/05 07/12/05 07/20/05 07/13/05 07/12/05 07/06/05 07/06/05 06/21/05	06/22/05 06/21/05 06/20/05 06/24/05 07/07/05 06/30/05 06/24/05 06/14/05 06/30/05 06/06/05	(G) Glucomannan (G) Allyl compounds, copolymers with unsaturated acids (G) Tall oil modified aromatic acrylic polymer (G) Tall oil modified aromatic acrylic polymer, ammonium salt (S) 1,3-dioxane-2-ethanol, 5-ethyl-5-(hydroxymethyl)-.beta.,.beta.-dimethyl- (S) Siloxanes and silicones, di-me, 3-hydroxypropyl me, me octyl, ethoxylated (G) Amine salt of styrene acrylic polymer (G) Blocked polyurethane (G) Blocked polyurethane (G) Siloxanes and silicones, di-me, alkoxy aryl, polymers with aryl silsesquioxanes, alkoxy-terminated, polymers with epichlorohydrin and 4,4'-(1-alkylidene) bis [cycloalkanol]
P-05-0346 P-05-0361	06/22/05 07/13/05	06/07/05 06/24/05	(G) Polyester resin (G) Siloxanes and silicones, di-me, 3-(2-hydroxyalkoxy)-1-[(2-hydroxyalkoxy)alkyl]-1-alkenyl me
P-05-0375 P-05-0376 P-05-0379 P-05-0380	06/22/05 06/22/05 06/21/05 07/05/05	06/13/05 06/13/05 06/10/05 06/09/05	(G) Sma ester potassium salt (G) Sma ester sodium salt (G) Isocyanate functional polyester urethane polymer (G) Benzene, 1,1'-methylenebis[4-isocyanato-, polymer with benzenedicarboxylic acid, butyl dialkyl ester, poly[oxy(methyl-1,2-ethanediy)], .alpha.-hydro--hydroxy-, oxirane, alkyl-, polymer with oxirane, ether with propanepolyol and sartomer's hbh p-3000 and lexorez 1180
P-05-0424 P-05-0430 P-05-0457	07/06/05 06/29/05 07/11/05	06/14/05 06/22/05 06/29/05	(G) Nh2-terminated polyurethane prepolymer (G) Substituted benzotriazole (G) Styrene, cycloaliphatic acrylate, alkyl acrylates, hydroxyalkyl methacrylate copolymer
P-05-0461 P-05-0475 P-98-0448	07/18/05 07/11/05 07/11/05	07/07/05 07/06/05 06/17/05	(G) Substituted copper naphthalene sulfonic acid hydroxyethyl sulfono azo salt (G) Acetoacetate functional acrylic polyol (S) 2-propenoic acid, 2-methyl-, polymer with butyl 2-methyl-2-propenoate, butyl 2-propenoate, ethenylbenzene and 2-hydroxyethyl 2-propenoate, tert-bu peroxide-initiated
P-98-1068 P-99-1396	07/06/05 07/13/05	06/30/05 06/29/05	(G) Polycaprolactone polyols (G) Polyester polyether isocyanate polymer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices

Dated: August 2, 2005.

Darryl S. Ballard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05-15841 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION
Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

July 25, 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 September 9, 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, Washington, SW., DC 20554 or via the Internet to Judith-B.Herman@fcc.gov. If you would like to obtain or view a copy of this new or revised information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pr>.

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.: 3060-0454.

Title: Regulation of International Accounting Rates.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5 respondents; 41 responses.

Estimated Time Per Response: 1 hour per requirement.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 205 hours.

Total Annual Cost: \$2,200.

Privacy Act Impact Assessment: Yes.

Needs and Uses: The Commission is revising this collection by mandating electronic filing. This will eliminate paper filings and requires applicants to file electronically all applications and other filings related to international telecommunications services via the user-friendly, Internet-based International Bureau Filing System (IBFS).

Additionally, the Commission plans to develop two new accounting rate change applications that impact this information collection. We do not know the specific time frame for the development of each application.

However, the estimated completion date for the applications is December 31, 2008. The development of the applications is contingent upon the availability of budget funds, human resources and other factors. The annual burden hours and costs are unknown at this time because the forms have not been developed by the Commission yet.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-15429 Filed 8-9-05; 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

July 26, 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 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 October 11, 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: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to: PRA@fcc.gov. To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1-C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to PRA@fcc.gov or contact Judith B. Herman at 202-418-0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0704.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-6.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 519.

Estimated Time Per Response: .5-120 hours.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 84,337 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission has eliminated the tariff cancellation

requirement; therefore, we are decreasing the reported burden hours by 74,598 hours and \$435,000 in total annual costs. The OMB is asked to approve this revised collection, when we submit it in 60 days, the removal of the burden hours for that requirement as part of this collection.

These collections of information are necessary to provide consumers ready access to information concerning the rates, terms, and conditions governing the provision of interstate, domestic and interexchange services offered by nondominant interexchange carriers (IXCs) in a detariffed and increasingly competitive environment. In the Second Order on Reconsideration issued in CC Docket No. 96-61, (March 1999), the Commission reinstated the public disclosure requirement and also required that nondominant interexchange carriers that have Internet Web sites to pass this information online in a timely and easily accessible manner. These carriers are also required to file annual certifications pursuant to section 254(g); maintain prices and service information; and are forborne from filing certain tariffs. The tariff cancellation requirement has been completed so the burden for that part of this collection has been removed.

OMB Control No.: 3060-0760.

Title: Access Charge Reform, CC Docket No. 96-262.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 17.

Estimated Time Per Response: 3-1,575 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 55,462 hours.

Total Annual Cost: \$12,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted to the OMB after the 60 day comment period because we have revised it to eliminate the cost study and third party disclosure requirements that are no longer needed. The Commission also revises the remaining burden hours and respondent estimates to provide more current and accurate data. Price cap local exchange carriers (LECs) must demonstrate that competitors have made irreversible, sunk investments in the facilities needed to provide services at issue.

In the Fifth Report and Order, CC Docket No. 96-262, (August 1999), the Commission modified the rules that govern the provision of interstate access services by those price cap LECs subject to price regulation to advance the pro-

competitive, deregulatory national policies embodied in the Telecommunications Act of 1996. The pricing flexibility framework adopted in that Order was designed to grant greater flexibility to price cap LECs as competition develops, while ensuring that: (1) Price cap LECs do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) price cap LECs do not increase rates to unreasonable levels for customers that lack competitive alternatives.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-15430 Filed 8-9-05; 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

July 28, 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 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 October 11, 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: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to: *PRA@fcc.gov*. To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1-C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202-418-0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-1085.

Title: Collection of Location Information, Provision of Notice and Reporting on Interconnected Voice Over Internet Protocol (VoIP) E911 Compliance.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 100 respondents; 14,238,254 responses.

Estimated Time Per Response: .09-16 hours.

Frequency of Response: On occasion and one-time reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 435,894 hours.

Total Annual Cost: \$43,162,335.

Privacy Act Impact Assessment: N/A.

Needs and Uses: On June 3, 2005, the Commission released a First Report and Order in WC Docket No. 04-36 and a Notice of Proposed Rulemaking in WC Docket No. 05-196, *FCC 05-116 (Order)* in which the Commission established rules requiring providers of interconnected VoIP—meaning VoIP service that allows a user generally to receive calls originating from and to terminate calls to the public switched telephone network (PSTN)—to provide enhanced 911 (E911) capabilities to their customers as a standard feature of service. See *IP-Enabled Services, WC Docket No. 04-36, E911 Requirements for IP-Enabled Service Providers, WC Docket No. 05-196, FCC 05-116* (rel. June 3, 2005). The Order requires collection of information in six requirements:

A. Location Registration. The Order requires providers of interconnected VoIP services to obtain location information from their customers for use

in the routing of 911 calls and the provision of location information to emergency answering points.

B. Provision of Automatic Location Information (ALI). In order to meet the obligations set forth in the Order, interconnected VoIP service providers will place the location information for their customers into, or make that information available through, specialized databases maintained by local exchange carriers (and, in at least one case, a state government) across the country.

C. Customer Notification. In order to ensure that consumers of interconnected VoIP services are aware of their interconnected VoIP service's actual E911 capabilities, the Order requires that all providers of interconnected VoIP service specifically advise every subscriber, both new and existing, prominently and in plain language, the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service.

D. Record of Customer Notification. The Order requires VoIP providers to obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood this advisory.

E. User Notification. In addition, in order to ensure to the extent possible that the advisory is available to all potential users of an interconnected VoIP service, interconnected VoIP service providers must distribute to all subscribers, both new and existing, warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on and/or near the customer premises equipment used in conjunction with the interconnected VoIP service.

F. Compliance Letter. The Order requires all interconnected VoIP providers to submit a letter to the Commission detailing their compliance with the rules set forth in the Order no later than 120 days after the effective date of the Order. This letter will enable the Commission to ensure that interconnected VoIP providers have achieved E911 compliance by the established deadline.

The Commission sought "emergency" OMB approval for this information collection on June 14, 2005. OMB approval was obtained on June 28, 2005. The Commission now is requesting an extension for this information (no changes) in order to obtain the full three year clearance from OMB.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-15433 Filed 8-9-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

July 28, 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 September 9, 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. If you would like to obtain or view a copy of this new or revised information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pr>.

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.: 3060-1081.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96-45.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 22.

Estimated Time Per Response: .25-3 hours.

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Total Annual Burden: 242 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission adopted additional mandatory reporting requirements for this information collection in CC Docket No. 96-45, CC 05-46. These requirements will ensure that eligible telecommunications carriers (ETCs) continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes. Specifically, each ETC must submit, on an annual basis the following information: (1) Progress reports on the ETC's five-year service quality improvement plan; (2) detailed information on any outage lasting at least 30 minutes; (3) the number of unfulfilled requests for service from potential customers within its service areas; (4) the number of complaints per 1,000 handsets or lines; (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules; (6) certification that the ETC is able to function in emergency situations; (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-15434 Filed 8-9-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 04-144; DA 05-2000]

Piscataway Board of Education and King's Temple Ministries, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document modified the Hearing Designation Order (HDO) previously issued in this docket, regarding the application of Piscataway Board of Education (PBE) for renewal of license of WVPH(FM), Piscataway, New Jersey, and the mutually exclusive application of King's Temple Ministries, Inc. (KTM) for authority to construct a new noncommercial educational (NCE) FM station on Channel 212 in Plainfield, New Jersey. Specifically, the designated issue was expanded to include a determination as to whether a time sharing arrangement between the two applicants would best serve the public interest and, if so, to determine a schedule for such time sharing.

ADDRESSES: Please file documents with the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 3-B443, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James Shook, Special Counsel, Investigations and Hearings Division, Enforcement Bureau at (202) 418-1448; or Nina Shafran, Deputy Chief, Audio Division, Media Bureau at (202) 418-2781.

SUPPLEMENTARY INFORMATION: This is a summary of the Order, DA 05-2000, adopted and released by the Commission's Media Bureau on July 13, 2005. The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text 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, <http://www.bcpiweb.com>, 1-800-378-3160. Alternative formats (braille, large print, electronic files, audio format) are available to persons with disabilities by sending an e-mail to fcc504@fcc.gov, or by calling the Commission's Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (tty).

Synopsis of the Order

1. PBE petitioned for reconsideration of the HDO issued April 9, 2004 (see DA 04-957, 69 FR 23204, April 28, 2004) which had designated for hearing PBE's renewal application regarding NCE station WVPH(FM), Piscataway, NJ, and a competing application filed by KTM for a new NCE station to serve Plainfield, NJ. In the HDO, the Commission's Media Bureau found that no qualifications issues arose regarding the renewal applicant or new station applicant and that conditional grant of both applications would serve the public interest, convenience and necessity. Pursuant to 47 CFR 73.561(b)(2) as construed by the staff, the matter was designated for an expedited hearing limited solely to the issue of sharing time.

2. In the Order, the Media Bureau dismissed PBE's petition for reconsideration as unauthorized pursuant to 47 CFR 1.106(a)(1).

3. Also in the Order, in light of certain Commission-level decisions discussed therein, the Media Bureau on its own motion vacated its prior conditional grants of PBE's renewal application and KTM's new station application, returned both applications to pending status, and modified the issue previously specified to include the issue of whether granting both PBE's and KTM's applications would serve the public interest, convenience, and necessity better than would operation restricted to PBE. If the ALJ determines that a time sharing arrangement would result in more effective use of the specified channel, he shall also determine the terms and conditions of a time sharing arrangement if the parties do not, either before commencement of the hearing or during the hearing, negotiate a settlement on their own.

4. Pursuant to 47 CFR 1.221(b), the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send copies of the Order, by certified mail, return receipt requested, to the parties through counsel. PBE and KTM, pursuant to 47 CFR 1.221(c), have already filed their respective written appearances stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. PBE and KTM, pursuant to 47 CFR 73.3594, shall give notice of the hearing within the time and in the manner prescribed in 47 CFR 73.3594, and shall advise the Commission of the publication of such notice as required by 47 CFR 73.3594(g).

Federal Communications Commission.

Peter H. Doyle,

Chief, Audio Division, Media Bureau.

[FR Doc. 05-15432 Filed 8-9-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 05-2230]

Seventh Meeting of the Advisory Committee for the 2007 World Radiocommunication Conference (WRC-07 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the seventh meeting of the WRC-07 Advisory Committee will be held on September 14, 2005, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2007 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and draft proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: September 14, 2005; 11 a.m.-12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW-C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytbat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418-7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC-07 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2007 World Radiocommunication Conference (WRC-07).

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the seventh meeting of the WRC-07 Advisory Committee. The WRC-07 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the seventh meeting is as follows:

Agenda

Seventh Meeting of the WRC-07 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW-C305, Washington, DC 20554.

- September 14, 2005; 11 a.m.-12 noon.
1. Opening Remarks.
 2. Approval of Agenda.
 3. Approval of the Minutes of the Sixth Meeting.
 4. Status of Preliminary Views and Draft Proposals.
 5. NTIA Draft Preliminary Views and Proposals.
 6. Informal Working Group Reports and Documents relating to:
 - a. Consensus Views and Issues Papers.
 - b. Draft Proposals.
 7. Future Meetings.
 8. Other Business.

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 05-15527 Filed 8-9-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained

from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Millennium Bankshares Corporation*, Reston, Virginia; to acquire 100 percent of the voting shares of Albemarle First Bank, Charlottesville, Virginia, and MB Interim Bank, Charlottesville, Virginia.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Peak Banks of Colorado, Inc.*, Nederland, Colorado; to acquire 100 percent of the voting shares of Clear Creek Bank Corp., and thereby indirectly acquire voting shares of First State Bank, both of Idaho Springs, Colorado.

Board of Governors of the Federal Reserve System, August 4, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-15772 Filed 8-9-05; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 29-30, 2005

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 29-30, 2005.¹

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 3¼ percent.

The vote encompassed approval of the paragraph below for inclusion in the

¹ Copies of the Minutes of the Federal Open Market Committee Meeting on June 29-30, 2005, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

statement to be released shortly after the meeting:

The Committee perceives that, with appropriate monetary policy action, the upside and downside risks to the attainment of both sustainable growth and price stability should be kept roughly equal. With underlying inflation expected to be contained, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.

By order of the Federal Open Market Committee, August 2, 2005.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 05-15793 Filed 8-9-05; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI), the Acting Assistant Secretary for Health, and the Director, Office of Acquisition Management and Policy, have taken final agency action in the following case:

Randall Luce, University at Buffalo, State University of New York: Based on the report of an investigation conducted by the University of Buffalo (UB), State University of New York (SUNY) (UB Report), and a conviction of the criminal offense of grand larceny, as defined in section 110-155.30 of the New York Penal Law, in the Buffalo City Court of Erie County, State of New York (Case #2004ER009612M), the Department of Health and Human Services (HHS) debarred Mr. Randall Luce, former research technician in the UB Research Institute for Addictions (RIA), for a period of three (3) years, beginning on July 26, 2005, and ending on July 25, 2008.

Mr. Luce pled guilty to grand larceny and admitted to the misappropriation of funds and the fabrication of research subject interviews in the conduct of an RIA study supported by the United States Public Health Service (PHS), National Institutes of Health (NIH), National Institute on Alcoholism and Alcohol Abuse (NIAAA), grant RO1 AA12452, "A harm reduction approach for reducing DWI recidivism."

This action is taken pursuant to the HHS nonprocurement debarment and suspension regulation at 45 CFR part 76.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852. (301) 443-5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 05-15777 Filed 8-9-05; 8:45 am]

BILLING CODE 4150-31-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request for Application (RFA) 05055]

Strengthening Existing National Organizations Serving Racial and Ethnic Populations Capacity Development Programs: Strategies To Advance Program Implementation, Coordination, Management, and Evaluation Efforts; Notice of Availability of Funds—Amendment

A notice announcing the availability of Fiscal Year (FY) 2005 funds to support and strengthen existing National and Regional Minority Organizations (NMOs/RMOs) that engage in health advocacy, promotion, education and preventive healthcare with the intent of improving the health and well-being of racial and ethnic minority populations; published in the **Federal Register**, on July 26, 2005, Volume 70, Number 142, pages 43152.

The notice is amended as follows: On page 43157, second column, please replace the entire paragraph:

A special emphasis panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above. Applications competing for Federal funds receive an objective and independent review performed by a committee of experts qualified by training and experience in particular fields or disciplines related to the program being reviewed. In selecting review committee members for the special emphasis panel, other factors in addition to training and experience may be considered to improve the balance of a panel. Each reviewer is screened to avoid conflicts of interest and is responsible for providing an objective, unbiased evaluation based on the review criteria noted above. The panel provides expert advice on the merits of each application to program officials responsible for final selections for

awards. Before final award decisions are made, CDC may make pre-decisional site visits to those applicants who rank high on the initial scoring to review the agency's program, business management, and fiscal capabilities. CDC may also check with the health department, the organization's board of directors, and community partners to obtain additional information about the organizational structure and the availability of needed services and support. Replace with:

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above. The application review will be performed by CDC employees within the agency's Centers, Institute and Offices but outside the funding office.

Dated: August 4, 2005.

William P. Nichols,

*Director, Procurement and Grants Office,
Centers for Disease Control and Prevention.*

[FR Doc. 05-15796 Filed 8-9-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 34772-34774, dated June 15, 2005) is amended to reflect the reorganization of the Office of the Chief Science Officer, Office of the Director, Centers for Disease Control and Prevention.

Section C-B, Organization and Functions, is hereby amended as follows:

Revise the functional statement for the *Office of the Chief Science Officer (CAS)*, as follows:

After item (11), insert the following item: (12) monitors vaccine safety and conducts scientific research to evaluate the safety of all currently available and new vaccines.

Delete items (5) of the functional statement for the *Epidemiology and Surveillance Division (CJ3)*, *National Immunization Program (CJ)* and renumber the remaining items accordingly.

Delete the functional statement for the *Immunization Safety Branch (CJ37)*, *Epidemiology and Surveillance Division (CJ3)*, *National Immunization Program (CJ)* in its entirety.

Dated: July 29, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05-15800 Filed 8-9-05; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 34772-34774, dated June 15, 2005) is amended to reflect the establishment of the Coordinating Center for Environmental Health and Injury Prevention at the Centers for Disease Control and Prevention.

Section C-B, Organization and Functions, is hereby amended as follows:

After the mission statement for the Centers for Disease Control and Prevention (C), insert the following:

Coordinating Center for Environmental Health and Injury Prevention (CT). The mission of the Coordinating Center for Environmental Health and Injury Prevention (CCEHIP) is to plan, direct, and coordinate national and global public health research, programs, and laboratory sciences that improve health and eliminate illness, disability, and/or death caused by injuries or environmental exposures.

In carrying out this mission, the CCEHIP (1) promotes mission-related accomplishments across the National Center for Environmental Health (NCEH), Agency for Toxic Substances and Disease Registry (ATSDR) and the National Center for Injury Prevention and Control (NCIPC); (2) fosters excellence in public health science and programs across NCEH, ATSDR and NCIPC; (3) assures the establishment of NCEH, ATSDR and NCIPC priorities and goals and coordinates their alignment with CDC and DHHS priorities and

goals; (4) assures that NCEH, ATSDR and NCIPC resources are aligned with their priorities and goals; (5) supports the accomplishment of NCEH, ATSDR and NCIPC goals and priorities; (6) identifies synergies across NCEH, ATSDR and NCIPC and CDC; (7) assures that NCEH, ATSDR and NCIPC meet statutory and mandated requirements; (8) adheres to best business practices for management and administrative functions across NCEH, ATSDR and NCIPC; and, (9) serves as liaison with CDC Coordinating Centers, Offices, and the Office of the Director.

Office of the Director (CTA). (1) Provides leadership and guidance and evaluates the activities of the Coordinating Center for Environmental Health and Injury Prevention (CCEHIP); (2) develops overarching goals and objectives and provides leadership, policy formation, scientific oversight and guidance in program planning and development; (3) coordinates assistance provided by CCEHIP to other CDC components, other Federal, State, and local agencies, the private sector and other nations; (4) provides and coordinates resource management requirements for CCEHIP; (5) develops and provides guidance on workforce development activities within CCEHIP and coordinates the recruitment, assignment, technical supervision, and career development of staff, with emphasis on goals for equal employment opportunity and diversity where appropriate; and, (6) collaborates as appropriate with other Coordinating Centers, Centers, Offices, Institutes of CDC, and other PHS agencies, and other Federal agencies.

Dated: July 29, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05-15797 Filed 8-9-05; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 34772-34774,

dated June 15, 2005) is amended to reflect the establishment of the Coordinating Center for Health Promotion at the Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the mission statement for the Centers for Disease Control and Prevention (C), insert the following:

Coordinating Center for Health Promotion (CU). The mission of the Coordinating Center or Health Promotion (CCHP) is to plan, direct and coordinate a national program for the prevention of premature, mortality, morbidity and disability due to chronic diseases, genomics, disabilities (physical and developmental), birth defects, reproductive outcomes and adverse consequences of hereditary conditions including blood disorders.

In carrying out its mission, the CCHP (1) Plans, directs, and conducts epidemiologic, behavioral and laboratory investigations, technology translation, demonstrations, and programs directed toward the definition, prevention, and control of chronic conditions, genomics, disabilities, birth defects, reproduction outcomes, hereditary conditions, and promote health behaviors and practices in conjunction with State and local agencies; (2) provide leadership in the development, evaluation, and dissemination of effective health promotion activities and risk reduction programs; (3) plans, develops, and maintains systems of surveillance for chronic diseases and conditions, reproductive outcomes, birth defects, behavioral and other risk factors; (4) plans, directs, and conducts epidemiologic and evaluative investigations related to issues of access, utilization, and quality of health care services aimed at the prevention and control of chronic conditions, birth defects, reproductive outcomes and the adverse consequences of hereditary blood disorders; (5) serve as the primary focus for assisting States and local agencies through grants and cooperative agreements and other mechanisms in establishing and maintaining chronic disease, genomics, disability, birth defects, reproductive health, and hereditary blood disorders programs; (6) provide training and technical consultation and assistance to States and local agencies in planning, establishing, maintaining, and evaluating prevention and control strategies for chronic conditions, genomics, disabilities, birth defects, reproductive outcomes and the adverse consequences of hereditary conditions;

(7) plan, coordinate and conduct laboratory activities related to selected chronic diseases, birth defects, disabilities and genomics; (8) provide technical consultation and assistance to other nations in the development and implementation of programs related to chronic disease prevention, genomics, disabilities, birth defects, reproductive outcomes and the adverse consequences of hereditary conditions including blood disorders; (9) develops and directs workforce development activities within CCHP and coordinates the recruitment, assignment, technical supervision, and career development of staff, with emphasis on goals for equal employment opportunity and diversity where appropriate; and, (10) collaborates with other Centers and offices of CDC, other PHS agencies, domestic and international public health agencies, and voluntary and professional health organizations.

Office of the Director (CUA). (1) Manages, directs, coordinates, and evaluates the activities of the Coordinating Center for Health Promotion (CCHP); (2) develops overarching goals and objectives and provides leadership, policy formation, scientific oversight and guidance in program planning and development; (3) coordinates assistance provided by CCHP to other CDC components, other Federal, State, and local agencies, the private sector and other nations; (4) provides and coordinates resource management support services for CCHP, including guidance and coordination for grants, cooperative agreements, and other assistance mechanisms; (5) coordinates, manages, and analyzes broad-based surveillance activities in support of programs carried out by CCHP; (6) develops and directs workforce development activities within CCHP and coordinates the recruitment, assignment, technical supervision, and career development of staff, with emphasis on goals for equal employment opportunity and diversity where appropriate; (7) provides technical information services to facilitate the dissemination of significant information to CCHP staff, various Federal, state and local agencies, professional and voluntary organizations, and selected target populations; and, (8) collaborates as appropriate with other Coordinating Centers, Centers, Offices, Institutes of CDC, and other PHS agencies, and other Federal agencies.

Dated: July 29, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–15799 Filed 8–9–05; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 34772–34774, dated June 15, 2005) is amended to reflect the establishment of the Coordinating Officer for Terrorism Preparedness and Emergency Response.

After the mission statement for the Centers for Disease Control and Prevention (C), insert the following:

Coordinating Office for Terrorism Preparedness and Emergency Response (CG). The mission of the Coordinating Office for Terrorism and Preparedness and Emergency Response (COTPER) is to protect health and enhance the potential for full, satisfying and productive living across the lifespan of all people in all communities related to community preparedness and response. To carry out its mission COTPER (1) fosters collaborations, partnerships, integration, and resource leveraging to increase the Centers for Disease Control and Prevention's (CDC) health impact and achieve population health goals; (2) provides strategic direction to support CDC's terrorism preparedness and emergency response efforts; (3) manage CDC-wide preparedness and emergency response programs; (4) maintains concerted emergency response operations—including the Strategic National Stockpile and the Director's Emergency Operations Center; (5) communicates terrorism preparedness and emergency response activities to internal and external stakeholders.

Office of the Director (CGA). (1) Manages, directs, and coordinates the activities of the office; (2) coordinates CDC legislative agenda and activities related to public health preparedness and emergency response; (3) provides leadership in policy formation, program operations, strategic direction, and fiscal

oversight; (4) identifies needs and resources for new initiatives and assigns responsibilities for their development; (5) serves as the principal CDC liaison to the Department of Health and Human Services as well as other federal agencies, international organizations, foreign governments and other organization concerned with terrorism preparedness and response; (6) directs and coordinates CDC and national activities to better prepare the public health workforce through training and education; (7) serves as the liaison from the Office of the Director, CDC, to the emergency operations of CDC; (8) coordinates CDC emergency operations; (9) serves as spokesperson for CDC policies and strategies regarding terrorism; (10) develops and maintains the CDC-wide Terrorism Preparedness and Response Strategic Plan; (11) coordinates CDC-wide terrorism budget formulation with the Financial Management Office, coordinating centers and coordinating offices, centers and staff offices; (12) develops and analyzes legislation and potential legislation for their impact on CDC and the nation's safety; (13) coordinates and provides on training and education programs, international activities, partnership and special projects related to terrorism.

Division of Business Services (CGB). The Division of Business Services (DBS) provides the coordinating office with a centralized business hub where customer service and business administration is the focal point of all business support functions. To carry out its mission, the division: (1) Develops and implements supplemental and/or unique to COPTER administrative policies and procedures that govern business administration, procurement practices, facilities management, time and attendance reporting, travel, records management, personnel and a wide scope of other business services; (2) plans, coordinates, tracks, and provides management advice and direction of fiscal management for the organization's annual budgets and spend plans; (3) provides consultation on human capital needs and facilitates hiring and training practices as described in the Office of Personnel Management and agency guidelines; (4) coordinates and manages all business services related to management, administration, and training for COPTER; (5) coordinates all issues related to physical security, telecommunications, office space and design, procurement of equipment, furniture, IT services, and facilities management; (6) provides assistance in formulating, developing, negotiating,

managing, and administering various COPTER contracts; (7) coordinates and manages all controlled correspondence and Freedom of Information Act requests; (8) maintains liaison with the other offices within COPTER and other business services divisions within CDC and the Agency for Toxic Substances and Disease Registry.

Division of State and Local Readiness (CGC). The Division of State and Local Readiness provides support, technical guidance and fiscal oversight to State, local, and territorial public health department grantees for the development and enhancement of public health plans, infrastructure and systems to prepare for and respond to terrorism, outbreaks of disease, and other public health emergencies.

Office of the Director (CGC1). (1) Plans, directs, and evaluates the activities of the division; (2) develops goals and objectives and provides national leadership and guidance in public health preparedness policy formulation and program planning and development; (3) ensures multidisciplinary collaboration in State and local public health preparedness activities; (4) provides leadership and guidance in the development of training and educational programs; (5) coordinates the development of guidelines and standards to ensure ongoing, effective public health preparedness programs and their evaluations; (6) oversees the creation of programmatic materials, and ensures appropriate clearance of these materials; (7) assists in the preparation of speeches and Congressional testimony on State and local cooperative agreements and State and local preparedness for the division director, the center director, and other public health officials; (8) monitors divisional resource allocation and utilization in relation to State and local preparedness projects; (9) provides technical consultation and assistance to State and local health departments, community planning groups, and non-governmental and other prevention partners in operational aspects of public health preparedness.

Program Services Branch (CGCB). (1) Provides technical consultation and assistance to State and local health departments in operational aspects of public health preparedness, through coordination with multiple agency components; (2) facilitates linkages with public health preparedness programs at Federal, State, and local levels to ensure their readiness to respond to a terrorist event or other public health threats or emergencies; (3) monitors activities of cooperative agreement projects to assure program objectives and key performance

indicators are achieved; (4) identifies and resolves problems in project areas through on-site program reviews; (5) identifies and promotes CDC recommendations, promising practices, and lessons learned; (6) conducts and coordinates technical reviews and provides funding recommendations related to cooperative agreement activities; (7) provides supervision for State and local public health preparedness field staff; (8) facilitates coordination within State/local project areas regarding preparedness activities with other program partners.

Outcome Monitoring and Evaluation Branch (CGCC). (1) Collaborates and consults with CDC staff, other Public Health Service agencies, State and local health departments, and other groups and organizations involved in preparedness activities to develop performance goals and indicators for readiness; (2) summarizes and synthesizes the preparedness research literature to derive research priorities and specify the characteristics of effective preparedness interventions; (3) conducts evaluation research activities to evaluate the effectiveness and impact of preparedness strategies and programs and development of both process and outcome measures that preparedness programs can use to assess their ongoing performance; (4) collects, analyzes, interprets and applies information to identify gaps in State and local public health preparedness; (5) disseminates guidance and recommendations in coordination with other OTPER/CDC coordinating centers and coordinating offices, centers and staff offices, partners and stakeholders to improve State and local preparedness; (6) monitors State and local achievement of public health preparedness performance measures; (7) develops and maintains a real-time management information system to monitor projects funded by the State and Local Preparedness Cooperative Agreement requirements.

Division of Strategic National Stockpile (CGE). The Division of Strategic National Stockpile (DSNS) delivers critical medical assets to the site of a national emergency. The Strategic National Stockpile (SNS) is a national repository of antibiotics, chemical antidotes, vaccines, antitoxins, life-support medications, intravenous administration and airway maintenance supplies, and medical/surgical items. It is designed to re-supply State and local public health agencies in the event of a biological and/or chemical terrorism incident anywhere, at anytime within the U.S. The DSNS ensures the availability and rapid deployment of the SNS and supports, guides, and advises

on efforts by State and local governments to effectively manage and use SNS assets that may be deployed. The DSNS stands ready for immediate deployment to any U.S. location in the event of a terrorist attack using a biological or chemical agent, or in response to any natural or technological disaster as National Command Authority may direct.

Office of the Director (CGEI). (1) Conducts the executive planning and management of the division; (2) plans strategies and methods for educating the public health and emergency response communities about the SNS and its effective use; (3) represents the SNS in State, local, and federally sponsored exercises to test community response to chemical/nerve agent or bioterrorism event; (4) provides technical assistance to leaders in State and local governments in their planning and preparations to effectively manage and use SNS assets; (5) directs and monitors a comprehensive strategy for managing and executing the critical systems in operating a successful commercial good manufacturing practice compliance program; (6) supports and maintains an intragovernmental committee to advise CDC Director on SNS formulary; (7) provides medical, pharmaceutical, and scientific oversight of the SNS formulary.

Logistics Branch (CGEB). (1) Operationally defines requirements once they are established by the Office of the Director and the intra-governmental committee on the SNS formulary and ratified by CDC; (2) manages the procurement of medical materiel to meet requirements through the CDC Federal procurement partner for the DSNS; (3) manages and tracks the expenditure of DSNS funds for the procurement, storage, and transport of medical materiel assets; (4) supervises the storage of the SNS 12-hour Push Packages; (5) manages the development and oversight of contracts for Stockpile Managed Inventory (SMI) and Vendor Managed Inventory (VMI) with commercial manufacturers and distributors of medical materiel; (6) manages the rotation of freshness-dated products in the 12-hour Push Packages, in SMI, and in VMI; (7) coordinates the physical security and safety of SNS assets with all storage sites; (8) provides logistics expertise for the Technical Advisory Response Unit (TARU), in full exercises or upon a Federal deployment of the SNS that will accompany the SNS to the scene of the chemical/nerve agent or bioterrorism event as well as for the team staffing the DSNS Operations Center; (9) coordinates the recovery of unused SNS assets deployed in an

actual chemical/nerve agent or bioterrorism event, including the recovery of SNS air cargo containers; (10) maintains the capacity to transport any and all SNS assets by overseeing contractual arrangements with commercial cargo carrier partners; (11) stores and maintains vaccines, therapeutic blood products, and antitoxins in selected repositories designated for managing and shipping these and other special medical countermeasures.

Program Preparedness Branch (CGEC). (1) Supervises the development, refinement, and dissemination of guidance for CDC project areas to plan for the management and use of deployed SNS assets and for building necessary infrastructure; (1) analyzes overall development needs of personnel in State/local SNS Preparedness Programs and creates, implements, directs, reviews, and manages training and other developmental activities designed to meet those needs; (3) manages coordination with project area officials on the planning and execution of both tabletop and full exercises to test the function teams and the entire contingent organization created for SNS preparedness; (4) collaborates with the Division of State and Local Readiness in COTPER by providing support for their responsibilities as project officers relative to the SNS Preparedness component of the CDC Bioterrorism Preparedness cooperative agreement; (5) evaluates readiness of each of the 62 CDC Bioterrorism Preparedness project areas to effectively manage and use deployed SNS assets; (6) plans, designs and prepares SNS-related communications and educational materials in support of State/local SNS Preparedness Programs; (7) provides health communication products before, during, and after an event to assist State/local SNS Preparedness Program personnel and other public health officials deal with the public; (8) serves as the DSNS point of contact for collaboration with various Federal agencies and nongovernmental organizations (e.g., Association of State and Territorial Health Organizations, National Association of City and County Health Officials) on programmatic initiatives and issues affecting State/local SNS preparedness; (9) reviews and comments on SNS-specific components of applications submitted for CDC Bioterrorism Preparedness cooperative agreements; (10) collaborates with the DSNS Response Branch on the CHEMPACK project, and other special projects, to ensure smooth implementation and successful ongoing

performance; (11) develops, in collaboration with various contractors, the Department of Defense, and universities, models for use by Project Areas in implementing elements of the SNS Program.

Program Coordination Branch (CGED). (1) Interfaces with external agencies and organizations with interest and involvement in SNS activities and information; (2) manages the development of program policies and procedures and performance of periodic analysis of existing policies to assess compliance and requirements; (3) supervises the SNS Training Steering Committee that identifies, prioritizes, coordinates, and recommends internal and external training needs and events; (4) supervises the Stockpile Configuration Management Board that reviews, reconciles, and adjusts SNS package and kit design and contents to maintain consistency with medical, scientific, resource, and end user requirements; (5) manages day-to-day execution of a commercial good manufacturing practice compliance program in support of the Director; (6) supervises all aspects of asset (material and personnel) safeguarding and protection; (7) manages development, testing, implementation, training, and operation of the DSNS unique information management systems and technology; (8) manages the DSNS internal review program; (9) provides project management for new missions and initiatives within the DSNS.

Response Branch (CGEE). (1) Plans and manages response operations during both day-to-day operations and activation in response to emergencies; (2) manages continuity of operations of operations centers to ensure effective response operations should any adversity affect the capability of the DSNS primary operations center; (3) supervises the development, coordination, maintenance, and exercise of DSNS response and deployment plans; (4) manages the planning, coordination, and conduct of the SNS Technical Advisory Response Unit (TARU) Academy to train staff for duties on this immediate response team that deploys with SNS assets; (5) manages the planning, coordination, and conduct of the SNS Mobile Training Teams to train State and local SNS Preparedness Program personnel, in collaboration with other DSNS branches and teams; (6) manages the coordination, planning, and conduct of DSNS participation and support for Federal, State, and local exercises; (7) supervises the preparation and readiness of the Technical Advisory Response Unit (TARU) to respond to emergencies; (8) provides operations

and communications expertise for the TARU, in full exercises or upon a Federal deployment of the SNS, that accompanies the SNS to the scene of the chemical/nerve agent or bioterrorism events.

Division of Select Agents and Toxins (CGF). The Division of Select Agents and Toxins ensures the safe and secure possession, use, transfer, and storage of select agents and toxins in the United States of America. This mission is achieved by establishing, monitoring and enforcing regulations, and by collaborating with partners from other agencies and professional associations. To carry out its mission, the division: (1) Registers all laboratories, institutes and other facilities that possess select agents or toxins; (2) establish and maintains a national database of all entities that possess select agents; (3) receives and review entity applications; (4) inspects laboratory facilities (entities) to ensure that required bio-safety and bio-security requirements are met; (5) approves all select agents or toxin transfers; (6) receives and monitorings all reports on theft, loss, or release of a select agent or toxin; (7) partners with other government agencies, public health organizations, and registered entities to ensure compliance with the Select Agent Regulations; (8) develops and implements appropriate policies or regulations to ensure the safety and security of select agents and toxins; (9) issues permits for the importation of etiologic agents and hosts of vectors of human diseases.

Division of Emergency Operations (OGG). The Division of Emergency Operations (DEO) provides operational, administrative and logistical support to all coordinating centers and coordination offices, centers and staff officers in respondent to public health events and is CDC's focal point for the consideration of plans, training (emergency response) and exercises that are conducted at the national, Federal and collective CDC level. To carry out

it mission, the division: (1) Oversees the operational, administrative and communications functions of a state of the art emergency operations center on a 24 hours, 7 days a week basis; (2) collaborates with lead coordinating centers and coordination offices, centers and staff offices to deploy personnel, gathers and prepared situations reports, analyses, and disseminates information; (3) coordinates the use of resources from the coordination centers and coordinating offices, centers and staff offices to oversee the delivery of initial and prolonged emergency management consultative services to States and localities experiencing public health emergencies or other Federal and international agencies supporting them; (4) establishes and monitoring external coordination and communications with other CDC organization components, including the Department of Health and Human Services Secretary's Operations Center, and other Federal agencies operations centers including the Homeland Security Operations Center of the Department of Homeland Security, and other Federal agencies; as appropriate; (5) coordinates the training of deploying CDC staff and tracks their locations and mission activities during a deployment; (6) procures and maintains supplies, services and equipment in response to emergency deployment operations and coordinates equipment and personnel movement; (7) coordinates and tracks specimen and other hazardous cargo shipments including all CDC medical evacuation mission involving the movement of suspected infectious and contagious patients; (8) provides deployment support of 24 hours a days, 7 ways a week (travel orders, equipment, etc.) and tracks the expenditure of funds for CDC personnel responding to emergency deployments; (9) manages the operations and use of the CDC aircraft; (10) provides a public health logistics capability to respond to natural and man-made disasters in foreign countries/U.S. territories.

Dated: July 28, 2005.
William H. Gimson,
Chief Operating Officer, Centers for Disease Control and Prevention (CDC).
 [FR Doc. 05-15798 Filed 8-9-05; 8:45 am]
BILLING CODE 4160-18-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Submission for OMB Review; Comment Request

Title: Child and Family Services Plan, Annual Progress and Services Report, and Budget Request.

OMB No.: 0980-0047.

Description: Under title IV-B, subparts 1 and 2, of the Social Security Act, States and Indian Tribes are to submit a five-year Child and Family Services Plan (CFSP) or an Annual Progress and Services Report (APSR), and an annual budget request and estimated expenditure report (CFS-101). In accordance with Federal regulations and policy issuances, States are required to provide an update on their progress in achieving stated goals and service delivery improvements within their child welfare system. The CFSP is used by States and Indian Tribes to develop and implement services, and describe coordination efforts with other Federal, State, and local programs. The APSR is used to provide updates and changes in the goals and services under the five-year plan. The CFS-101 will be submitted each year—once every five years along with the CFSP and the intervening four years along with the APSR—to apply for appropriated funds for each fiscal year. The CFSP also includes the required State plans under Section 106 of the child Abuse Prevention Treatment Act and section 477 of title IV-E, the Chafee Foster Care Independence Program.

Respondents: States and Indian Tribes.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CFSP	275	1	240	66,000/5 = 13,200
APSR	275	1	180	49,500
CFS101	275	1	5	1,375
Estimated Total Annual Burden Hours .....	.....	.....	.....	64,075

Additional Information: Copies of the proposed collection 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. E-mail address:

grjohnson@acf.hhs.gov. All requests should be identified by the title of the information collection.

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, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: August 4, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05-15821 Filed 8-9-05; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Grant Award to Urban Family Council

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Award announcement.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to Urban Family Council, Pennsylvania, to provide Abstinence-Only Education and related services for adolescents in public school, age 12-19 and their parents and guardians, in Philadelphia, Center, Cumberland, and Lycoming Counties of Pennsylvania. The amount of the grant is \$229,152. This noncompetitive award was recommended by the Congress.

FOR FURTHER INFORMATION CONTACT: K.A. Jagannathan, Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, phone: (202) 205-4829.

Dated: August 4, 2005.

Naomi Goldstein,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 05-15820 Filed 8-9-05; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel, World Parkinson's Review Congress.

Date: August 3, 2005.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, (301) 496-4056.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Clinical Trial Training Program.

Date: August 8, 2005.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Phillip R. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892-9529, (301) 496-5388, wiethorp@ninds.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Epilepsy Genetic Studies.

Date: August 10-11, 2005.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, (301) 496-5390, willarda@ninds.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel NIH Gene Discovery Meeting.

Date: August 17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel, 2401 "M" Street, Washington, DC 20037.

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, (301) 594-0635, rc218u@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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: August 2, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-15751 Filed 8-9-05; 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 Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, K01 Glycolipid Trafficking.

Date: August 25, 2005.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892-5452, (301) 594-8894, matsumotod@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: August 2, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-15752 Filed 8-9-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, NIH Director's Pioneer Awards Finalist Interviews.

Date: August 29-31, 2005.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Judith H. Greenberg, PhD., Director, Division of Genetics and Developmental Biology, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN-12B, Bethesda, MD 20892, 301-594-2755, greenbej@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 2, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-15753 Filed 8-9-05; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: September 15-16, 2005.

Closed: September 15, 2005, 10:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Open: September 15, 2005, 4 p.m. to 5 p.m.

Agenda: Discussion on NIMH program and policy issues.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Open: September 16, 2005, 8:30 a.m. to 12:30 p.m.

Agenda: Presentation of NIMH Director's report and discussion of NIMH program and policy issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C10, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892-9609, 301-443-5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and a sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: <http://www.nimh.nih.gov/council/advis.cfm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 2, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-15754 Filed 8-9-05; 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 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 Mental Health Special Emphasis Panel, Time Sensitive Medicare Part D Review. *Date:* August 29, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Tracy Waldeck, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6132, MSC 9608, Bethesda, MD 20892-9608, 301/435-0322, waldeckt@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: August 2, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-15755 Filed 8-9-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY**Coast Guard**

[USCG-2005-22040]

Chemical Transportation Advisory Committee; Charter Renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice of charter renewal.

SUMMARY: The Secretary of Homeland Security has renewed the charter for the Chemical Transportation Advisory Committee (CTAC) for 2 years from July 5, 2005, until July 5, 2007. CTAC is a Federal advisory committee under 5 U.S.C. App. 2 (Pub. L. 92-463, 86 Stat. 770). It advises the Coast Guard on safe and secure transportation and handling of hazardous materials in bulk on U.S.-flag vessels and barges in U.S. ports and waterways.

ADDRESSES: You may request a copy of the charter by writing to Commandant (G-MSO-3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001; by calling 202-267-1217; or by faxing 202-267-4570. This notice and the charter are available on the Internet at <http://dms.dot.gov> in docket (USCG-2005-22040).

FOR FURTHER INFORMATION CONTACT: Commander Robert Hennessy, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone 202-267-1217, fax 202-267-4570.

Dated: August 3, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection.

[FR Doc. 05-15782 Filed 8-9-05; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY**Transportation Security Administration****New Emergency Agency Information Collection Activity Under OMB Review: Department of Homeland Security—Vulnerability Identification Self-Assessment Tool—Transportation (DHS-VISAT-T)**

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of emergency clearance request.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for emergency processing and approval under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden.

DATES: Send your comments by September 9, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory

Affairs, Office of Management and Budget, Attention: DHS-TSA Desk Officer, at (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA-9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220; telephone (571) 227-1995; facsimile (571) 227-2594.

SUPPLEMENTARY INFORMATION:**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Department of Homeland Security—Vulnerability Identification Self-Assessment Tool—Transportation (DHS-VISAT-T).

Type of Request: Emergency processing request of new collection.
OMB Control Number: Not yet assigned.

Forms(s): N/A.

Affected Public: Owners and operators within the transportation sector. The affected modes of transportation include Aviation, Rail, Pipelines, Highway and Bridges, and Mass Transit.

Abstract: After its inception, TSA faced the challenge of securing all of the different modes within the transportation sector. A methodology was required in order to support inter- and intra-modal analysis and decision-making. Millions of assets exist within the transportation sector, ranging from over 500,000 highway-bridges to over 19,000 general aviation airports. Given

this population of assets, it became apparent that a mechanism was needed to solicit data from the asset owners/operators. TSA needs this data, such as the assets' security measures currently deployed, along with a high-level assessment of system security effectiveness, in order to prioritize resources.

In response to this need, TSA's Office of Threat Assessment and Risk Management (OTRM) developed the Department of Homeland Security—Vulnerability Identification Self-Assessment Tool—Transportation (DHS-VISAT-T), formerly called the TSA Self-Assessment Risk Module (TSARM), as a means to gather security-related data. TSA designed this tool to be flexible to support the unique characteristics of each transportation mode, while still providing a common framework from which analysis and trends can be identified. DHS-VISAT-T represents the U.S. Government's first self-assessment tool that provides the following features:

- The tool is provided to users at no cost;
- The tool is voluntary;
- The tool is Web-based, easily accessible; and
- All ratings are determined by the user.

The self-assessment tool contains two sections. In the first section of the tool, users answer a series of questions divided into seven countermeasure categories to develop a comprehensive picture of the asset's security system posture. The countermeasure categories include:

- Plans, Policies, and Procedures;
- Security Training;
- Access Control;
- Physical Security Assets;
- Security Technologies and Equipment;
- Communications Security; and
- Information Security.

The second section of the tool focuses on the prevention and the mitigation of a base array of threat scenarios developed for different categories of assets. Users rate their asset in terms of target attractiveness (from a terrorist's perspective) and several consequence categories that describe health and well-being, economic consequences, and symbolic value of the asset. Users first list the asset's baseline security countermeasures that apply for each of the threat scenarios, and then rate the effectiveness of the countermeasures in detecting and/or preventing the terrorist's actions against each threat scenario. Descriptive guidance for the effectiveness rating is provided for each of the countermeasure categories. The

performance-based effectiveness ratings describe the asset's ability to thwart the threat.

After the tool is applied considering baseline countermeasures, users apply the tool two additional times to assess the impact of adding new countermeasures or enhancing existing countermeasures. The first additional assessment assumes a general increase in the national threat level (orange). The second additional assessment assumes that the asset is known to be a specific target (red). The intent is that the enhanced countermeasures will increase the security effectiveness compared to the baseline effectiveness ratings.

Upon completion of the tool assessment, users receive a report that summarizes their inputs. They may then use this report to develop a security plan or to identify areas of potential vulnerability. Users have the option to submit the completed assessment to DHS. If submitted, DHS reviews the assessment for consistency and provides feedback to the users.

Number of Respondents: Of the possible 3,002,450 respondents, TSA expects that approximately 10 percent, or 300,245, will use the tool.

Issued in Arlington, Virginia, on August 3, 2005.

Lisa S. Dean,
Privacy Officer.

[FR Doc. 05-15771 Filed 8-9-05; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4975-N-23]

Notice of Proposed Information Collection: Comment Request; Local Appeals to Single-Family Mortgage Limits

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 11, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to:

Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or Wayne_Eddins@hud.gov.

FOR FURTHER INFORMATION CONTACT: Margaret Burns, (Acting) Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Local Appeals to Single-Family Mortgage Limits.

OMB Control Number, if applicable: 2502-0302.

Description of the need for the information and proposed use: The National Housing Act permits HUD to raise the maximum mortgage amount up to eighty-seven percent of the Federal Home Loan Mortgage Corporation (Freddie Mac) loan limits in areas with high prevailing sales prices to reflect regional differences in the cost of housing. Any party who believes that the present limit does not accurately reflect the higher sales price in that area may request an increase. The request must be accompanied by sufficient housing sales price data to support the request. The data should be a listing of all the one- or nearly all the one-family sales in the area for a prescribed period of time, depending on the volume of sales. HUD will use the information

collected to determine whether an increase is warranted.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 5,600. The number of respondents is 140, the frequency of response is on occasion, and the burden hour per response is 40 hours.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: August 1, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E5-4332 Filed 8-9-05; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission: Notice of Meeting

Notice is hereby given in accordance with section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 15, 2005.

The Commission was established pursuant to Public Law 99-647. The purpose of the Commission is to assist Federal, State and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on September 15, 2005 at 7 p.m. at Heritage Hall, 101 Green Street, Slatersville, RI 02876 for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Larry Gall, Interim Executive Director, John H. Chafee, Blackstone River Valley

National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, tel.: (401) 762-0250.

Further information concerning this meeting may be obtained from Larry Gall, Interim Executive Director of the Commission at the aforementioned address.

Larry Gall,

Interim Executive Director, BRVNHCC.

[FR Doc. 05-15795 Filed 8-9-05; 8:45 am]

BILLING CODE 4310-RK-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-030-05-1610-PH-241A]

Grand Staircase-Escalante National Monument Advisory Committee: Call for Nominations

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of call for nominations for members of the Grand Staircase-Escalante National Monument Advisory Committee (GSENM-MAC).

SUMMARY: The purpose of this notice is to request public nominations for five members of the Grand Staircase-Escalante National Monument Advisory Committee (GSENM-MAC). The GSENM-MAC provides advice and recommendations to GSENM on science issues and the achievement of Grand Staircase-Escalante National Monument Management Plan objectives. GSENM will receive public nominations until September 26, 2005.

DATES: A completed nomination form and accompanying nomination letters must be received at the address listed below no later than September 26, 2005.

ADDRESSES: Grand Staircase-Escalante National Monument Headquarters Office, 190 East Center, Kanab, Utah 84741.

FOR FURTHER INFORMATION CONTACT: Allysia Angus, Landscape Architect / Land Use Planner, Grand Staircase-Escalante National Monument Headquarters Office, 190 East Center, Kanab, Utah 84741; phone (435) 644-4388, or e-mail allysia_angus@blm.gov.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established the GSENM-MAXC pursuant to section 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739) and in conformity with the Federal Advisory Committee Act (5 U.S.C. Appendix 2). The Secretary appoints persons to the GSENM-MAC who are representatives of the various

major citizens interests pertaining to land use planning and management of the lands under BLM management in the GSENM. This notice, published pursuant to 43 CFR 1784.4-1 and in accordance with the Approved Management Plan for the Grand Staircase-Escalante National Monument (February 2000), requests the public to submit nominations for candidates who, if appointed, will replace the present incumbents of five, three-year terms on the GSENM-MAC that are scheduled to expire in September, 2005.05. Any individual or organization may nominate one or more persons to serve on the GSENM-MAC. Individuals may nominate themselves for GSENM-MAC membership.

Nomination forms may be obtained from the Grand Staircase-Escalante National Monument Headquarters Office, (address listed above). To make a nomination, submit to the Headquarters Office a letter of nomination, a completed nomination form, letters of reference from persons or organizations associated with the interest represented by the candidate, candidates and any other information that speaks to the candidate's qualifications.

Nominations may be made for the following categories of interest:

- A member with expertise in wildlife biology, to represent the wildlife biology community;
- A member with expertise in social science, to represent the social science community;
- A representative of State or tribal government;
- An educator, to represent the educational community; and
- A representative of the environmental community.

The specific category the candidate would be representing should be identified in the letter of nomination and in the nomination form. The BLM Utah State Director and the Manager, GSENM, will review the nomination forms and letters of reference. The BLM State Director shall confer with the Governor of the State of Utah on potential nominations. The BLM State Director will then forward recommended nominations to the Secretary of the Interior, who is responsible for making the appointments.

Each GSENM-MAC member will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies him or her to provide advice from among the categories of interest listed above.

There are fifteen members of the GSENM-MAC. Members are appointed

for terms of three years. The current terms for the Wildlife Biology, Social Science, State or tribal government, Educator, and Environmental positions will expire September 2005. The new appointments to these five positions will begin no earlier than September 2005 and will end September 2008.

Members will serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The Committee will meet at least twice a year. Additional meetings may be called by the Designated Federal Officer.

Dated: May 13, 2005.

Dave Hunsaker,

Grand Staircase-Escalante National Monument Manager.

[FR Doc. 05-15814 Filed 8-9-05; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-400-1120-PH]

Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council Meeting; Idaho

AGENCY: Bureau of Land Management, 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) Coeur d'Alene District Resource Advisory Council (RAC) will meet as indicated below.

DATES: September 8 and 9, 2005. During the afternoon of September 8, the RAC members will stop at several field locations along the Lower Salmon River south of Cottonwood, Idaho. On September 9th the RAC will hold a meeting at the Salmon River Rapids Lodge located at 1010 S. Main St. in Riggins, Idaho. The meeting will be held from 8 a.m. to about 10 a.m., after which the RAC will make field visits to several locations in the Riggins area. The public comment period will be from 8 a.m. to 9 a.m. on September 9, 2005.

FOR FURTHER INFORMATION CONTACT: Stephanie Snook, RAC Coordinator, BLM Coeur d'Alene District, 1808 N. Third Street, Coeur d'Alene, Idaho 83814 or telephone (208) 769-5004.

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 Idaho. Agenda items for this meeting include: The Lower Salmon River proposed mineral withdrawal, invasive species, noxious weeds, and weed treatments. Reports or updates on current issues will include the OHV Task Force, Salmon River trail, accessibility issues, and Resource Management Plans for the Coeur d'Alene and Cottonwood Field Offices.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated 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 or other reasonable accommodations, should contact the BLM as provided above.

Dated: August 5, 2005.

Lewis M. Brown,

District Manager.

[FR Doc. 05-15883 Filed 8-9-05; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-930-1430-ET; COC-34653]

Public Land Order No. 7642; Modification of Public Land Order No. 6761; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order modifies Public Land Order No. 6761, which withdrew lands for the protection of archaeological sites, to allow for disposal by exchange. This action will open the lands to exchange only.

DATES: Effective August 10, 2005.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-3706.

SUPPLEMENTARY INFORMATION: The lands have been and will remain open to mineral leasing. The lands containing archaeological values will not be exchanged until the sites have been mitigated.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and

Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 6761 (55 FR 862, January 10, 1990), which withdrew 378.84 acres of public lands to protect the Windy Gap Archaeological Site, is hereby modified to allow for disposal of the lands by exchange in accordance with Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended, 43 U.S.C. 1716 (2000).

2. The lands referenced in Paragraph 1 are hereby made available for exchange in accordance with Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716 (2000), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: July 19, 2005.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 05-15816 Filed 8-9-05; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-930-1430-ET; COC-67064]

Public Land Order No. 7641; Transfer of Jurisdiction, Baca National Wildlife Refuge; CO

AGENCY: Bureau of Land Management.

ACTION: Public land order.

SUMMARY: This order transfers administrative jurisdiction of 1,178.57 acres of surface and mineral estate and 3,991.40 acres of reserved Federal mineral estate from the Bureau of Land Management to the United States Fish and Wildlife Service for addition to and administration as part of the Baca National Wildlife Refuge. The transfer of jurisdiction is authorized by Section 8(a) of the Great Sand Dunes National Park and Preserve Act of 2000 (Pub. L. 106-530).

DATES: Effective August 10, 2005.

FOR FURTHER INFORMATION CONTACT: Doris Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7093, 303-239-3713.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 8 of the Great Sand Dunes National Park and Preserve Act of 2000, Public Law 106-530, it is ordered as follows:

1. Subject to valid existing rights, administrative jurisdiction of the following described public lands, including the mineral estate, is hereby transferred to the United States Fish and Wildlife Service for addition to and administration as part of the Baca National Wildlife Refuge:

New Mexico Principal Meridian

T. 41 N., R. 10 E.,
Sec. 12, lot 1.
T. 42 N., R. 10 E.,
Sec. 12, lots 1 and 2;
Sec. 13, lots 1 and 2;
Sec. 24, lots 1 and 2;
Sec. 25, lots 1 and 2.
T. 43 N., R. 10 E.,
Sec. 34, W $\frac{1}{2}$ SW $\frac{1}{4}$.
T. 41 N., R. 11 E.,
Sec. 14, lots 1 to 4, inclusive, and S $\frac{1}{2}$;
Sec. 23, N $\frac{1}{2}$ and SW $\frac{1}{4}$.
The areas described aggregate 1,178.57 acres in Saguache County.

2. Subject to valid existing rights, administrative jurisdiction of the reserved Federal mineral estate in the lands described below is hereby transferred to the United States Fish and Wildlife Service for addition to and administration as part of the Baca National Wildlife Refuge:

New Mexico Principal Meridian

T. 42 N., R. 10 E.,
Sec. 2, lots 1, 2, and S $\frac{1}{2}$ NE $\frac{1}{4}$.
T. 42 N., R. 10 E.,
Sec. 13, SW $\frac{1}{4}$;
Sec. 24, W $\frac{1}{2}$.
T. 43 N., R. 10 E.,
Sec. 23, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 35, E $\frac{1}{2}$ SE $\frac{1}{4}$.
T. 41 N., R. 11 E.,
Sec. 15, fractional N $\frac{1}{2}$ and SE $\frac{1}{4}$;
Sec. 21, W $\frac{1}{2}$ and SE $\frac{1}{4}$;
Sec. 22, E $\frac{1}{2}$ and SW $\frac{1}{4}$;
Sec. 23, SE $\frac{1}{4}$;
Sec. 26, N $\frac{1}{2}$ and SE $\frac{1}{4}$;
Sec. 27, N $\frac{1}{2}$ and SW $\frac{1}{4}$;
Sec. 34, W $\frac{1}{2}$ and SE $\frac{1}{4}$;
Sec. 35, NE $\frac{1}{4}$ and SW $\frac{1}{4}$.
The areas described aggregate 3,991.40 acres in Saguache County.

3. In accordance Section 7(e) of Public Law 106-530, the lands and minerals described in Paragraphs 1 and 2 are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; location, entry and patent under the mining laws; and disposition under all laws relating to mineral and geothermal leasing. Future use and disposition of the lands and minerals described in this order shall be in accordance with the provisions of Public Law 106-530.

Dated: July 19, 2005.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 05-15817 Filed 8-9-05; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-065-5440 FR F514; N-62049]

Notice of Realty Action: Recreation and Public Purposes Act Classification for Conveyance; Esmeralda County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance, under the provisions of the Recreation and Public Purposes (R&PP) Act of 1926, as amended (43 U.S.C. 869 *et seq.*), approximately 29.29 acres of public land near the community of Dyer, Esmeralda County, Nevada. Esmeralda County proposes to acquire and manage the parcel as a solid waste transfer station and drop box facility.

ADDRESSES: Send written comments to the Assistant Field Manager, BLM Tonopah Field Station, P.O. Box 911, Tonopah, Nevada 89049. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Tonopah, Nevada 89049.

FOR FURTHER INFORMATION CONTACT:

Wendy Seley, Realty Specialist, Bureau of Land Management, Tonopah Field Station, at (775) 482-7806 or the address listed above.

SUPPLEMENTARY INFORMATION: The following described public land, is hereby classified as suitable for conveyance under the provisions of the R&PP Act (43 U.S.C. 869 *et seq.*):

Mount Diablo Meridian, Nevada

T. 3 S., R. 35 E.
Sec. 36, lots 4, 5, 6, 7

Containing 29.29 acres, more or less, in Esmeralda County.

Esmeralda County has applied for patent to the public land under the R&PP Act. Esmeralda County proposes to use and manage the land for a municipal solid waste transfer station and drop box facility. The subject land is identified in the Tonopah Resource Management Plan, approved October 2, 1997, as not needed for federal purposes.

The conveyance is consistent with current Bureau planning for this area and would be in the public interest. The patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

3. A right-of-way authorized under the Act of October 21, 1976, (43 U.S.C. 1761) for powerline purposes granted to Valley Electric Association, its successors or assigns, by right-of-way No. Nev 051579.

4. A right-of-way authorized for a Federal Aid Highway (sec. 17) under the Act of November 9, 1921, as amended, (042 Stat. 0216) by right-of-way No. Nev 09885 granted to the Nevada Department of Transportation, its successors or assigns.

5. A right-of-way authorized under the Act of October 21, 1976 (43 U.S.C. 1761), for telephone and telegraph purposes granted to Nevada Bell, its successors or assigns, by right-of-way No. N-35352 and will be subject to:

1. All valid existing rights documented on the official public land records at the time of patent issuance.

Patent will contain the following provisions:

1. Esmeralda County, a political subdivision of the State of Nevada, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of actions, expense, and liability (hereinafter referred to in this clause as claims), resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentees employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on or the release of hazardous substances from Mount Diablo Meridian, Nevada, T. 3 S., R. 35 E., section 36, lots 4, 5, 6, 7, regardless of whether such claims shall be attributable to: (1) The concurrent,

contributory, or partial fault, failure or negligence of the United States; (2) the sole fault, failure, or negligence of the United States.

2. A portion of the above described land was used as a solid waste disposal site, and will be used as a solid waste transfer station and drop box facility. Upon closure, the site may contain small quantities of commercial and household wastes as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner of final cover of the site unless excavation is conducted subject to applicable State and Federal requirements.

3. No portion of the land shall under any circumstances revert to the United States if any portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, storage, or release of any hazardous substance.

A portion of the subject lands (19.70 acres, according to the survey records as of October 20, 2003) were previously classified and segregated for the purposes of a lease or sale under N-24695, authorizing a sanitary landfill pursuant to the Recreation and Public Purposes Act. Commencing on August 10, 2005, above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. Interested parties may submit comments regarding the proposed conveyance or classification of the lands until September 26, 2005.

On August 26, 1997, Esmeralda County filed a R&PP application for approximately 20 acres of public land to be developed as a drop box facility with related facilities. A supplemental plat map was issued on October 21, 2003, increasing the application size to 29.29 acres. Esmeralda County is a political subdivision of the State of Nevada. Esmeralda County is a qualified local government entity. Additional detailed information pertaining to this application and plan of development is on file in case file N-62049 located at the address listed above.

Classification Comments: Interested parties may submit comments involving the suitability of the land for municipal

solid waste transfer station and drop box facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for R&PP use.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective October 11, 2005. The lands will not be offered for conveyance until after the classification becomes effective.

Authority: 43 CFR 2741.

Dated: June 30, 2005.

William S. Fisher,

Assistant Field Manager, Tonopah.

[FR Doc. 05-15812 Filed 8-9-05; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-111-05-1220-EB-ID33]

Cove Recreation Site Use Fees and Supplementary Rules

AGENCY: Bureau of Land Management, Boise District, Idaho.

ACTION: Establishment of use fees and proposal of supplementary rules at Cove Recreation Site, Owyhee County, Idaho.

SUMMARY: The Bureau of Land Management is establishing use fees for the Cove Recreation Site in Birds of Prey National Conservation Area, and proposing supplementary rules at Cove Recreation Site for public use of the campground and day use areas. The fees are authorized by law, and the supplementary rules are necessary for human health and safety and to protect the natural resources of the site.

DATES: The use fees for Cove Recreation site will be effective beginning February 6, 2006. You should submit your written comments on the proposed supplementary rules by September 9, 2005. BLM may not necessarily consider or include in the Administrative Record for the final supplementary rules

comments that are received after the close of the comment period (see DATES) or comments delivered to an address other than those listed under ADDRESSES.

ADDRESSES:

(1) You may mail comments on the proposed supplementary rules to Bureau of Land Management, Four Rivers Field Office, 3948 Development Avenue, Boise, Idaho 83705; (2) You may hand deliver comments to the Bureau of Land Management, at the same address.

FOR FURTHER INFORMATION CONTACT:

Larry Ridenhour, Outdoor Recreation Planner, Bureau of Land Management, Four Rivers Field Office, 3948 Development Avenue, Boise, Idaho 83705 (208) 384-3300.

SUPPLEMENTARY INFORMATION:

- I. Procedures for Submitting Comments
- II. Background
- III. Procedural Matters
- IV. Recreation Site Fees and Proposed Supplementary Rules

I. Procedures for Submitting Comments

Comments on the proposed supplementary rules should be specific, should be confined to issues pertinent to the proposals, and should explain the reason for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposed supplementary rules that you are addressing.

BLM will have all comments, including names and addresses, available for public review at the Four Rivers Field Office office in Boise, ID, during regular business hours (8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

Cove Recreation Site is a 29-unit campground and day-use site located along C.J. Strike Reservoir, about 35 miles southwest of Mountain Home in southwestern Idaho.

Pursuant to the Federal Lands Recreation Enhancement Act of 2004, a fee per vehicle will be charged for day use and a fee per campsite will be charged for overnight use at Cove Recreation Site. BLM will charge

separate fees for day use, primitive overnight use, and recreational vehicle (RV) camping. These fees will be posted at the site, and at the Web site, <http://www.birdsofprey.blm.gov>, and at the Four Rivers Field Office in Boise, ID. Fees must be paid at the self-service pay stations located in the campground and day use areas. Checkout time for overnight users is 2 p.m. People holding Golden Age or Golden Access Passports will be entitled to a 50-percent fee reduction.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These proposed supplementary rules will not have an effect of \$100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These proposed supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. They merely impose rules of conduct and impose other limitations on certain recreational activities at a recreation site on the Birds of Prey National Conservation Area to protect natural resources and human health and safety.

Fees have not been charged at this campground in the past. While this represents a change from past free use of the site, it will not be a major change in the context of the Executive Order; that is, the fees will not have an effect on the economy of \$100 million per year. Information concerning the proposed new fees has been available on the BLM Web site, is posted on site, has been written up in local newspapers, and has been spread through word of mouth from on-site camp hosts and local users. These efforts will continue following notice publication with additional press releases to local news media.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We

invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed supplementary rules clearly stated? (2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity? (3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections? (5) Is the discussion of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful to your understanding of the proposed supplementary rules? How could this material be more helpful in making the proposed supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared an Environmental Assessment (No. ID-090-03-022) (EA) for reconstruction of the Cove Recreation Site. These proposed supplementary rules are designed to mitigate potential user-related issues discussed in the environmental assessment. While the EA does not include or analyze specific language for the proposed rules, it does inform the public that rules for use of the area would be developed to reduce user conflicts and protect important resources and values.

The EA states that, because of heavy historical use of the site, the ground surface surrounding the structures on the site is disturbed and highly compacted from unrestricted vehicle traffic. Off-road vehicle (ORV) use is widespread throughout the area. BLM has noted an increasing network of trails throughout the NCA. As a result, erosion is a concern in several heavily used areas, including the Cove Recreation Site, particularly on the east side of the inlet. The potential impacts to vegetation, water quality, and public health as a result of overuse of this site are a concern. Uncontrolled ORV activity damages existing habitats, disturbs wildlife within the area (including raptors) and can adversely impact other recreational uses.

The proposed supplementary rules are designed to mitigate these specific issues addressed in the EA, including:

1. Off-road vehicle impacts to soils and vegetation,
2. User conflicts (noise, pets, weapons, vehicle speeding, etc.), and
3. Human-caused wildfires.

BLM has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA is available for review in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601-612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These proposed supplementary rules should have no effect on business entities of whatever size. They merely would impose reasonable restrictions on certain recreational activities on the National Conservation Area to protect natural resources and the environment, and human health and safety.

To determine an appropriate fee structure, we interviewed managers of local and regional recreational facilities, including Bruneau Dunes State Park, Three Island State Park, and Black Sands Resort, a small business, to ascertain what they currently charged for picnicking, day use, tent camping, RV camping with and without hook-ups, etc. As part of this process, we assured the owner of Black Sands Resort (located 1/2 mile west of Cove Rec. Site) that the fees for Cove Rec. Site would be set so as not to undercut the fees being charged at Black Sands Resort for the same services. In addition, the proposed fees are consistent with fees being charged for the same services at other public facilities, including the above-mentioned Bruneau Dunes and Three Island State Parks.

Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These proposed supplementary rules are not a "major rule" as defined at 5 U.S.C. 804(2). They would not result in an effect on the economy of \$100

million or more, in an increase in costs or prices, or in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. They would merely impose reasonable restrictions on certain recreational activities at one recreation site on the National Conservation Area to protect natural resources and the environment, and human health and safety. The user fees imposed at the site will not unfairly compete with local small businesses.

Unfunded Mandates Reform Act

These proposed supplementary rules do not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year; nor do these proposed supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. They would merely impose reasonable restrictions on certain recreational activities at one recreation site on the National Conservation Area to protect natural resources and the environment, and human health and safety. As for the fees to be imposed, BLM has coordinated with all local, State, and Federal agencies before establishing a new fee structure at the site. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The proposed supplementary rules would have no effect on private lands or property. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules 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 proposed supplementary rules would have no effect on State or local government, and specifically exempt

State and local government law enforcement and emergency personnel and activities from the effect of the supplementary rules. As for the recreation site fees to be imposed, BLM has coordinated with all local, State, and Federal agencies, consulting with managers of local and regional recreational facilities, including Bruneau Dunes State Park and Three Island State Park, before proposing a new fee structure at the site. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed supplementary rules do not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Coordination and consultation as to development of the Cove Recreation Site and the establishment of new fees has included contact with the following Tribal entities: Shoshone Bannock Tribes and Shoshone Paiute Tribes. As a result of the consultation and coordination, in accordance with Executive Order 13175, we have found that these proposed supplementary rules for the recreation site do not include policies that have Tribal implications.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these proposed supplementary rules is Larry Ridenhour, Outdoor Recreation Planner, Four Rivers Field Office, Bureau of Land Management.

IV. Recreation Site Fees and Proposed Supplementary Rules

Recreation site fees for the Cove Recreation Site will go into effect on February 6, 2006. The fee schedules will be posted at the site, in the Four Rivers Field Office, and on the Internet at <http://www.birdsofprey.blm.gov>.

In addition to the recreation site fees, the following supplementary rules are established for the campground and day-use areas:

1. Rules

a. Fees must be paid within one hour of arrival to the recreation site or campground.

b. Fees for overnight camping will permit two vehicles per numbered campsite. Additional vehicles will be charged an extra fee per day.

c. Camping is permitted at developed (numbered) sites only.

d. Motorized vehicles must remain on constructed roadways, must park at designated sites only, and may not obstruct traffic flow.

e. Cross-country vehicle travel is not allowed.

f. Vehicles and camping gear may not be left unattended in the recreation site for longer than 24 hours.

g. Quiet hours are established from 10 p.m. to 6 a.m. No loud talking, loud music, barking dogs, operation of generators, or other disturbing activities are permitted in the campground during these hours.

h. Campfires are permitted in developed fire grills only.

i. No firewood may be cut or broken from standing live or dead vegetation.

j. Maximum length of stay in the campground is 14 consecutive days.

k. Pets must be kept on a leash within the recreation site, and camping and day use areas must be kept free of pet waste.

l. Firearms, bows and arrows, other weapons, air rifles, paintball equipment, and pistols may not be discharged in the campground or day-use areas.

m. The use of fireworks is prohibited within Cove Recreation Site.

n. Drivers must obey the posted speed limits within the Cove Recreation Site.

2. Exceptions

Federal, State, and local law enforcement officers, government employees, and BLM volunteers are exempt from these supplementary rules in the course of their official duties. Limitations on the use of motorized vehicles do not apply to emergency vehicles, fire suppression and rescue vehicles, law enforcement vehicles, and other vehicles performing official duties, or as approved by an authorized officer of BLM.

3. Authority

These rules are established under the authority contained in 43 CFR 8365.1–6. Violations of these rules are punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months (43 CFR 8360.0–7), or

the enhanced penalties established in 18 U.S.C. 3571.

Dated: June 22, 2005.

Rosemary Thomas,

Four Rivers Field Office Manager.

[FR Doc. 05-15815 Filed 8-9-05; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-110-05-1220-PM]

Notice of Travel Restriction and Seasonal Closure to OHVs

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of off-highway vehicle (OHV) travel restriction and seasonal closure to motorized use in the Hog Canyon and Trail Canyon areas, Bureau of Land Management, Kanab Field Office, Utah

SUMMARY: Notice is hereby given that effective immediately, the Bureau of Land Management (BLM), Kanab Field Office, is restricting OHV travel on 7,924 acres of public lands near Kanab, Utah. The public lands affected by this restriction are located in portions of T. 43 S., R. 5 W.; T. 43 S., R. 6 W.; and T. 43 S., R. 7 W., Salt Lake Meridian. The purpose of the restriction and seasonal closure is to protect soil, vegetation, wildlife, cultural, and riparian area resources that have been adversely impacted or are at risk of being adversely impacted by OHV use. This restriction and seasonal closure will remain in effect until the considerable adverse effects giving rise to the restriction and seasonal closure are eliminated and measures are implemented to prevent recurrence of these adverse effects.

DATES: This notice is effective immediately and shall remain in effect until the adverse effects have been eliminated and measures implemented to prevent recurrence.

FOR FURTHER INFORMATION CONTACT: Tom Christensen, Outdoor Recreation Planner, BLM Kanab Field Office, 318 North 100 East, Kanab, Utah 84741; Phone (435) 644-4600.

SUPPLEMENTARY INFORMATION: In 1981, the Vermilion Management Framework Plan (MFP) designated the majority of public lands managed by the BLM Kanab Field Office as "open" to off-road vehicle (*i.e.*, off-highway vehicle) use. Since that time, improvements to OHV and all-terrain vehicle design, capability, affordability and popularity have led to more numerous and

widespread presence of these motorized vehicles. Hog Canyon and Trail Canyon are in the immediate vicinity of Kanab, Utah. Their proximity to town and highly scenic values have led to increasing OHV use in these areas. This increased use is creating adverse impacts to riparian, soil, vegetation, wildlife, and cultural resources. These impacts are occurring on existing routes as well as on a proliferating network of new, user-created routes. Additionally, the recent discovery of an active raptor nest in the cliffs of Pugh Canyon, bordering Hog Canyon to the southeast, has led to concern over human impacts to this nesting pair.

New Travel Restriction and Seasonal Closure for Hog Canyon and Trail Canyon

OHV cross-country travel in this area is prohibited in Hog Canyon and Trail Canyon. Trail Canyon will be closed to OHV use. Travel by all motorized vehicles in Hog Canyon will be limited to specific identified routes (a map showing these routes is available in the BLM Kanab Field Office). Both canyons are public lands administered by the BLM's Kanab Field Office and are located in Kane County, Utah, north of the town of Kanab. This area includes approximately 30.9 miles of routes and 7,924 acres of public lands in portions of T. 43 S., R. 5 W.; T. 43 S., R. 6 W.; and T. 43 S., R. 7 W., Salt Lake Meridian.

An area on the north side of Pugh Canyon is now closed annually to motorized use between February 1 and August 31, to protect the fecundity of a breeding pair of raptors. To clarify recreation opportunities available in the area, the BLM will provide maps identifying routes upon which motorized travel is allowed and the location of the seasonal closure. The intent of this restriction is to protect natural and cultural resources from the adverse effects of OHV use.

Implementation

A map showing both Trail Canyon and the specific identified routes where OHV use is allowed in Hog Canyon as well as the location of the Hog Canyon seasonal closure area is available for public review at the BLM Kanab Field Office. The routes and closure area are also shown on a map on the BLM Kanab Field Office's Web site at http://www.ut.blm.gov/kanab_fo. The BLM will also provide public land users with a specific map of the identified routes within the Hog Canyon area on this Web site. Signs and maps will be posted at kiosks near major entry areas.

Authority: This restriction and seasonal closure notice is issued under the authority of 43 CFR 8341.2.

Violations of this restriction and seasonal closure are punishable by a fine not to exceed \$1,000 or imprisonment not to exceed 12 months.

Persons who are administratively exempt from the restriction and seasonal closure contained in this notice include: any Federal, State or local officer or employee acting within the scope of their duties, members of any organized rescue or fire-fighting force in the performance of an official duty, and any person holding written authorization from the BLM.

Dated: July 8, 2005.

Rex Smart,

Field Manager, Kanab Field Office.

[FR Doc. 05-15813 Filed 8-9-05; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before July 23, 2005. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by August 25, 2005.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

COLORADO

Las Animas County

Nichols House, 212 E. 2nd St., Trinidad, 05000930

LOUISIANA

Avoyelles Parish

Central Bank and Trust Company, Mansura, 2057 L'Eglise St., Mansura, 05000933
Evangeline Parish Evangeline Bank and Trust Company, 342 W. Main St., Ville Platte, 05000934

MASSACHUSETTS**Hampshire County**

Dorsey-Jones House, (Underground Railroad in Massachusetts MPS) 1919 Nonotuck St., Northampton, 05000931
 South Worthington Historic District, Ireland St., Conwell Rd., Huntington Rd., Thrasher Hill Rd., Higgins Rd. S. Worthington Rd., Worthington, 05000935

Suffolk County

South Boston Boat Clubs Historic District, 1793-1849 William J. Day Blvd., Boston, 05000936

MISSOURI**Bollinger County**

Mayfield, Will, College Arts and Science Building, 207 Mayfield Dr., Marble Hill, 05000929

NEW MEXICO**Bernalillo County**

Willis, J.R., House and La Miradora Apartments, (Multi-unit Dwellings in Albuquerque, New Mexico MPS) 310 Rio Grande Blvd., SE, Albuquerque, 05000942

Mora County

Cassidy, James J., House, (Upland Valleys of Western Mora County MPS) Address Restricted, Cleveland, 05000943

NEW YORK**New York County**

Townhouses at 352 and 353 Riverside Dr., 352 and 353 Riverside Dr., New York, 05000944

Queens County

Douglaston Historic District, Roughly bounded by Shore Rd., Marinette St., Douglas Rd. and Cherry St., Douglaston, 05000937

NORTH CAROLINA**Buncombe County**

Biltmore Hospital, (Biltmore Village MRA) 14 All Souls Crescent, Asheville, 05000938
 Broadway Market Building, 201 Broadway, Asheville, 05000939

Davidson County

Thomasville Downtown Historic District, Roughly bounded by Main St., Trade St., Guilford St. and Commerce St., Thomasville, 05000940

Gaston County

York—Chester Historic District, Bounded by W. Franklin Blvd., W. Second Ave., South St., W. Tenth Ave., W. Eighth Ave. and S. Clay St., Gastonia, 05000941

OREGON**Coos County**

Hotel North Bend, 768 Virginia St., North Bend, 05000932

SOUTH DAKOTA**Brule County**

Morrison, Edward, House, 624 Main St., Pukwana, 05000945

Lincoln County

Ulrickson Barn, SD 11 29350, Hudson, 05000946

Walworth County

Johnson Barn, Approx 4 mi. WNW of Glenham, Mobridge, 05000950

VERMONT**Bennington County**

Bennington High School, 650 Main St., Bennington, 05000948

Chittenden County

Palmer, Charles R., House, 201 and 203 N. Willard St., Burlington, 05000947

Orleans County

Crystal Lake State Park, (Historic Park Landscapes in National and State Parks MPS) 96 Bellwater Ave., Barton, 05000949

WISCONSIN**Brown County**

Nichols, John T., and Margaret, House, 128 Taft Ave., Allouez, 05000954

Clark County

Trogner, George W. and Sarah, House, 108 Grand Ave., Neillsville, 05000953

Iowa County

Dodge Mining Camp Cabin, 205 E. Fountain St., Dodgeville, 05000952

Milwaukee County

Adelman, Albert and Edith, House, 7111 N. Barnett Ln., Fox Point, 05000951

Polk County

Cushing Land Agency Building, 106 S. Washington St., St. Croix Falls, 05000955
 [FR Doc. 05-15759 Filed 8-9-05; 8:45 am]

BILLING CODE 4312-51-P

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****Public Meetings To Discuss the Preparation of an Environmental Impact Statement on Excess Spoil Generation and Disposal and Stream Buffer Zones Rulemaking**

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Notice of meetings.

SUMMARY: On June 16, 2005, we, the Office of Surface Mining Reclamation and Enforcement (OSM), announced in the **Federal Register** our intent to prepare an environmental impact statement (EIS) to analyze the effects of possibly revising our regulations pertaining to excess spoil generation and disposal, and stream buffer zones. We asked you to contact us if you wanted us to meet with you to discuss the scope of the proposed action,

reasonable alternatives to the proposed action, and significant issues that should be examined in the course of preparing the EIS.

Eighteen people contacted us to request public scoping meetings at various locations in the Appalachian coal fields. We are pleased to accommodate these requests by holding scoping meetings in Knoxville, Tennessee; Hazard, Kentucky; Charleston, West Virginia; and Pittsburgh, Pennsylvania. Details applicable to these meetings are contained in this announcement.

DATES: The meeting dates are:

1. August 22, 2005, 6 p.m. to 9 p.m., Knoxville, TN.
2. August 23, 2005, 6 p.m. to 9 p.m., Hazard, KY.
3. August 24, 2005, 6 p.m. to 9 p.m., Charleston, WV.
4. August 25, 2005, 6 p.m. to 9 p.m., Pittsburgh, PA.

ADDRESSES: The meeting locations are:

1. Knoxville—Hilton Hotel, Sequoia Room, 501 W. Church Avenue, Southwest, Knoxville, Tennessee.
2. Hazard—Hazard Community Technical College, One Community College Drive, First Federal Center, Room 123A, Hazard, Kentucky.
3. Charleston—Embassy Suites Hotel, Ballroom ABC, 300 Court Street, Charleston, West Virginia.
4. Pittsburgh—Best Western Parkway Center, 8th Floor in the Horizon Room, 875 Greentree Road, Greentree, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

David G. Hartos, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 3 Parkway Center, Pittsburgh, PA 15220; telephone: (412) 937-2909. E-mail address: DHARTOS@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

On January 7, 2004, we published in the **Federal Register** proposed changes to regulations regarding excess spoil disposal, the stream buffer zone, and corresponding changes to the stream diversion regulations. In that notice, we said that we prepared a draft environmental assessment (EA) on the rule and that it was available for review. We also said that we had tentatively concluded that the proposed rule will not have a significant effect on the human environment, and that we anticipate that a finding of no significant impact (FONSI) would be issued with the final rule.

We subsequently determined that preparation of an EIS would be an appropriate mechanism to fully assess alternative approaches to these specific proposed actions and their potential

impacts. On June 16, 2005 (70 FR 35122), we published a notice in the **Federal Register** announcing our intent to prepare an EIS to analyze the effects of possibly revising our regulations pertaining to excess spoil generation and disposal and stream buffer zones. We asked for your input regarding the scope of impacts of the proposed action, the topics that we should examine, and any reasonable alternatives that should be considered. We also said that we would hold meetings if there was sufficient interest in having such meetings.

Eighteen people, some representing organizations, contacted us and asked for meetings in various locations in the Appalachian coal fields. We are pleased to accommodate these requests by holding four meetings at the sites listed under **ADDRESSES**.

These meetings will be open to anyone who would like to attend and participate. The primary purpose of the meetings is to assist us in focusing the preparation of the upcoming EIS on those significant issues and reasonable alternatives related to the proposed action. Other issues to be discussed are impact topics, data needs, and national, State, and local concerns. The meetings will be informal and interactive and, where possible, seating will be around small tables to facilitate the exchange of ideas. The meetings are not intended to be adversarial or a debate on the merits of the proposed action.

We will keep detailed notes of the meeting and make these notes publicly available in the administrative record. Please note that we will not have a court reporter present and oral testimony will not be taken and transcribed, but we will accept written comments and suggestions regarding the upcoming EIS.

Any disabled individual who needs special accommodation to attend a public hearing is encouraged to contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 3, 2005.

Michael K. Robinson,

Acting Regional Director, Appalachian Region, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 05-15790 Filed 8-9-05; 8:45 am]

BILLING CODE 4310-05-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-421-06]

Circular Welded Non-Alloy Steel Pipe From China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 421(b) of the Trade Act of 1974 (19 U.S.C. 2451(b)) (the Act).

SUMMARY: Following receipt of a petition filed on August 2, 2005, on behalf of Allied Tube and Conduit Corp., Harvey, IL; IPSCO Tubulars, Inc., Camanche, IA; Maruichi American Corp., Santa Fe Springs, CA; Maverick Tube Corp., Chesterfield, MO; Sharon Tube Co., Sharon, PA; Western Tube Conduit Corp., Long Beach, CA; Wheatland Tube Co., Wheatland, PA; and the United Steelworkers of America, AFL-CIO, Pittsburgh, PA; the Commission instituted investigation No. TA-421-06, *Circular Welded Non-Alloy Steel Pipe From China*, under section 421(b) of the Act to determine whether circular welded non-alloy steel pipe¹ from

¹For purposes of this investigation, the subject product includes certain welded carbon quality steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as structural or mechanical tubing). The term carbon quality steel may include certain low alloy steel imported as other alloy steel pipes and tubes.

All pipe meeting the physical description set forth above that is used in, or intended for use in, standard and structural pipe applications is covered by the scope of this investigation. Standard pipe applications include the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and as an intermediate product for protection of electrical wiring, such as conduit shells. Structural pipe is used in construction applications.

The imported products are currently provided for in the Harmonized Tariff Schedule of the United States (HTS) subheadings 7306.30.10 and 7306.30.50. Specifically, the various HTS statistical reporting numbers under which the subject standard pipe has been provided for since January 1, 1992, are as follows: 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTS category is provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Pipe multiple-stenciled to the ASTM A-53 specification and to any other specification, such as the API-5L or 5L X-42 specifications, or single-certified pipe that enters under HTS subheading 7306.10.10, is covered by this investigation when

China is being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and E (19 CFR part 206).

DATES: Effective August 2, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202-205-3187 or via E-mail, fred.ruggles@usitc.gov), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of

used in, or intended for use in, one of the standard pipe applications listed above, regardless of the HTS category in which it is entered. Pipe shells that enter the United States under HTS subheading 7306.30.50, including HTS statistical reporting number 7306.30.5028, are also covered by this investigation. The investigation also covers pipe used for the production of scaffolding (but does not include finished scaffolding).

Products not included in this investigation are mechanical tubing (whether or not cold-drawn) provided for in HTS subheading 7306.30.50, tube and pipe hollows for redrawing provided for in HTS 7306.30.5035, or finished electrical conduit provided for in HTS 7306.30.5028. API line pipe used in oil or gas applications requiring API certifications is also not included in this investigation. Similarly, pipe produced to the API specifications for oil country tubular goods use are not included in this investigation.

the period for filing entries of appearance.

Limited disclosure of confidential business information ("CBI") under an administrative protective order ("APO") and CBI service list.—Pursuant to section 206.47 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearing.—The Commission has scheduled a hearing in connection with this investigation beginning at 9:30 a.m. on September 16, 2005, at the U.S. International Trade Commission Building. Subjects related to both market disruption or threat thereof and remedy may be addressed at the hearing. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 7, 2005. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 9 at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is September 9, 2005. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is September 21, 2005. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of market disruption or threat thereof and/or remedy on or before September 29, 2005. Parties may submit final comments on market disruption on September 29, 2005 and on remedy on October 4, 2005. Final comments shall contain no more than ten (10) double-spaced and single-sided pages of textual material. All written submissions must conform with the provisions of section 201.8 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is

permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, will not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

Any submissions that contain CBI must also conform with the requirements of section 201.6 of the Commission's rules. CBI that is furnished in written submissions (1) may be subject to, and may be released under an administrative protective order issued by the Commission pursuant to section 206.47 of the Commission's Rules of Practice and Procedure; (2) may be included in a confidential version of the report that the Commission transmits to the President and the U.S. Trade Representative, should the Commission transmit a confidential version; and (3) may also be used in any other import injury investigations conducted by the Commission on the same, or similar, subject matter.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Remedy.—Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present arguments on the issue of remedy may do so orally at the hearing or in their prehearing briefs, posthearing briefs, or final comments on remedy.

Authority: This investigation is being conducted under the authority of section 421 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

Issued: August 4, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-15773 Filed 8-9-05; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-547]

In the Matter of Certain Personal Computers, Monitors and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 6, 2005 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Hewlett-Packard Development Company, L.P. and Hewlett-Packard Company. A supplement to the complaint was filed on July 26, 2005. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain personal computers, monitors and components thereof by reason of infringement of claims 4, 7-8, 12, 15, and 18 of U.S. Patent No. 6,501,721; claims 1-17 of U.S. Patent No. 6,691,236; claims 1-26 of U.S. Patent No. 6,438,697; claims 1-8, and 23-33 of U.S. Patent No. 6,894,706; and claims 1-33 of U.S. Patent No. 6,803,865 patent. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for

this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 3, 2005, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain personal computers, monitors and components thereof by reason of infringement of one or more of claims 4, 7-8, 12, 15, and 18 of U.S. Patent No. 6,501,721; claims 1-17 of U.S. Patent No. 6,691,236; claims 1-26 of U.S. Patent No. 6,438,697; claims 1-8, and 23-33 of U.S. Patent No. 6,894,706; and claims 1-33 of U.S. Patent No. 6,803,865 patent and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—
Hewlett-Packard Development Company, L.P., 20555 State Highway 249, Houston, TX 77070; Hewlett-Packard Company, 3000 Hanover Street, Palo Alto, California 94304-1105;

(b) The respondents are the following companies alleged to be in violation of section 337 and are the parties upon which the complaint is to be served: Gateway, Inc., 7565 Irvine Center Drive, Irvine, California 92618; eMachines, Inc., 7565 Irvine Center Drive, Irvine, California 92618;

(c) Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401-R, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: August 5, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-15826 Filed 8-9-05; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) Docket No. 1419]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) is announcing the September 9, 2005, meeting of the Council.

DATES: Friday, September, 9, 2005, 9:15 a.m.-12:30 p.m.

ADDRESSES: The meeting will take place at the Main Conference Center of the U.S. Department of Justice, Robert F. Kennedy Justice Building, 950

Pennsylvania Avenue, NW., Washington, DC 20530-0001.

FOR FURTHER INFORMATION CONTACT: Robin Delany-Shabazz, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, by telephone at 202-307-9963, or by e-mail at Robin.Delany-Shabazz@usdoj.gov.

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to section 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, *et seq.* Documents such as meeting announcements, agendas, minutes, and interim and final reports will be available on the Council's Web page at <http://www.JuvenileCouncil.gov>. (You may also verify the status of the meeting at that Web address.)

Although designated agency representatives may attend, the Council membership is composed of the Attorney General (Chair), the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary for Homeland Security, Immigration and Customs Enforcement. Nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States.

Meeting Agenda

The agenda for this meeting will include: (a) A review of the past meeting and written public comments; (b) discussion of federal efforts relative to child sexual exploitation; (c) status of January 2006 National Conference, "Building on Success: Providing Today's Youth With Opportunities for a Better Tomorrow"; and (d) discussion and plans for future coordination.

For security purposes, members of the public who wish to attend the meeting must pre-register by calling the Juvenile Justice Resource Center at 301-519-6473 (Daryel Dunston) or 301-519-5217 (Valerie Outlaw), no later than Friday, August 26, 2005. (**Note:** these are not toll-free telephone numbers.) Additional identification documents may be required. To register online, please go to

<http://www.JuvenileCouncil.gov/meetings.html>. Space is limited.

Note: Photo identification will be required for admission to the meeting.

Written Comments

Interested parties may submit written comments by Friday, September 2, 2005, to Robin Delany-Shabazz, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at Robin.Delany-Shabazz@usdoj.gov. The Coordinating Council on Juvenile Justice and Delinquency Prevention expects that the public statements presented will not repeat previously submitted statements. No oral comments will be permitted at this meeting.

Dated: July 21, 2005.

William Woodruff,

Deputy Director of the Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 05-15760 Filed 8-9-05; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Parole Commission

Record of Vote of Meeting Closure (Public Law 94-409) (5 U.S.C. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 5:30 p.m. on Tuesday, August 2, 2005, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to discuss the procedure to be followed for review of one case upon request of the Attorney General as provided in 18 U.S.C. 4215(c).

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioner present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Cranston J. Mitchell, and Patricia Cushwa.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: August 3, 2005.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 05-15889 Filed 8-8-05; 10:21 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Reporting and Performance Standards System for the Migrant and Seasonal Farm Worker Program Under Title I, Section 167 of the Workforce Investment Act (WIA) of 1998

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Employment and Training Administration (ETA) is soliciting comments on revised reporting requirements for the Migrant and Seasonal Farm Worker (MSFW) program. This information collection request is necessary in order to collect data for calculating a set of common performance measures of the outcomes achieved by the MSFW program.

DATES: Submit comments on or before October 11, 2005.

ADDRESSES: Send comments to: Mr. John R. Beverly, Administrator, Office of National Programs, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210; telephone: (202) 693-3840 (this is not a toll-free number); fax: (202) 693-3589; e-mail: ETAPerforms@dol.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Alina Walker, Chief, Division of Migrant and Seasonal Farm Workers, Employment and Training Administration, U.S. Department of

Labor, 200 Constitution Avenue, NW., Room S-4206, Washington, DC 20210; telephone: (202) 693-2706 (this is not a toll-free number); fax: (202) 693-3945; e-mail: ETAPerforms@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Each grantee administering funds under the MSFW program is required to submit a program planning report (ETA Form 9094), a budget information summary report (ETA Form 9093), and a quarterly program status report (ETA Form 9095). This latter form contains information related to levels of participation and service, related assistance activities, and actual placements in employment. In addition, each grantee submits a quarterly file of individual records on all participants who exit the program, called the Workforce Investment Act Standardized Participant Record (WIASPR).

In 2001, under the President's Management Agenda, OMB and other Federal agencies developed a set of common performance measures to be applied to certain federally-funded employment and training programs with similar strategic goals. As part of this initiative, ETA initially issued Training and Employment Guidance Letter (TEGL) 15-03 and has more recently issued TEGL 28-04, Common Measures Policy, which rescinded TEGL 15-03 and reflected updates to the policy. The value of implementing common measures is the ability to describe in a similar manner the core purposes of the workforce system—how many people found jobs; did they keep their jobs; and what were their earnings. Multiple sets of performance measures have burdened states and grantees as they are required to report performance outcomes based on varying definitions and methodologies. By minimizing the different reporting and performance requirements, implementing a set of common performance measures can facilitate the integration of service delivery, reduce barriers to cooperation among programs, and enhance the ability to assess the effectiveness and impact of the workforce investment system, including the performance of the system in serving individuals facing significant barriers to employment.

The common measures are an integral part of ETA's performance accountability system, and ETA will continue to collect from grantees the data on program activities, participants, and outcomes that are necessary for program management and to convey full and accurate information on the performance of workforce programs to policymakers and stakeholders.

This revision to the MSFW program reporting system identifies a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, holds grantees appropriately accountable for the Federal funds they receive, assesses progress against a set of common performance measures, and allows the Department to fulfill its oversight and management responsibilities.

The Employment and Training Administration is proposing similar changes to the reporting requirements for the WIA Title 1B, Wagner-Peyser Act, and Trade Adjustment Assistance programs. Please note that ETA will seek comments regarding changes to information collection for these programs in separate **Federal Register** notices.

The following three adult common performance measures apply to grantees of the MSFW program:

- Entered Employment.
- Employment Retention.
- Six Months Earnings Increase.

Grantees are currently required to submit data according to measures established under the Government Performance and Results Act (GPRA), which include entered employment, retention, and earnings increase. While the GPRA measures for the MSFW program are similar to the common measures, the data elements that are needed to do the calculations are slightly different, requiring modifications to the definitions and record layout of the WIASPR. Important changes to note on the WIASPR include the following:

- Elimination of all fields that collect information on youth served by the

MSFW program due to recent budgetary actions.

- Elimination of data collection fields associated with the current MSFW performance standards system to incorporate data for calculating common performance measures.

- A change in the field that tracks the reason the participant exited the MSFW program, because participants who exited due to certain reasons, such as becoming institutionalized, are excluded from calculations of common measures.

- Addition of three fields to track whether the participant was employed in the first, second, and third quarters after program exit, which are used to calculate the common measures.

- Addition of fields to capture wages earned by the participant in the 1st quarter after program exit and over a six-month period covering the 2nd and 3rd quarters after program exit to calculate the earnings increase measure.

II. Desired Focus of Comments

Currently, the Department is soliciting comments concerning the revised information collection request for the MSFW program in order to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed ICR can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

Type of Review: Revision.

Agency: Department of Labor, Employment and Training Administration.

Title: Reporting and Performance Standards System for the Migrant and Seasonal Farm Worker Program under Title I, Section 167 of the Workforce Investment Act (WIA).

OMB Number: 1205-0425.

Recordkeeping: Three years for States and grantees.

Affected Public: State, local or tribal governments; not-for-profit institutions.

Cite/Reference/Form/etc: Section 167, Workforce Investment Act of 1998 (Pub. L. 105-220), see table below for list of forms.

Total Respondents: 53 States and grantees.

Frequency: Annually and quarterly.

Total Responses: 159 submissions annually and 29,712 quarterly—grantees submits an ETA 9095 form and WIASPR files each quarter.

Estimated Total Burden Hours:

Form/activity	Total respondents	Frequency	Total responses	Average time per response	Total annual burden hours
Plan Narrative	53	Annual	53	20	1,060
ETA 9093	53	Annual	53	15	795
ETA 9094	53	Annual	53	16	848
ETA 9095	53	Quarterly	212	7	1,484
WIASPR Data	53	Quarterly	29,500	2.25	66,375
Totals	53	.....	29,871	60.25	70,562

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintaining): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Signed in Washington, DC, on August 3, 2005.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. E5-4324 Filed 8-9-05; 8:45 am]

BILLING CODE 4510-30-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: Requirements of a Bona Fide Thrift or Savings Plan (29 CFR part 547) and Requirements of a Bona Fide Profit-Sharing Plan or Trust (29 CFR part 549). 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 October 11, 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

Section 7(e)(3)(b) of the Fair Labor Standards Act permits the exclusion from an employee's regular rate of pay, payments on behalf of an employee to a "bona fide" thrift or savings plan, profit-sharing plan or trust. Regulations, 29 CFR Parts 547 and 549 set forth the requirements for a "bona fide" thrift or savings plan, profit-sharing plan or trust. The maintenance of the records required by the regulations enables the Department of Labor (DOL) investigators to determine whether a given thrift or savings plan, profit-sharing plan or trust, is in compliance with Section 7(e)(3)(b) of the FLSA. Without these records, such a determination could not be made. This information collection is currently approved for use through March 31, 2006.

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 extension of approval to collect this information in order to determine whether a given thrift or savings plan or profit-sharing plan or trust is in compliance with section (7)(e)(3)(b) of the FLSA.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Requirements of a Bona Fide Thrift or Savings Plan (29 CFR part 547) and Requirements of a Bona Fide Profit-Sharing Plan or Trust (29 CFR part 549).

OMB Number: 1215-0119.

Frequency: On occasion.

Affected Public: Business or other for-profit; not-for-profit institutions; farms; State, local, or tribal government.

Total Respondents: 716,000.

Total Annual Responses: 716,000.

Estimated Total Burden Hours (Recordkeeping): 2.

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: August 4, 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. 05-15780 Filed 8-9-05; 8:45 am]

BILLING CODE 4510-27-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Kathy Shaeffer, Mail Suite 6M70, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street, SW., Mail Suite 6M70, Washington, DC 20546, (202) 358-1230, kathleen.shaeffer-1@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting approval for a new collection that will be used to assess the safety culture of employees associated with simulation and flight-test activities at NASA Langley Research Center.

II. Method of Collection

NASA uses electronic methods to collect information from collection respondents.

III. Data

Title: Behavioral Science Technology (BST) Cultural Assessment of the Flight Research Services Directorate (FRSD) at NASA Langley.

OMB Number: 2700-.

Type of Review: New collection.

Affected Public: Business or other for-profit; Federal government.

Estimated Number of Respondents: 75.

Estimated Time Per Response: Approximately 30 minutes.

Estimated Total Annual Burden Hours: 37.5.

Estimated Total Annual Cost: \$0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: August 3, 2005.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05-15794 Filed 8-9-05; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL SCIENCE FOUNDATION

Notice of Meeting; Advisory Committee For Polar Programs

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (1130).

Date/Time: August 11, 2005, 4 p.m. to 5 p.m. e.d.t.

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford I, Room 390.

Type of Meeting: Open.

Contact Person: Altie Metcalf, Office of Polar Programs (OPP), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292-8030.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: Receive the report prepared by the Subcommittee on USAP Resupply. This meeting will be by teleconference for the Committee members.

Agenda: Introductions; Advisory Committee comments on the draft report; comments from other interested parties; Committee discussion and consideration of the report.

Dated: August 4, 2005.

Suzanne Plimpton,

Management Analyst.

[FR Doc. 05-15774 Filed 8-9-05; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-157/97]

Notice and Solicitation of Comments; Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action To Decommission Ward Center for Nuclear Studies at Cornell University Reactor Facility

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application from the Cornell University dated August 22, 2003, for a license amendment approving its proposed decommissioning plan for the Ward Center for Nuclear Studies (TRIGA Reactor, Docket No. 50-157, License R-80 and Zero Power Reactor, Docket No. 50-97, License R-89) located in Ithaca, New York.

In accordance with 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which provides for publication in the **Federal Register** and in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site.

Comments should be provided within 30 days of the date of this notice to Patrick M. Madden, Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Mail Stop O12-G13, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Further, in accordance with 10 CFR 50.82(b)(5), notice is also provided to interested persons of the Commission's intent to approve the plan by amendment, subject to such conditions and limitations as it deems appropriate and necessary, if the plan demonstrates that decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public.

Copies of the application for a license amendment approving Cornell University's proposed decommissioning plan are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20855-2738. The NRC maintains an Agencywide Documents Access and Management

System (ADAMS), which provides text and image files of NRC's public documents. The initial application may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>, under ADAMS accession number ML032400421, ML032400186, ML032400205, and ML032400427. Persons who do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, may contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated in Rockville, Maryland, this 1st day of August 2005.

For the Nuclear Regulatory Commission.

Alexander Adams, Jr.,

Acting Section Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5-4325 Filed 8-9-05; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, August 25, 2005;

Thursday, September 8, 2005;

Thursday, September 22, 2005;

Thursday, October 20, 2005;

Thursday, November 3, 2005.

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor

members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: August 2, 2005.

Mary M. Rose,

Chairperson, Federal Prevailing Rate Advisory Committee.

[FR Doc. 05-15775 Filed 8-9-05; 8:45 am]

BILLING CODE 6325-49-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Regulations 13D and 13G; Schedules 13D and 13G, OMB Control No. 3235-0145, SEC File No. 270-137.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the office of

Management and Budget for extension and approval.

Schedules 13D and 13G are filed pursuant to sections 13(d) and 13(g) of the Securities Exchange Act and Regulations 13D and 13G thereunder to report beneficial ownership of equity securities registered under section 12 of the Exchange Act. Regulations 13D and 13G provide investors and subject issuers with information about accumulations of securities that may have the potential to change or influence control of the issuer. Schedules 13D and 13G are used by persons, including small entities, to report their ownership of more than 5% of a class of equity securities registered under section 12. We estimate that it takes approximately 43,500 total burden hours to prepare a Schedule 13D and that it is filed by approximately 3,000 respondents. The respondent prepares 25% of the 43,500 annual burden hours for a total reporting burden of 10,875 hours. Schedule 13G takes approximately 98,800 total burden hours to prepare and is filed by an estimated 9,500 respondents. The respondent prepares 25% of the 98,800 annual burden hours for a total reporting burden of 24,700 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: August 1, 2005.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-4308 Filed 8-9-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 12d2-1, SEC File No. 270-98, OMB Control No. 3235-0081,

Rule 12d2-2, SEC File No. 270-86, OMB Control No. 3235-0080.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 12d2-1 was adopted in 1935 pursuant to sections 12 and 23 of the Securities Exchange Act of 1934 ("Act"). Rule 12d2-1 provides the procedures by which a national securities exchange may suspend from trading a security that is listed and registered on the exchange. Under Rule 12d2-1, an exchange is permitted to suspend from trading a listed security in accordance with its rules, and must promptly notify the Commission of any such suspension, along with the effective date and the reasons for the suspension.

Any such suspension may be continued until such time as the Commission may determine that the suspension is designed to evade the provisions of section 12(d) of the Act and Rule 12d2-2 thereunder.¹ During the continuance of such suspension under Rule 12d2-1, the exchange is required to notify the Commission promptly of any change in the reasons for the suspension. Upon the restoration to trading of any security suspended under Rule 12d2-1, the exchange must notify the Commission promptly of the effective date of such restoration.

The trading suspension notices serve a number of purposes. First, they inform the Commission that an exchange has suspended from trading a listed security or reintroduced trading in a previously suspended security. They also provide the Commission with information

¹ Rule 12d2-2 prescribes the circumstances under which a security may be delisted from an exchange and withdrawn from registration under section 12(b) of the Act, and provides the procedures for taking such action.

necessary for it to determine that the suspension has been accomplished in accordance with the rules of the exchange, and to verify that the exchange has not evaded the requirements of section 12(d) of the Act and Rule 12d2-2 thereunder by improperly employing a trading suspension. Without Rule 12d2-1, the Commission would be unable to fully implement these statutory responsibilities.

There are nine national securities exchanges that are subject to Rule 12d2-1. The burden of complying with Rule 12d2-1 is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange LLC ("Amex") than on the other exchanges.² However, for purposes of this filing, it is assumed that the number of responses is evenly divided among the exchanges. Since approximately 104 responses under Rule 12d2-1 are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one-half reporting hour per response, 52 annual burden hours for all exchanges. The related costs associated with these burden hours are \$2,886.00.

Rule 12d2-2 and Form 25 were adopted in 1935 and 1952, respectively, pursuant to sections 12 and 23 of the Act. Rule 12d2-2 sets forth the conditions and procedures under which a security may be delisted from an exchange and withdrawn from registration under section 12(b) of the Act. The Commission has recently adopted amendments to Rule 12d2-2 and Form 25.³ The amendments will become effective on August 22, 2005 and the compliance date of the amendments is April 24, 2006. Under the amended Rule 12d2-2, all issuers and national securities exchanges seeking to delist and deregister a security in accordance with the rules of an exchange will file the newly adopted version of Form 25 with the Commission. The Commission has also adopted amendments to Rule 19d-1 under the Act to require exchanges to file the newly adopted version of Form 25 as notice to the Commission under section 19(d) of the Act. Finally, the Commission has adopted amendments to exempt options and security futures from section 12(d) of the Act. These amendments are intended to simplify

the paperwork and procedure associated with a delisting and to unify general rules and procedures relating to the delisting process.

The Form 25 is useful because it informs the Commission that a security previously traded on an exchange is no longer traded. In addition, the Form 25 enables the Commission to verify that the delisting has occurred in accordance with the rules of the exchange. Further, the Form 25 helps to focus the attention of delisting issuers to make sure that they abide by the proper procedural and notice requirements associated with a delisting. Without Rule 12d2-2 and the Form 25, as applicable, the Commission would be unable to fulfill its statutory responsibilities.

There are seven national securities exchanges that trade equity securities that will be respondents subject to Rule 12d2-2 and Form 25.⁴ The burden of complying with Rule 12d2-2 and Form 25 is not evenly distributed among the exchanges, however, since there are many more securities listed on the NYSE and the Amex than on the other exchanges. However, for purposes of this filing, the staff has assumed that the number of responses is evenly divided among the exchanges. Since approximately 648 responses under Rule 12d2-2 and Form 25 for the purpose of delisting equity securities are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one hour per response, 648 annual burden hours for all exchanges. In addition, since approximately 57 responses are received by the Commission annually from issuers wishing to remove their securities from listing and registration on exchanges, the Commission staff estimates that the aggregate annual reporting hour burden on issuers would be, assuming on average one reporting hour per response, 57 annual burden hours for all issuers. Accordingly, the total annual hour burden for all respondents to comply with Rule 12d2-2 is 705 hours. The related costs associated with these burden hours are \$37,830.00.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549.

August 2, 2005.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-4309 Filed 8-9-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52205; File No. SR-BSE-2005-29]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

August 4, 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 August 1, 2005, the Boston Stock Exchange, Inc. ("BSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE is proposing to amend its rules governing the operation of the intermarket option linkage ("Linkage") on the Boston Options Exchange ("BOX"). The BSE is proposing to amend the trade-through and locked markets rules to allow a market maker to "trade and ship" or "book and ship" an order. The text of the proposed rule change is available on the BSE's Web site (<http://www.bostonstock.com>), at

² In fact, some exchanges do not file any trading suspension reports in a given year.

³ See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

⁴ We note that there are two additional national securities exchanges that only trade standardized options which, as noted above, are exempt from Rule 12d2-2.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the BSE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The BSE 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 BSE proposes to amend its rules governing Linkage trading with respect to trade-throughs and locked markets. The amendment will provide that BOX Options Participants may: (i) Trade an order at a price that is one minimum quoting increment inferior to the national best bid or offer ("NBBO") if the Options Participant contemporaneously transmits to the market(s) disseminating the NBBO Linkage Orders³ to satisfy all interest at the NBBO price ("trade and ship"); and (ii) place on the BOX book an order that would lock another exchange if the Options Participant contemporaneously sends a Linkage Order to such other exchange to satisfy all interest at the lock price ("book and ship"). Under the trade and ship proposal, pursuant to agency obligations, any execution the Options Participant receives from the market disseminating the NBBO must be reassigned to any customer order underlying the Linkage Order that was transmitted to trade against the market disseminating the NBBO. Below are examples illustrating the applications of these concepts:

- (Trade and Ship Example—BOX is disseminating an offer of \$2.00 for 100 contracts. Exchange B is disseminating the national best offer of \$1.95 for 10 contracts. No other market is at \$1.95. A BOX market maker receives a 100 contract customer buy order to pay \$2.00. Under this proposal, the BOX market maker could execute 90 contracts (or 100 contracts) of the customer order at \$2.00 provided the BOX market maker contemporaneously

transmits a 10 contract P/A Order⁴ to Exchange B to pay \$1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10 contract fill at \$1.95 and 90 contracts at \$2.00 (if the customer order was originally filled in its entirety at \$2.00, an adjustment would be required to provide the customer with the \$1.95 price for 10 contracts reflecting the P/A Order execution). As proposed, this would not be deemed a Trade-Through.

- (Book and Ship Example—BOX is disseminating a \$1.85–\$2.00 market. Exchange B is disseminating a \$1.80–\$1.95 market. The \$1.95 offer is for 10 contracts. No other market is at \$1.95. A BOX market maker receives a customer order to buy 100 contracts at \$1.95. Under this proposal, the BOX market maker could book 90 contracts of the customer buy order at \$1.95 provided the BOX market maker contemporaneously transmits a 10 contract P/A Order to Exchange B to pay \$1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10 contract fill and the rest of the customer's order will be displayed as a \$1.95 bid on the BOX. The national best offer would likely be \$2.00. As proposed, this would not be deemed a "locked" market for purposes of the Intermarket Option Linkage Plan.

2. Statutory Basis

The BSE believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)⁵ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will provide greater automatic execution of orders through Linkage and facilitate the ability of market makers to execute or book their customer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe the proposed rule change will impose any burden on competition not necessary or

appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The BSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the BSE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BSE-2005-29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-BSE-2005-29. 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

³ The BSE defines "Linkage Order" in Section 1, subsection (j) of Chapter XII of BOX Rules.

⁴ The BSE defines "Principal Acting as Agent ("P/A") Order" in Section 1, subsection (j)(i) of Chapter XII of BOX rules.

⁵ 15 U.S.C. 78f(b)(5).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2005-29 and should be submitted on or before August 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-4310 Filed 8-9-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52203; File No. SR-ISE-2005-36]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Cancellation Fee Changes

August 3, 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 July 25, 2005, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change concerning the Exchange's cancellation fee as described in items I, II, and III below, which items have been prepared by the ISE. On July 29, 2005, the ISE submitted an amendment to the proposed rule change ("Amendment No. 1").³ The ISE has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the ISE under section 19(b)(3)(A)(ii) of the Act⁴ and

Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal 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

The ISE proposes to amend its Schedule of Fees regarding its cancellation fee. The text of the proposed rule change is available on the Exchange's Internet Web site (http://www.iseoptions.com/legal/proposed_rule_changes.asp), at the principal office of the ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The ISE has prepared 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 this proposed rule change is to amend the ISE's cancellation fee. Through June of 2005 the Exchange charged Electronic Access Members ("EAMs") \$1 per order canceled in excess of the number of orders executed. In File No. SR-ISE-2005-31 ("Fee Amendment"), the Exchange amended that fee in a rule change effective on filing pursuant to section 19(b)(3)(A) of the Act.⁶ To address problems the Exchange encountered in applying the cancellation fee, the Fee Amendment applied the fee: (1) On the cancellation activity of each of an EAM's customers (including itself when it self-clears), rather than the aggregate activity of all of an EAM's customers; and (2) on a per-contract, rather than a per-order basis.

Upon the Exchange's filing of the Fee Amendment, the Commission received a number of comment letters raising objections to the proposal. Based on

those comment letters, the Commission staff told the ISE that it believed that the proposed fee should be subject to formal comment pursuant to section 19(b)(2) of the Act. Accordingly, this proposed rule change will reinstate the cancellation fee as in effect prior to the submission of the Fee Amendment. The Exchange will be filing a rule change pursuant to section 19(b)(2) of the Act proposing to implement a revised fee.

2. Statutory Basis

The ISE states that the basis for the proposed rule change is the requirement under section 6(b)(4) of the Act⁷ that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE states that the proposed rule change does not impose in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties. However, the Commission received comment letters on certain aspects of the current cancellation fee that this filing is amending. The Exchange will address those comment letters in a separate filing specifically repropounding aspects of the fee to which the commenters objected.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(2)⁹ thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 clarified that the change in the cancellation fee will take effect on August 1, 2005.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

⁶ See Securities Exchange Act Release No. 52177 (July 29, 2005).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 19b-4(f)(2).

investors, or otherwise in furtherance of the purposes of the Act.¹⁰

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 SR-ISE-2005-36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to SR-ISE-2005-36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to SR-ISE-2005-36 and should be submitted on or before August 31, 2005.

¹⁰ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of Act, the Commission considers the period to commence on July 29, 2005, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-4312 Filed 8-9-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52176; File No. SR-NASD-2005-086]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Article VIII of the By-Laws of NASD Regulation, Inc. Relating to District Committees and District Nominating Committees

July 29, 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 July 5, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by NASD. NASD has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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

NASD proposes to amend Article VIII (District Committees and District Nominating Committees) of the By-Laws of NASD Regulation, Inc. ("By-Laws") to clarify the qualification requirements for candidates to NASD District Committees and District Nominating Committees (collectively, "Committees"), and to establish procedures for the nomination and election of an alternate candidate who will replace, in an uncontested election, a candidate nominated by the District

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 7 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)

⁵ As required under Rule 19b-4(f)(6)(iii), NASD provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

Nominating Committee that withdraws from further consideration or is determined to be ineligible. Below is the text of the proposed rule change.⁶ Proposed new language is *italicized*; proposed deleted text is [bracketed].

* * * * *

ARTICLE VIII

DISTRICT COMMITTEES AND DISTRICT NOMINATING COMMITTEES

Sec. 8.1 No change.

Composition of District Committees

Sec. 8.2 (a) A district created under Section 8.1 shall elect a District Committee pursuant to this Article. A District Committee shall consist of no fewer than five and no more than 20 members, unless otherwise provided by resolution of the Board. Subject to the limitation set forth in the immediately preceding sentence, the authorized number of members of a District Committee shall be determined from time to time by the Board; provided, however, that no decrease in the authorized number of members of a District Committee shall shorten the term of office of any member thereof. Each District Committee member shall: (1) Be [employed by] *registered with an NASD member eligible to vote in the district for District Committee elections,* and (2) work primarily from such NASD member's principal office or a branch office that is located within the district where the member serves on a District Committee. Members of the District Committees shall serve as panelists in disciplinary proceedings in accordance with the Rules of the Association. The District Committees shall consider and recommend policies and rule changes to the Board. The District Committees shall endeavor to educate NASD members and other brokers and dealers in their respective districts as to the objects, purposes, and work of the NASD and NASD Regulation in order to foster NASD members' interest and cooperation.

Sec. 8.3 to Sec. 8.8. No change.

Composition of District Nominating Committees

Sec. 8.9 (a) Each district created under Section 8.1 shall elect a District Nominating Committee pursuant to this Article. A District Nominating Committee shall consist of five

⁶ The Commission made minor technical changes to the rule text on behalf of the NASD. See E-mail from Kosha Dalal, Associate General Counsel, NASD, to Ronesha A. Butler, Special Counsel, Division of Market Regulation, Commission, dated July 27, 2005.

members, unless the Board by resolution increases a District Nominating Committee to a larger number. Each District Nominating Committee member shall: (1) be [employed by] *registered with* an NASD member eligible to vote in the district for District Committee elections, and (2) work primarily from such NASD member's principal office or a branch office that is located within the district where the member serves on a District Nominating Committee, but shall not be a member of the District Committee. A majority of the members of the District Nominating Committee shall include persons who previously have served on a District Committee or who are current or former Directors or current or former Governors of the NASD Board.

Sec. 8.10 to Sec. 8.16. No change.

District Nominating Committee Slate

Sec. 8.17 (a) The District Nominating Committee shall review the background of proposed candidates and the description of the NASD membership provided by NASD Regulation staff and shall nominate a slate of candidates for the election. The slate shall include one candidate for each *open* position on the District Committee and the District Nominating Committee subject to election at the next annual election. *The District Nominating Committee may also nominate one alternate candidate for the District Committee and one alternate candidate for the District Nominating Committee. In the event of an uncontested election pursuant to Section 8.19, the alternate candidate would replace any member of the nominated slate of candidates who withdrew or was determined to be ineligible.* In nominating candidates for the office of member of the District Committee and the office of member of the District Nominating Committee, the District Nominating Committee shall endeavor to secure appropriate and fair representation on the District Committee and on the District Nominating Committee of the various sections of the district and various classes and types of NASD members engaged in the investment banking or securities business within the district. In nominating candidates for the office of member of the District Nominating Committee, a District Nominating Committee shall assure that the composition of the District Nominating Committee meets the standards in Section 8.9(a).

Notification of Nomination

Sec. 8.18 The District Director, acting on behalf of the District

Nominating Committee, shall give a Notice to the Secretary of NASD Regulation of each candidate nominated by the District Nominating Committee and the office to which the candidate is nominated. *If the District Nominating Committee chooses, in its discretion, to nominate an alternate candidate for either the District Committee or the District Nominating Committee, or an alternate candidate for each such Committee, the District Director shall give Notice to the Secretary of NASD Regulation of each alternate candidate nominated by the District Nominating Committee and the office to which each alternate candidate is nominated.* On or before October 1 of each year, the Secretary of NASD Regulation shall give a Notice of the nominated candidates and any alternate candidate(s) to the Executive Representatives of NASD members and the District Committee.

Sec. 8.19. No change.

Designation of Additional Candidates

Sec. 8.20 If an officer[,] or director[,] of, or [employee of] *individual who is registered with*, an NASD member who meets the qualifications of Section 8.2 or 8.9, as applicable, is not nominated by the District Nominating Committee as a candidate or an alternate and wants to be considered for election to the District Committee or the District Nominating Committee, he or she shall deliver a written notice to the District Director within 14 calendar days after the Secretary of NASD Regulation gives the Notice of nominated candidates pursuant to Section 8.18. The District Director shall make a written record of the time and date of the receipt of the officer's, director's, or [employee's] *registered person's* notice. The officer, director, or [employee] *registered person* shall be designated as an "additional candidate."

Sec. 8.21 to Sec. 8.33 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, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The By-Laws set forth provisions relating to the operation of the Committees, including specifically, provisions regarding Committee meetings, vacancies and elections. Under Article VIII, the role of the District Committee members includes serving as panelists in disciplinary proceedings in accordance with NASD Rules, recommending policy and rule changes to the Board, educating members in their district, and selecting members of the regional Committees in a manner consistent with the By-Laws. The role of the District Nominating Committee includes nominating candidates to serve on the Committees for that region. Currently, there are 11 District Committees, divided by geographic region. The By-Laws set forth provisions governing the annual elections of the Committees.

In the 2004 District Committee election, potential candidates sought clarification of the qualification requirements set forth in Article VIII, Sections 8.2 and 8.9 of the By-Laws. Specifically, questions arose as to the meaning of the language in such Sections requiring that potential candidates for election to, respectively, a District Committee or District Nominating Committee, be "employed by" a member eligible to vote in that district. To clarify the term, NASD is proposing to replace these references in Sections 8.2 and 8.9, and the reference to "employee" in Section 8.20, with the term "registered with" and "registered person," respectively, thereby making it clear that any person associated and registered with the member is eligible for election to the District Committee or District Nominating Committee irrespective of whether such person is, as a legal matter, employed by such member.⁷

⁷ Any person who engages in the investment banking or securities business of a member must be registered with NASD and be an associated person of that member. There is no requirement that associated persons be employees. They may, in fact, operate for employment law purposes as independent contractors. The Commission reiterates its longstanding position that the designation of independent contractor has no relevance for purposes of the securities laws. See letter to Gordon S. Macklin, President, NASD from Douglas Scarff, Director, Division of Market Regulation, dated June 18, 1982. NASD believes the requirement of being "registered with" as opposed to "employed by" the member more accurately aligns the candidacy requirements with the qualification of persons who may represent a member.

In addition, in the 2004 District Committee election, a candidate nominated by the District Nominating Committee for District 10 withdrew from further consideration following the September 2004 *Special Notice to Members* announcing the nominees for District 10 and prior to the distribution of the contested election ballot. As a result, procedures were implemented to allow the District Nominating Committee for District 10 to amend the slate of nominees to include an alternate nominee to replace the withdrawing nominee.

To add flexibility to the nomination process and avoid potential delays, NASD is proposing to amend Section 8.17(a) to permit the District Nominating Committee, at the time it nominates its slate of candidates for the District Committee and the District Nominating Committee, to identify one alternate candidate for each such Committee. The alternate candidate would, in the context of an uncontested election, replace a nominated candidate who withdraws or is otherwise determined to be ineligible. In addition, NASD is proposing to amend Section 8.17(a) to provide that in an uncontested election, if any of the nominees for the District Committee or the District Nominating Committee withdraws or is determined to be ineligible before being declared duly elected, the withdrawing/ineligible nominee would be replaced by the alternate candidate. In an uncontested election, candidates are deemed duly elected 14 days after the Secretary of NASD Regulation provides notice of the nominated candidates to the Executive Representatives of NASD members and the District Committee and, so long as no additional candidate has come forward pursuant to Section 8.20 of the By-Laws. If a Committee member withdraws after the Committee members are duly elected, the vacancy provisions of the By-Laws, Sections 8.4 and 8.11, would apply. The proposed amendments to the By-Laws contemplate that an alternate candidate will replace a candidate on the slate only when an election is uncontested.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁸ in general, and with section 15A(b)(6) of the Act,⁹ in particular, which require, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to thirty days after the date of filing. NASD requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow the proposed rule change to be operative before the start of the 2006 Committees' election cycle. The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the waiver will allow the NASD to clarify and streamline the election processes governing the Committees and clarify the qualification requirements of candidates to serve on a District Committee or District Nominating Committee for the 2006 election cycle.¹³ For these reasons, the Commission designates the proposed

rule change as effective and operative immediately.

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed 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 SR-NASD-2005-086 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to SR-NASD-2005-086. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the 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 SR-NASD-

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² *Id.*

¹³ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

2005-086 and should be submitted on or before August 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-4313 Filed 8-9-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52209; File No. SR-NASD-2004-165]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to NASD Rule 2790

August 4, 2005.

I. Introduction

On October 29, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to, among other things, amend the definition of "new issue" under NASD Rule 2790. On February 1, 2005, NASD submitted Amendment No. 1 to the proposed rule change.¹ On April 18, 2005, NASD submitted Amendment No. 2 to the proposed rule change.² The proposed rule change, as amended, was published for comment in the *Federal Register* on June 1, 2005.³ The Commission received eight comment letters on the proposal, as amended.⁴ On July 18, 2005, the

NASD submitted a response to comment letters.⁵ This order approves the proposed rule change, as amended.

II. Description of Proposed Rule Change

A. Securities Offerings of BDCs, DPPs, and REITs

The proposals would amend subparagraph (i)(9) of NASD Rule 2790 to exclude from the definition of "new issue" securities offerings of a business development company ("BDC") as defined in section 2(a)(48) of the Investment Company Act,⁶ a direct participation program ("DPP") as defined in NASD Rule 2810(a)(4), and a real estate investment trust ("REIT") as defined in section 856 of the Internal Revenue Code (the "Code").⁷

B. Foreign Investment Company Exemption

The proposals would include a technical change to the exemption for foreign investment companies in subparagraph (c)(6)(A) of NASD Rule 2790 to clarify the scope of the exemption as reflected in a recent NASD staff memorandum dated August 6, 2004 ("Staff Memorandum").⁸ Currently, subparagraph (c)(6) exempts from the Rule sales to and purchases by an investment company organized under the laws of a foreign jurisdiction, provided that: (1) the investment company is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; and (2) no person owning more than 5% of the shares of the investment company is a restricted person. In the Staff Memorandum, among other things, NASD staff explained that the exemption for foreign investment companies extends only to an investment company organized under the laws of a foreign jurisdiction that is either "listed on a foreign exchange for sale to the public" or "authorized for sale to the public," and that does not have any restricted person that beneficially owns more than 5% of the company's shares. Accordingly, the proposal would amend the rule text to clarify the scope of the exemption so that investment companies listed on a foreign exchange must be "for sale to the public."

⁵ Letter from Gary L. Goldsholle, Associate Vice President and Associate General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (July 18, 2005).

⁶ 15 U.S.C. 80a-2(a)(48).

⁷ 26 U.S.C. 856.

⁸ The Staff Memorandum is available on the NASD's Web site at <http://www.nasd.com>.

C. Information Required To Be Filed

The proposals would amend NASD Rule 2790 to codify the requirement for the book-running managing underwriter to file distribution information as announced in a Notice to Members.⁹ In 2004, to coincide with the implementation of NASD Rule 2790, NASD initiated a new system for members to submit new issue distribution information named "IPO Distribution Manager."¹⁰ Through IPO Distribution Manager, the lead managing underwriters of offerings involving a "new issue" as defined in Rule 2790 will be required to make two filings with the Corporate Financing Department. In the initial filing, which must be filed on or before the offering date, the managing underwriter must submit the initial list of distribution participants and their commitment and retention amounts. In the final filing, which must be filed no later than three days after the offering date (T + 3), the managing underwriter must submit the final list of distribution participants and their commitment and retention amounts.

III. Discussion

The Commission received eight comment letters on the proposed rule change, two of which supported the proposal,¹¹ and six of which did not address the substance of the proposed rule change. After careful review, the Commission finds, as discussed more fully below, that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association. The Commission finds specifically that the proposed rule change is consistent with sections 15A(b)(6) and 15A(b)(9) of the Exchange Act.¹²

Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

⁹ See Notice to Members 04-20 (March 2004) ("NtM 04-20").

¹⁰ See *Id.*

¹¹ See Hines and IPA.

¹² 15 U.S.C. 78o-3(b)(6) and (b)(9).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ Amendment No. 1 included minor changes to the rule text of the proposed rule change.

² Amendment No. 2 included minor changes to the proposed rule change including clarifying that most REITs have invested assets at the time of their initial public offering.

³ See Securities Exchange Act Release No. 51735 (May 24, 2005), 70 FR 31554 (June 1, 2005).

⁴ Letter from Hines Real Estate Securities, Inc. to Jonathan G. Katz, SEC, dated June 14, 2005 ("Hines"); Letter from Investment Program Association to Jonathan G. Katz, SEC, dated June 22, 2005 ("IPA"); Letter from Hong Kong Investment Funds Association to Jonathan G. Katz, SEC, dated June 22, 2005 ("HKIFA"); Letter from Investment Management Association to Jonathan G. Katz, SEC, dated June 22, 2005 ("IMA"); Letter from Investment Company Institute to Jonathan G. Katz, SEC, dated June 22, 2005 ("ICI"); Letter from Dechert LLP to Jonathan G. Katz, SEC, dated June 22, 2005 ("Dechert"); Letter from The Investment Trusts Association, Japan, to Jonathan G. Katz, SEC, dated June 22, 2005 ("ITA"); and Letter from T. Rowe Price Associates, Inc. to Jonathan G. Katz, SEC, dated June 23, 2005 ("T. Rowe Price").

Section 15A(b)(9) requires that the rules of an association not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Section 3(f) of the Exchange Act directs the Commission to consider, in addition to the protection of investors, whether approval of a rule change will promote efficiency, competition, and capital formation.¹³ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation.

A. Securities Offerings of BDCs, DPPs, and REITs (NASD Rule 2790(i)(9)(J))

The proposal would amend NASD Rule 2790(i)(9) to exclude from the definition of “new issue” securities offerings of BDCs, DPPs, and REITs. The NASD staff has found that, historically, most of these offerings do not commence trading at a substantial premium. Accordingly, NASD believes that including such offerings within the scope of NASD Rule 2790 would do little to further the purposes of the Rule and, moreover, may impair the ability of such companies to obtain capital. One commenter that supported the proposed rule change agreed that it is highly unlikely for shares in a REIT to commence trading at a significant premium.¹⁴ Another commenter in support of the proposed rule change also noted its belief that the inclusion of DPP and REIT securities within the definition of “new issue” does little to further the purpose of Rule 2790 and has a negative impact on the ability of DPPs and REITs to raise capital.¹⁵

The Commission believes it is appropriate for the NASD to exclude from the definition of “new issue” BDCs, DPPs, and REITs because these products historically commence trading at their public offering price and premiums, if any, tend to be very small. We believe that the proposed rule change, in carving-out these securities offerings, is reasonable in that it, among other things, does not impede the ability of BDCs, DPPs, and REITs in raising capital, while preserving the rule’s investor protection goals. We also note that NASD has stated that, if warranted by future developments in the trading pattern of BDCs, DPPs, or REITs, NASD staff would reconsider the appropriateness of the exclusion for offerings of these types of securities. Thus, the Commission believes that the proposed rule change to exclude BDCs, DPPs, and REITs from the definition of

“new issue” is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Exchange Act.

B. Foreign Investment Company Exemption (NASD Rule 2790(c)(6)(A))

The proposal would include a technical change to the exemption for foreign investment companies in subparagraph (c)(6)(A) of NASD Rule 2790 to clarify the scope of the exemption as reflected in the Staff Memorandum. NASD believes this technical change is important because the purposes of NASD Rule 2790 could easily be frustrated by purchases of large quantities of a new issue by a foreign investment company listed on a foreign exchange that is owned entirely or principally by broker-dealer personnel (or other restricted persons).

Of the six commenters that did not support approval of the proposed rule change, all focused on the Rule’s existing exemption for foreign investment companies in subparagraph (c)(6)(B), which provides that a foreign investment company is eligible for an exemption from the Rule if, among other things, no person owning more than 5% of the shares of the investment company is a restricted person.¹⁶

The Commission notes that the proposed rule change to subparagraph (c)(6)(A) of the Rule is intended to clarify the scope of the exemption so that investment companies listed on a foreign exchange must be “for sale to the public.” As noted above, several commenters expressed concern regarding the 5% threshold in subparagraph (c)(6)(B) of the Rule. We note however, that this restriction is not a part of the current proposals, but has been in place since 1998 (as part of the predecessor to Rule 2790, the Free-Riding and Withholding Interpretation).¹⁷ We therefore agree with the NASD that the concerns expressed by commenters in this regard are not germane to the current proposals.¹⁸

We also understand that NASD intends to continue to consider the concerns raised by commenters regarding the 5% limitation in subparagraph (c)(6)(B) of the Rule and to

have further discussions with the industry regarding the Rule and whether additional amendments are appropriate. We urge the NASD to continue in these discussions with the industry in order to determine whether additional amendments to the Rule are appropriate. Thus, we find that the proposed rule change to clarify that, to satisfy the conditions of the exemption, a foreign investment company must, among other things, be “for sale to the public,” is reasonable and consistent with Sections 15A(b)(6) and 15A(b)(9) of the Exchange Act.

C. Information Required To Be Filed (NASD Rule 2790(j))

The proposals would amend NASD Rule 2790 to codify the requirement for the book-running managing underwriter to file distribution information as announced in *NtM* 04–20. None of the commenters specifically addressed this aspect of the proposed rule change. The Commission believes this proposal is appropriate in order to provide clarity to the industry regarding new issue distribution data. Accordingly, the Commission believes this proposal is consistent with sections 15A(b)(6) and 15A(b)(9) of the Exchange Act.

D. Implementation

The NASD suggests that the proposed rule change become effective 45 days after approval by the Commission and the Commission believes that this is reasonable.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,¹⁹ that the proposed rule change (SR–NASD–2004–165), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–4327 Filed 8–9–05; 8:45 am]

BILLING CODE 8010–01–P

¹⁶ See HKIFA, IMA, ICI, Dechert, ITA and T. Rowe Price.

¹⁷ See Securities Exchange Act Release No. 40001 (May 18, 1998), 63 FR 28535 (May 26, 1998).

¹⁸ One commenter, Dechert, on behalf of six Canadian mutual funds, alleged that the NASD’s treatment of foreign entities in NASD Rule 2790 unduly burdened these Canadian mutual funds in violation of North American Free Trade Agreement (“NAFTA”). However, the Commission believes that the Rule is grounded in investor protection concerns and is not intended to unduly burden foreign investment companies.

¹³ 15 U.S.C. 78c(f).

¹⁴ See Hines.

¹⁵ See IPA.

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52204; File No. SR-PCX-2005-63]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Adoption of Generic Listing Standards for Index-Linked Securities

August 3, 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 April 28, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. On July 26, 2005, PCX submitted Amendment No. 1 to the proposed rule change.³ On August 3, 2005, PCX submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Through PCXE, the Exchange proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, to adopt PCXE Rule 5.2(j)(6). With this filing, the Exchange proposes to adopt generic listing standards pursuant to Rule 19b-4(e)⁵ of the Act in connection with index-linked securities ("Index Securities"). The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

* * * * *

Rule 5

Listings

* * * * *

Rule 5.2(a)-(i)-No change.

Rule 5.2(j)(1)-(5)-No Change.

Index-Linked Securities

Rule 5.2(j)(6). *Index-linked securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. The Corporation may submit a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 ("Act") to permit the listing and trading of index-linked securities that do not otherwise meet the standards set forth below in paragraphs (a) through (k). The Corporation will consider for listing and trading pursuant to Rule 19b-4(e) under the Act, index-linked securities provided:*

(a) *Both the issue and the issuer of such security meet the criteria set forth above in "General Criteria," except that the minimum public distribution shall be 1,000,000 units with a minimum of 400 public holders, except, if traded in thousand dollar denominations, then no minimum number of holders.*

(b) *The issue has a minimum term of one (1) year but not greater than ten (10) years.*

(c) *The issue must be the non-convertible debt of the issuer.*

(d) *The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.*

(e) *The issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000, and to otherwise substantially exceed the earnings requirements set forth in PCXE Rule 5.2(c). In the alternative, the issuer will be expected: (i) To have a minimum tangible net worth of \$150,000,000 and to otherwise substantially exceed the earnings requirement set forth in PCXE Rule 5.2(c), and (ii) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.*

(f) *The issuer is in compliance with Rule 10A-3 under the Act.*

(g) *Initial Listing Criteria—Each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either (1) have been reviewed and approved for the trading of options or other*

derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (2) the index or indexes meet the following criteria:

(i) *Each component security has a minimum market value of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least \$50 million;*

(ii) *Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;*

(iii) *In the case of a capitalization weighted index or modified capitalization weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;*

(iv) *No underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);*

(v) *90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in PCX Rule 5.3;*

(vi) *Each component security shall be an Act reporting company which is listed on a national securities exchange or is traded through the facilities of Nasdaq and reported national market system securities; and*

(vii) *Foreign country securities or American Depositary Receipts ("ADRs") that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.*

(h) *Continued Listing Criteria— (1) The Corporation will commence delisting or removal proceedings (unless the Commission has approved the*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made clarifying and technical changes to the original rule filing. Amendment No. 1 replaced PCX's original submission in its entirety.

⁴ In Amendment No. 2, the Exchange corrected a reference in the proposed rule text.

⁵ 17 CFR 240.19b-4(e).

continued trading of the subject index-linked security), if any of the standards set forth above in paragraph (g)(2) are not continuously maintained, except that:

(i) the criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index can not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted, modified capitalization weighted and price weighted indexes as of the first day of January and July in each year;

(ii) the total number of components in the index may not increase or decrease by more than 33⅓% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

(iii) the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

(iv) in a capitalization-weighted index or modified capitalization weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

(2) In connection with an index-linked security that is listed pursuant to paragraph (g)(1) above, the Corporation will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject index-linked security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.

(3) The Corporation will also commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject index-linked security), under any of the following circumstances:

(i) if the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;

(ii) if the value of the index or composite value of the indexes is no

longer calculated or widely disseminated on at least a 15-second basis; or

(iii) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

(i) Index Methodology and Calculation—(i) Each index will be calculated based on either a capitalization, modified capitalization, price, equal-dollar or modified equal-dollar weighting methodology. (ii) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least quarterly. (iii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a “firewall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (iv) The current value of an index will be widely disseminated at least every 15 seconds. (v) If the value of an index-linked security is based on more than one (1) index, then the composite value of such indexes must be widely disseminated at least every 15 seconds.

(j) Surveillance Procedures. The Corporation will implement written surveillance procedures for index-linked securities, including adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(k) Index-linked securities will be treated as equity instruments.

Rule 5.2(k)–(n)—No change.

* * * * *

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under PCXE Rule 5.2(j)(1), the Exchange may approve, for listing and trading, securities that cannot be readily categorized under the listing criteria for

common and preferred securities, bonds, debentures, or warrants.⁶ The Exchange proposes to adopt PCXE Rule 5.2(j)(6) to provide generic listing standards to permit the trading of, either by listing or pursuant to unlisted trading privileges (“UTP”), Index Securities pursuant to Rule 19b–4(e) under the Act.⁷ This filing is based on the American Stock Exchange LLC’s (“AMEX”) proposed rule filing, which the Commission recently approved.⁸

a. Generic Listing Standards

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,⁹ if the Commission has approved, pursuant to section 19(b) of the Act,¹⁰ the SRO’s trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.¹¹ Hence, the Exchange is proposing this rule filing to adopt generic listing standards under new PCXE Rule 5.2(j)(6) for this product class, pursuant to which it will be able to trade, whether by listing or pursuant to UTP, Index Securities without individual Commission approval of each product pursuant to section 19(b)(2) of the Act.¹² Instead, the Exchange represents that any securities it lists and/or trades pursuant to PCXE Rule 5.2(j)(6) will satisfy the standards set forth therein. The Exchange states that within five (5) business days after commencement of trading of an Index Security in reliance on PCXE Rule 5.2(j)(6), the Exchange will file a Form 19b–4(e).¹³

b. Index Securities

Index Securities are designed for investors who desire to participate in a specific market segment through index products by providing investors with exposure to an identifiable underlying market index or combination of market indexes (the “Underlying Index” or “Underlying Indexes”).¹⁴ Index

⁶ See PCXE Rule 5.2(j)(1).

⁷ 17 CFR 240.19b–4(e).

⁸ See Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR-AMEX–2005–001).

⁹ 17 CFR 240.19b–4(c)(1).

¹⁰ 17 U.S.C. 78s(b).

¹¹ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (the “19b–4(e) Order”).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 240.19b–4(e)(2)(ii); 17 CFR 249.820.

¹⁴ The Exchange understands that the holder of an Index Security may or may not be fully exposed to

Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than ten years. Index Securities may or may not make interest payments based on dividends or other cash distributions paid on the securities comprising the Underlying Index or Indexes to the holder during their term. Despite the fact that Index Securities are linked to an underlying index, each will trade as a single, exchange-listed security.

A typical Index Security traded, whether by listing or pursuant to UTP, on the Exchange provides for a payment amount in a multiple greater than one (1) times the positive index return or performance, subject to a maximum gain or cap. More generally, Index Securities may or may not be structured with accelerated returns, upside or downside, based on the performance of the Underlying Index. The Exchange represents that the proposed generic listing standards will not be applicable to Index Securities where the payment at maturity may be based on a multiple of negative performance of an underlying index or indexes. An Index Security may or may not provide "principal protection," *i.e.*, a minimum guaranteed amount to be repaid.¹⁵ The Exchange believes that the flexibility to list a variety of Index Securities will offer investors the opportunity to more precisely focus their specific investment strategies.

The Exchange understands that the original public offering price of Index Securities may vary, with the most common offering price expected to be \$10 or \$1,000 per unit. As discussed above, Index Securities entitle the owner at maturity to receive a cash amount based upon the performance of a particular market index or combination of indexes. The Index Securities do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio or index of securities comprising the Underlying Index. Pursuant to PCXE Rule 5.2(j)(6), the current value of an Underlying Index or composite value of the Underlying Index will be widely disseminated every 15 seconds during the trading day.

the appreciation and/or depreciation of the underlying component securities. For example, an Index Security may be subject to a "cap" on the maximum principal amount to be repaid to holders or a "floor" on the minimum principal amount to be repaid to holders at maturity.

¹⁵ Some Index Securities may provide for "contingent" protection of the principal amount, whereby the principal protection may disappear if the Underlying Index at any point in time during the life of such security reaches a certain predetermined level.

Index Securities are expected to trade at a lower cost than the cost of trading each of the underlying component securities separately (because of reduced commission and custody costs) and are also expected to give investors the ability to maintain index exposure without the corresponding management or administrative fees and ongoing expenses. The initial offering price for an Index Security will be established on the date the security is priced for sale to the public. The final value of an Index Security will be determined on the valuation date at or near maturity consistent with the mechanics detailed in the prospectus for such Index Security.

c. Proposed Listing Criteria

The Exchange proposes the following for each issuer of Index Securities:

(A) *Assets/Equity*—Pursuant to PCXE Rule 5.2(j)(1), the issuer shall have assets in excess of \$100 million and stockholders' equity of at least \$10 million. In the case of an issuer that is unable to satisfy the earnings criteria set forth in PCXE Rule 5.2(c), the Exchange generally will require the issuer to have the following: (i) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

(B) *Distribution*—Minimum public distribution of 1,000,000 notes with a minimum of 400 public shareholders, except, if traded in thousand dollar denominations, then no minimum number of holders.

(C) *Principal Amount/Aggregate Market Value*—Not less than \$4 million.

(D) *Term*—The issue has a minimum of one (1) year but not greater than ten (10) years.

(E) *Tangible Net Worth*—The issuer will be expected to have a minimum tangible net worth¹⁶ in excess of \$250,000,000 and to otherwise substantially exceed the earnings requirements set forth in PCXE Rule 5.2(c). In the alternative, the issuer will be expected: (i) To have a minimum tangible net worth of \$150,000,000 and to otherwise substantially exceed the earnings requirement set forth in PCXE Rule 5.2(c), and (ii) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities

¹⁶ "Tangible net worth" is defined as total assets less intangible assets and total liabilities. Intangibles include non-material benefits such as goodwill, patents, copyrights and trademarks.

of Nasdaq exceeds 25% of the issuer's net worth.

Criteria for Underlying Indexes

Under the Exchange's proposal, each Underlying Index must satisfy the specific criteria set forth in proposed PCXE Rule 5.2(j)(6)(g) or be an index previously approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act¹⁷ and rules thereunder. In general, the criteria for the underlying component securities of the Underlying Index are substantially similar to the requirements for index options set forth in PCX Rule 5.13(a). In all cases, an Underlying Index must contain at least ten (10) component securities (each, an "Underlying Security").

Examples of Underlying Indexes intended to be covered under the proposed generic listing standards include the Standard & Poor's 500 Index ("S&P 500"), Nasdaq-100 Index ("Nasdaq 100"), the Dow Jones Industrial Average ("DJIA"), Nikkei 225 Index ("Nikkei 225"), the Dow Jones STOXX 50 Index ("DJ STOXX 50"), the Global Titans 50 Index ("Global Titans 50"), Amex Biotechnology Index ("Amex Biotech"), and certain other indexes that represent various industry and/or market segments.

In order to satisfy the proposed generic listing standards, the Underlying Index will be calculated based on either a market capitalization,¹⁸ modified market capitalization,¹⁹ price,²⁰ equal-dollar²¹ or modified equal-dollar²² weighting

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ A "market capitalization" index is the most common type of stock index. The components are weighted according to the total market value of the outstanding shares, *i.e.*, share price times the number of shares outstanding. This type of index will fluctuate in line with the price moves of the component stocks.

¹⁹ A "modified market capitalization" index is similar to the market capitalization index, except that an adjustment to the weights of one or more of the components occurs. This is typically done to avoid having an index that has one or a few stocks representing a disproportionate amount of the index value.

²⁰ A "price weighted" index is an index in which the component stocks are weighted by their share price. The most common example is the DJIA.

²¹ An "equal dollar weighted" index is an index structured so that share quantities for each of the component stocks in the index are determined as if one were buying an equal dollar amount of cash stock in the index. Equal dollar weighted indexes are usually rebalanced to equal weightings either quarterly, semi-annually, or annually.

²² A "modified equal-dollar weighted" index is designed to be a fair measurement of the particular industry or sector represented by the index, without assigning an excessive weight to one or more index components that have a large market capitalization relative to the other index components. In this type of index, the cash component is assigned a weight

Continued

methodology. If a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, such broker-dealer is required to erect and maintain a "firewall," in a form satisfactory to the Exchange, to prevent the flow of information regarding the Underlying Index from the index production personnel to the sales and trading personnel.²³ In addition, an Underlying Index that is maintained by a broker-dealer is also required to be calculated by an independent third party who is not a broker-dealer.

Eligibility Standards for Underlying Securities

Index Securities will be subject to the criteria in proposed PCXE Rule 5.2(j)(6)(g) and (h) for initial and continued listing. For an Underlying Index to be appropriate for the initial listing of an Index Security, such Index must either be approved for the trading of options or other derivative securities by the Commission under section 19(b)(2) of the Act²⁴ and rules thereunder or meet the following requirements:

- Each Underlying Security must have a minimum market value of at least \$75 million, except that for each of the lowest weighted Underlying Securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least \$50 million;
- Each Underlying Security must have a trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted Underlying Securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;
- In the case of a capitalization-weighted or modified capitalization-

that takes into account the relative market capitalization of the securities comprising the index. The index is subsequently re-balanced to maintain these pre-established weighting levels. Like equal-dollar weighted indexes, the value of a modified equal-dollar weighted index will equal the current combined market value of the assigned number of shares of each of the underlying components divided by the appropriate index divisor. A modified equal-dollar weighted index will typically be re-balanced quarterly.

²³ For certain indexes, an index provider, such as Dow Jones, may select the components and calculate the index, but overseas broker-dealer affiliates of U.S. registered broker-dealers may sit on an "advisory" committee that recommends component selections to the index provider. In such case, the Exchange should ensure that appropriate information barriers and insider trading policies exist for this advisory committee. See Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR-AMEX-2005-001).

²⁴ 15 U.S.C. 78s(b)(2).

weighted index, the lesser of the five highest weighted Underlying Securities in the index or the highest weighted Underlying Securities in the index that in the aggregate represent at least 30% of the total number of Underlying Securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

- No component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index will not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 Underlying Securities);
- 90% of the index's numerical index value and at least 80% of the total number of component securities will meet the then current criteria for standardized options trading set forth in PCX Rule 5.3;
- Each component security shall be a reporting company under the Act, which is listed on a national securities exchange or is traded through the facilities of a national securities system and is subject to last sale reporting; and
- Foreign country securities or American Depositary Receipts ("ADRs") that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.

As described above in the Section entitled "Criteria for Underlying Indexes," all Underlying Indexes are required to have at least ten (10) component securities.

The proposed continued listing criteria set forth in proposed PCXE Rule 5.2(j)(6)(h) regarding the underlying components of an Underlying Index provides that the Exchange will commence delisting or removal proceedings of an Index Security (unless the Commission has approved the continued trading of the Index Security) if any of the standards set forth in the initial eligibility criteria of proposed PCXE Rule 5.2(j)(6)(g)(2) are not continuously maintained, except that:

- The criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index can not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;
- The total number of components in the index may not increase or decrease by more than 33 $\frac{1}{3}$ % from the number of components in the index at the time

of its initial listing, and in no event may be less than ten (10) components;

- The trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and
- In a capitalization-weighted or modified capitalization weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

In connection with an Index Security that is listed pursuant to proposed PCXE Rule 5.2(j)(6)(g)(1), the Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the Index Security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under section 19(b)(2) of the Act²⁵ approving the index or indexes for the trading of options or other derivatives.

As set forth in proposed PCXE Rule 5.2(j)(6)(h)(3), the Exchange will also commence delisting or removal proceedings of an Index Security (unless the Commission has approved the continued trading of the Index Security), under any of the following circumstances:

- If the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;
- If the value of the Underlying Index or composite value of the Underlying Index is no longer calculated and widely disseminated on at least a 15-second basis; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The Exchange represents that Index Securities traded, whether by listing or pursuant to UTP, on the Exchange will be required to be in compliance with Rule 10A-3 under the Act.²⁶

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ See 17 CFR 240.10A-3(c)(7).

Exchange Rules Applicable to Index-Linked Securities

Index Securities will be treated as equity instruments and will be subject to all Exchange rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, market volatility related trading halt provisions pursuant to PCXE Rule 7.12. Exchange equity margin rules and the regular trading hours set forth in PCXE Rule 7.34 will apply to transactions in Index-Linked Securities.

Information Circular

In addition, upon evaluating the nature and complexity of each Index Security, the Exchange represents that it will prepare and distribute, if appropriate, an Information Circular to Equities Trading Permit ("ETP") Holders describing the product. Accordingly, the particular structure and corresponding risk of an Index Security traded on the Exchange will be highlighted and disclosed.²⁷ In particular, the circular will set forth the Exchange's suitability rule that requires ETP Holders recommending a transaction in Index Securities: (1) To determine that such transaction is suitable for the customer (PCXE Rule 9.2) and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

Surveillance

The Exchange will closely monitor activity in Index Securities to identify and deter any potential improper trading activity in Index Securities. Additionally, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of Index Securities. Specifically, the Exchange will rely on its existing surveillance procedures governing

²⁷ The Exchange notes that ETP Holders conducting a public securities business are subject to the rules and regulations of the National Association of Securities Dealers, Inc. ("NASD"), including NASD Rule 2310(a) and (b). Accordingly, NASD Notice to Members 03-71 regarding non-conventional investments or "NCIs" applies to ETP Holders recommending/selling index-linked securities to public customers. This Notice specifically reminds members in connection with NCIs (such as index-linked securities) of their obligations to: (1) Conduct adequate due diligence to understand the features of the product; (2) perform a reasonable-basis suitability analysis; (3) perform customer-specific suitability analysis in connection with any recommended transactions; (4) provide a balanced disclosure of both the risks and rewards associated with the particular product, especially when selling to retail investors; (5) implement appropriate internal controls; and (6) train registered persons regarding the features, risk and suitability of these products.

equities, options and exchange-traded funds, which have been deemed adequate under the Act. The Exchange has developed procedures to closely monitor activity in the Index Security and related Underlying Securities to identify and deter potential improper trading activity. Proposed PCXE Rule 5.2(j)(6)(j) provides that the Exchange will implement written surveillance procedures for Index Securities.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. As detailed above in the description of the generic standards, if the issuer or a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, such issuer or broker-dealer is required to erect and maintain a "firewall" in a form satisfactory to the Exchange, in order to prevent the flow of information regarding the Underlying Index from the index production personnel to sales and trading personnel. In addition, the Exchange will require that calculation of Underlying Indexes be performed by an independent third party who is not a broker-dealer.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,²⁸ in general, and furthers the objectives of section 6(b)(5) of the Act,²⁹ in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2005-63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2005-63 and should be submitted on or before August 31, 2005.

IV. Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b) of the Act³⁰ and the

³⁰ 15 U.S.C. 78f(b).

rules and regulations thereunder applicable to a national securities exchange.³¹ In particular, the Commission believes that the proposal furthers the objectives of section 6(b)(5) of the Act³² in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

The Commission has previously approved the listing and trading of several Index Securities based on a variety of debt structures and market indexes.³³ The Commission has also approved, pursuant to Rule 19b-4(e) under the Act,³⁴ generic listing standards for these securities proposed by the AMEX that, in all material respects, are identical to those proposed by PCX.³⁵

Consistent with its previous orders, the Commission believes that generic listing standards proposed by PCX for Index Securities should fulfill the intended objective of Rule 19b-4(e) by allowing those Index Securities that satisfy the generic listing standards to commence trading without public comment and Commission approval.³⁶ This has the potential to reduce the time frame for bringing Index Securities to market and thereby reduce the burdens on issuers and other market participants. Further, the Exchange's ability to rely on Rule 19b-4(e) for Index Securities potentially reduces the time frame for listing and trading these securities, and thus enhances investors' opportunities. The Commission notes that it maintains regulatory oversight over any products listed pursuant to generic listing standards through regular inspection oversight.

A. Trading of Index Securities

Taken together, the Commission finds that the PCX proposal contains adequate

rules and procedures to govern the trading of Index Securities listed pursuant to Rule 19b-4(e) on the Exchange or traded pursuant to unlisted trading privileges. All Index Security products listed under the standards will be subject to the full panoply of PCX rules and procedures that now govern the trading of Index Securities and the trading of equity securities on the PCX, including among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

PCX has proposed asset/equity requirements and tangible net worth for each Index Security issuer, as well as minimum distribution, principal/market value, and term thresholds for each issuance of Index Securities. As set forth more fully above, PCX's proposed listing criteria include minimum market capitalization, monthly trading volume, and relative weighting requirements for the Index Securities. These requirements are designed to ensure that the trading markets for index components underlying Index Securities are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. The Commission believes that these requirements should significantly minimize the potential for of manipulation. The Commission also finds that the requirement that each component security underlying an Index Security be listed on a national securities exchange or traded through the facilities of a national securities system and subject to last sale reporting will contribute significantly to the transparency of the market for Index Securities. Alternatively, if the index component securities are foreign securities that are not reporting companies, the generic listing standards permit listing of an Index Security if the Commission previously approved the underlying index for trading in connection with another derivative product and certain surveillance sharing arrangements exist with foreign markets. The Commission believes that if it has previously determined that such index and its components were sufficiently transparent, then the Exchange may rely on this finding, provided it has comparable surveillance sharing arrangements with the foreign market that the Commission relied on in approving the previous product.

The Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the

proposed listing standards should help ensure a fair and orderly market for Index Securities approved pursuant to PCX Rule 5.2(j)(6).

The Commission also believes that the requirement that at least 90 percent of the component securities, by weight, and 80 percent of the total number of Underlying Securities, be eligible individually for options trading will prevent an Index Security from being a vehicle for trading options on a security not otherwise options eligible.

The Exchange has also developed delisting criteria that will permit PCX to suspend trading of an Index Security in case of circumstances that make further dealings in the product inadvisable. The Commission believes that the delisting criteria will help ensure a minimum level of liquidity exists for each Index Security to allow for the maintenance of fair and orderly markets. Also, the Exchange will commence delisting proceedings in the event that the value of the underlying index or index is no longer calculated and widely disseminated on at least a 15-second basis.

B. Surveillance

The Exchange must surveil trading in any products listed under the generic listing standards. In that regard, the Commission believes that a surveillance sharing agreement between an Exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. When a new derivative securities product based upon domestic securities is listed and traded on an exchange pursuant to Rule 19b-4(e) under the Act, the exchange should determine that the markets upon which all of the U.S. component securities trade are members of the Intermarket Surveillance Group ("ISG"), which provides information relevant to the surveillance of the trading of securities on other market centers.³⁷ For new derivative securities products based on securities from one or more foreign markets, the exchange should have a comprehensive Intermarket Surveillance Agreement that covers the securities underlying the new securities

³¹ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³² 15 U.S.C. 78f(b)(5).

³³ See Securities Exchange Act Release Nos. 41091 (February 23, 1999), 64 FR 10515 (March 4, 1999) (Narrow-Based Index Options); 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (ETFs); and 43396 (September 29, 2000), 65 FR 60230 (October 10, 2000) (TIRs).

³⁴ 17 CFR 240.19b-4(e).

³⁵ See *supra* note 6.

³⁶ The Commission notes that the failure of a particular index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular index-linked product.

³⁷ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98). ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. The Commission notes that all of the registered national securities exchanges, including the ISE, as well as the NASD, are members of the ISG.

product.³⁸ Accordingly, with respect to indexes not previously approved by the Commission, the Commission finds that PCX's commitment to implement comprehensive surveillance sharing agreements,³⁹ as necessary, and the definitive requirements that (i) each component security shall be a registered reporting company under the Act and (ii) no more than 20 percent of the weight of the Underlying Index or Underlying Indexes may be comprised of foreign country securities or ADRs not subject to a comprehensive surveillance sharing agreement,⁴⁰ will make possible adequate surveillance of trading of Index Securities listed pursuant to the proposed generic listing standards.

With regard to actual oversight, PCX represents that its surveillance procedures are sufficient to detect fraudulent trading among members in the trading of Index Securities pursuant to proposed PCXE Rule 5.2(j)(6).

C. Acceleration

The Commission finds good cause for approving proposed rule change, as amended, prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal implements generic listing standards substantially identical to those already approved for the Amex. The Commission does not believe that the Exchange's proposal raises any novel regulatory issues. The proposed generic listing criteria should enable more expeditious review and listing of Index Securities by PCX, thereby reducing administrative burdens and benefiting the investing public. Thus, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁴¹ that the proposed rule change (SR-PCX-2005-63), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴²

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-4326 Filed 8-9-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52201; File No. SR-SCCP-2004-03]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change by Relating Anonymous Features on Trading Systems

August 3, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on September 7, 2004, Stock Clearing Corporation of Philadelphia ("SCCP") 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 SSCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow SSCP to process trades executed on a trading system that provides for anonymous trading.³

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SSCP 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. SSCP 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

Currently, SSCP receives and processes its participants' trades. In the future, SSCP may receive locked-in trade data from a trading system that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposed rule change is similar to a rule change approved by the Commission in 2003 that allowed the National Securities Clearing Corporation ("NSCC") to accommodate the reporting of trades executed on a system that provides trading anonymity. Securities Exchange Act Release No. 48526 (September 23, 2003), 68 FR 56367 (September 30, 2003) [File No. SR-NSCC-2003-14].

provides anonymity. In such a situation, SSCP would report such trades to its participants using an anonymous acronym instead of naming or identifying the actual contra side account number.

In the event that SSCP ceases to act for a participant in an anonymous trade, the operator of the trading system shall have the responsibility to identify to its users the trades, which are generally included in reports produced by SSCP, involving the affected participant. SSCP would forward to the operator of the trading system the appropriate information to facilitate its notification of its users. In addition, should SSCP receive information from NSCC that NSCC had ceased to act for an NSCC member that is an unidentified contra side of any such trade, SSCP would also forward this information to the operator of the trading system.⁴

SCCP believes that its proposed rule change is consistent with the requirements of section 17A(b)(3)(F) of the Act because it is designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions in that the proposed rule change should allow SSCP to accommodate trades executed on an anonymous trading system and should provide for the prompt and accurate clearance of those trades.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. 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

⁴ NSCC's anonymous trading rule includes similar notification requirements.

³⁸ See *id.*

³⁹ Proposed PCXE Rule 5.2(j)(6)(j).

⁴⁰ Proposed PCXE Rule 5.2(j)(6)(g)(vii).

⁴¹ 15 U.S.C. 78s(b)(2).

⁴² 17 CFR 200.30-3(a)(12).

- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-SCCP-2004-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-SCCP-2004-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549-9303. Copies of such filing also will be available for inspection and copying at the principal office of SCCP and on SCCP's Web site at <http://www.phlx.com/SCCP>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-SCCP-2004-03 and should be submitted on or before August 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-4311 Filed 8-9-05; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 5154]

Culturally Significant Objects Imported for Exhibition Determinations: "New Photography '05: Carlos Garaicoa, Bertien van Manen, Phillip Pisciotta, Robin Rhode"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "New Photography '05: Carlos Garaicoa, Bertien van Manen, Phillip Pisciotta, Robin Rhode" imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York New York, from on or about October 21, 2005 to on or about January 16, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: 202/453-8050). The address is Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: August 2, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05-15818 Filed 8-9-05; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of GoJet Airlines, LLC for Certificate Authority: Correction

AGENCY: Department of Transportation.

ACTION: Correction to Notice of Order To Show Cause (Order 2005-7-14) Docket OST-2004-19877.

SUMMARY: By Order 2005-7-14, served on July 15, 2005, the Department tentatively concluded that GoJet Airlines, LLC is fit, willing, and able to provide interstate scheduled air transportation of persons, property and mail, and should be issued a certificate of public convenience and necessity authorizing such operations, subject to conditions. At that time, we directed interested parties to file objections no later than 14 days after the service date of the order (*i.e.*, July 29, 2005). Subsequently, the Department published a notice in the **Federal Register** on July 21, 2005, inadvertently directing all interested parties wishing to file objections to do so by August 29, 2005. In order to correct this administrative error, while, at the same time, providing interested parties with a suitable period of time to file comments, we find it appropriate to direct persons wishing to file objections to our tentative decision to do so by August 15, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Lauralyn Remo, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Correction

In the **Federal Register** of July 21, 2005, in FR Doc. 05-14378, on page 42135, in the second column, correct the **DATES** caption to read:

DATES: Persons wishing to file objections should do so no later than August 15, 2005.

Dated: August 4, 2005.

Karan K. Bhatia,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 05-15916 Filed 8-9-05; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Application of GoJet Airlines, LLC for Certificate Authority: Correction

AGENCY: Department of Transportation.
ACTION: Correction to Notice of Order To Show Cause (Order 2005-7-14) Docket OST-2004-19877.

SUMMARY: By Order 2005-7-14, served on July 15, 2005, the Department tentatively concluded that GoJet Airlines, LLC is fit, willing, and able to provide tentatively scheduled air

⁵ 17 CFR 200.30-3(a)(12).

transportation of persons, property, and mail, and should be issued a certificate of public convenience and necessity authorizing such operations, subject to conditions. At that time, we directed interested parties to file objections no later than 14 days after the service date of the order (*i.e.*, July 29, 2005). Subsequently, the Department published a notice in the **Federal Register** on July 21, 2005, inadvertently directing all interested parties wishing to file objections should do so by August 29, 2005. In order to correct this administrative error, while, at the same time, providing interested parties with a suitable period of time to file comments, we find it appropriate to direct persons wishing to file objections to our tentative decision to do so by August 15, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Lauralyn Remo, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Correction

In the **Federal Register** of July 21, 2005, in FR Doc. 05-14378, on page 42135, in the second column, correct the **DATES** caption to read:

DATES: Persons wishing to file objections should do so no later than August 15, 2005.

Dated: August 4, 2005.

Karan K. Bhatia,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 05-15917 Filed 8-9-05; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2005-21254]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 24 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: August 10, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (202) 366-4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: <http://dmses.dot.gov>.

Background

On May 31, 2005, the FMCSA published a notice of receipt of exemption applications from 24 individuals, and requested comments from the public (70 FR 30999). The 24 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Linda L. Billings, George L. Cannon, Anthony Ciancone, Jr., Andrew B. Clayton, Kenneth D. Daniels, Jerry A. Davidson, Richard D. Espey, Jr., Allen R. Fasen, Tommy K. Floyd, Franklin G. Hermann, William W. Hodgins, Hazel L. Hopkins, Jr., Donald M. Jenson, Dean A. Maystead, Jason L. McBride, Sr., Willie J. Morgan, Carl V. Murphy, Jr., Donald L. Murphy, Mark D. Page, Larry D. Reynolds, Thomas D. Reynolds, Walter J. Savage, Jr., Thomas J. Sweeny, Jr., and Louis E. Villa, Jr.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 24 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on June 30, 2005. Two comments were received, and their contents were carefully considered by the FMCSA in reaching the final decision to grant the exemptions.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual

acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the agency has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., Visual Requirements and Commercial Drivers, October 16, 1998, filed in the docket, FMCSA-98-4334.) The panel's conclusion supports the agency's view that the present visual acuity standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 24 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, macular and retinal scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but seven of the applicants were either born with their vision impairments or have had them since childhood. The seven individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 45 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 24 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 50 years. In the past 3 years, three of the drivers have had convictions for traffic violations. Two of these convictions were for speeding, and one was for "failure to obey traffic control device." Three drivers were involved in four crashes among them, but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 31, 2005, notice (70 FR 30999). Since there were no substantial docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here, but note that information presented at 70 FR 30999 indicating that applicant 2, George L. Cannon, has driven straight truck for 50 years, is in error. The information should have indicated that Mr. Cannon has driven tractor-trailer combinations for 50 years. Our summary analysis of the applicants is supported by this correction and the information published on May 31, 2005 (70 FR 30999).

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate

past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA-98-3637.

We believe we can properly apply the principle to monocular drivers, because data from a former FMCSA waiver study program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 24 applicants receiving an exemption, we note that the applicants have had only four crashes and three traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision

impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 24 applicants listed in the notice of May 31, 2005 (70 FR 30999).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 24 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's

or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received two comments in this proceeding. The comments were considered and are discussed below.

Ms. Barb Sachau believes that vision exemptions are granted based on outdated research information from 1920 and 1952, therefore, compromising public safety on the highways. Also, she believes that medical examination information should not be accepted unless it is dated in the year the exemption is granted.

In regard to the first issue, the discussion above under the heading, "Basis for Exemption Determination," refers to research information completed in 1920 as the "first major research" and the study completed in 1952 as one of multiple "subsequent studies." The references show that the correlation between past and future driving performance has stood the test of time. We cite more recent research from 1964 and 1971, as well as the agency's vision waiver study program of the early 1990s. (See 61 FR 13338, 13345, March 26, 1996.) In addition, the agency assembled a panel of physicians expert in diagnosing and treating vision problems and utilized data from the previous vision waiver program (early 1990s) to provide a scientific basis for the current Federal vision exemption program.

In regard to the second issue, each applicant has been examined within one year of receiving the exemption by an ophthalmologist or optometrist who certifies the driver's vision has been stable for at least 3 years preceding the date of application. The FMCSA requires each driver upon receiving an exemption to be physically examined by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and provide a copy of the ophthalmologist's or optometrist's report to a medical examiner who conducts a medical examination and certifies the driver under 49 CFR 391.43. Thereafter, each exempted driver must have an eye examination and be certified annually. Because each

applicant has had stable vision for at least 3 years, and each applicant will undergo an eye examination upon receipt of the exemption, and yearly after receipt of the exemption, the FMCSA considers an exam performed within the last year to be consistent with the requirements of the vision program. In addition, it is consistent with the screening criteria of the vision waiver study program of the early 1990s. Those monocular drivers who participated in that program demonstrated a greater level of safety than that of all CMV drivers collectively.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the FMCSRs, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31316(e)); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions. The issues raised by Advocates were addressed at length in 70 FR 16887 (April 1, 2005). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

Based upon its evaluation of the 24 exemption applications, the FMCSA exempts Linda L. Billings, George L. Cannon, Anthony Ciancone, Jr., Andrew B. Clayton, Kenneth D. Daniels, Jerry A. Davidson, Richard D. Espey, Jr., Allen R. Fasen, Tommy K. Floyd, Franklin G. Hermann, William W. Hodgins, Hazel L. Hopkins, Jr., Donald M. Jenson, Dean A. Maystead, Jason L. McBride, Sr., Willie J. Morgan, Carl V. Murphy, Jr., Donald L. Murphy, Mark D. Page, Larry D. Reynolds, Thomas D. Reynolds, Walter J. Savage, Jr., Thomas J. Sweeny, Jr., and Louis E. Villa, Jr. from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31315 and 31316(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or

(3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31316. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: August 4, 2005.

Pamela M. Pelcovits,

Director, Office of Policy, Plans, and Regulations.

[FR Doc. 05-15784 Filed 8-9-05; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Pipeline Safety Advisory Bulletin; Inspecting and Testing Pilot-Operated Pressure Relief Valves

AGENCY: Office of Pipeline Safety (OPS), Pipeline and Hazardous Materials Safety Administration, DOT

ACTION: Notice of advisory bulletin.

SUMMARY: This notice announces a pipeline safety advisory bulletin about pilot-operated pressure relief valves installed in hazardous liquid pipelines. The bulletin provides pipeline operators guidance on whether their inspection and test procedures are adequate to determine if these valves function properly. Malfunctioning of a pilot-operated pressure relief valve was a contributing factor in an accident involving a petroleum products pipeline in Bellingham Washington.

FOR FURTHER INFORMATION CONTACT:

L.M. Furrow by phone at 202-366-4559, by fax at 202-366-4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590, or by e-mail at buck.furrow@dot.gov.

SUPPLEMENTARY INFORMATION: After its investigation of an accident involving a 16-inch petroleum products pipeline operated by the Olympic Pipe Line Company in Bellingham, Washington, the National Transportation Safety Board (NTSB) made the following recommendation to the Research and Special Programs Administration:¹ Develop and issue guidance to pipeline operators on specific testing

¹ The Norman Y. Mineta Research and Special Programs Improvement Act (Pub. L. 108-426, 118; November 30, 2004) reorganized the Research and Special Programs Administration (RSPA) into two new DOT administrations: the Pipeline and Hazardous Material Safety Administration (PHMSA) and the Research and Innovative Technology Administration. RSPA's regulatory authority over pipeline and hazardous materials safety was transferred to PHMSA.

procedures that can (1) be used to approximate actual operations during the commissioning of a new pumping station or the installation of a new relief valve, and (2) be used to determine, during annual tests, whether a relief valve is functioning properly. (P-02-4)

The recommendation arose from NTSB's evaluation of a test Olympic had done to check the pilot of a pilot-operated pressure relief valve in a pumping station at its new Bayview products terminal. NTSB found the test was inadequate to determine if the pilot was configured properly or if it was operating reliably. Furthermore, NTSB concluded that the DOT regulations governing the testing of relief valves and other safety devices on hazardous liquid pipelines provide insufficient guidance to ensure that test protocols and procedures will effectively indicate malfunctions of pressure relief valves or their pilot controls.²

According to NTSB's accident report³—available online at http://www.nts.gov/Publictn/P_Acc.htm—Olympic installed pressure control devices to protect the Bayview terminal piping and components from overpressure by the 16-inch pipeline. These devices consisted of (1) a control valve to throttle back the inflow of product; (2) a downstream pilot-operated pressure relief valve designed to divert excess product if a set pressure was exceeded; and (3) upstream remotely controlled block valves that would stop the inflow if a pressure of 700 psig was reached inside the terminal.

The report explains that the pilot of the relief valve had been configured for low-pressure operation, with a set point of 100 psig. Consequently, during start-up of the Bayview terminal, the relief valve opened at a pressure lower than intended. To correct the problem, Olympic replaced the pilot spring (with an identical spring) and increased the set point to 700 psig. (Olympic did not consult the valve manufacturer's specifications and was unaware that a different piston, cover, and O-ring were necessary for high-pressure

configuration.) The pilot was then tested in situ with a hydraulic pump rig to be sure the pilot valve opened at the correct pressure. Olympic used the same test procedure it used to test relief valves under DOT's regulations.

The accident investigation disclosed that increasing the set pressure of the pilot had compressed the pilot spring so much that rising inlet pressure could not lift the piston, making operation of the pilot completely unreliable. Although the pilot set point apparently had been tested, the test procedure did not reveal that the pilot had been configured for low-pressure operation and thus would not consistently open at the intended pressure. NTSB observed that if the relief valve did not open because of pilot malfunction and downstream pressure rose above 700 psig, a block valve would close and increase pressure in the 16-inch pipeline, which is what happened in the accident.

Advisory Bulletin (ADB-05-05)

OPS shares NTSB's concern that pipeline operators could be conducting in-service tests that do not identify unreliable pilot-operated pressure relief valves. Therefore, we are issuing the following advisory bulletin:

To: Operators of hazardous liquid pipelines regulated by 49 CFR part 195.

Subject: Inspecting and testing pilot-operated pressure relief valves.

Purpose: To assure that pilot-operated pressure relief valves function properly.

Advisory: Operators should review their in-service inspection and test procedures used on new, replaced, or relocated pilot-operated pressure relief valves and during the periodic inspection and testing of these valves. Operators can use the guidance stated below to ensure the procedures approximate actual operations and are adequate to determine if the valves function properly.

Guidance: The procedures should provide for the following:

(a) During installation, review the valve purchase order (or comparable documentation), valve name-plate, and manufacturer's specifications. Verify that the valve is:

(1) Compatible with the material and maximum operating pressure of the pipeline;

(2) Compatible with or protected from environmental attack or damage;

(3) Compatible with the hazardous liquid transported at all anticipated operating temperatures and pressures;

(4) In conformity with the manufacturer's specifications for the valve model and type of service, and

with the purchase order (or comparable documentation);

(5) Configured according to the manufacturer's specifications for the pilot and in-line valves; and

(6) Operable at the set pressure (*i.e.*, activation of the pilot valve opens the in-line valve).

(b) If the pilot assembly of a previously installed valve is reconfigured or repaired “

(1) Do the work according to the manufacturer's specifications;

(2) Test the valve to ensure it is operable at the set pressure (*i.e.*, activation of the pilot valve opens the in-line valve) or, if testing the in-line valve would be unsafe or environmentally hazardous, tests the pilot valve according to paragraph (d) below; and

(3) Document the work.

(c) Verify that the valve set pressure is consistent with “

(1) The design or configuration of the pilot valve and in-line valve; and

(2) Use of the valve as a primary overpressure protection device or as a backup safety relief device.

(d) Test the pilot valve at least twice and verify that it activates consistently at the intended set pressure.

(e) During periodic inspections and tests, review the valve installation to determine if it has been modified since the last inspection. If so, verify that the pilot sensor and valve inlet and discharge piping are properly sized and placed and that the installation is consistent with the intended design.

(f) Document all verifications, and sign, date, and keep for the operating life of the valve all documentation.

Issued in Washington, DC, on August 4, 2005.

Stacey Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 05-15758 Filed 8-9-05; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-05-21314; Notice 1]

Pipeline Safety: Petition for Waiver; BOC Gases

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

ACTION: Notice; Petition for Waiver; Correction.

SUMMARY: PHMSA is correcting a petition for waiver published in the

² Under 49 CFR 195.262(c), the safety devices in each new pumping station must be tested under conditions approximating actual operations and found to function properly before the pumping station may be used. Also, under 49 CFR 195.428, each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment must be inspected and tested annually to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

³ *Pipeline Rupture and Subsequent Fire in Bellingham, Washington, June 10, 1999*, Pipeline Accident Report NTSB/PAR-02/02, October 11, 2002.

Federal Register on July 14, 2005 (70 FR 40780). That petition, from BOC Gases (BOC), requested a waiver from the pipeline safety standards at 49 CFR 195.306(c)(5) to allow the use of inert gas or carbon dioxide as the test medium for pressure testing an existing carbon dioxide pipeline. This notice corrects the supplementary information of that publication, which referred to a gas pipeline safety regulation when it should have referred to a hazardous liquid pipeline safety regulation.

FOR FURTHER INFORMATION CONTACT: James Reynolds by phone at 202-366-2786, by fax at 202-366-4566, by mail at DOT, PHMSA Office of Pipeline Safety, 400 7th Street, SW., Washington, DC 20590, or by e-mail at james.reynolds@dot.gov.

Correction

In the **Federal Register** of July 14, 2005, in FR Doc. 05-13864, on page 40781, in the first column, correct the first paragraph of the **SUPPLEMENTARY INFORMATION** caption to read:

SUPPLEMENTARY INFORMATION: The hazardous liquid pipeline safety regulation at 49 CFR 195.306(c)(5) allows an operator of a carbon dioxide pipeline to use inert gas or carbon dioxide as the test medium if the pipe involved is new pipe having a longitudinal joint factor of 1.00.

Issued in Washington, DC on August 1, 2005.

Joy Kadnar,

Director of Engineering and Emergency Support.

[FR Doc. 05-15757 Filed 8-9-05; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-6 (Sub-No. 429X) and AB-882 (Sub-No. 1X)]

BNSF Railway Company— Abandonment Exemption—in Ramsey County, MN; Minnesota Commercial Railway Company—Discontinuance of Service Exemption—in Ramsey County, MN

BNSF Railway Company (BNSF) and Minnesota Commercial Railway Company (MNNR) (collectively, applicants) have jointly filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for BNSF to abandon, and MNNR to discontinue service over, a 0.67-mile line of railroad between milepost 7.19, a point approximately 100 feet north of

Interstate Highway I-694 in White Bear Township, and milepost 6.52, a point approximately 50 feet north of Beam Avenue in Maplewood, in Ramsey County, MN.¹

BNSF and MNNR have certified that: (1) No traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 9, 2005,² unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,³ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),⁴ and trail use/rail banking

requests under 49 CFR 1152.29 must be filed by August 19, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 30, 2005, with the: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to applicants' representatives: for BNSF, Sidney L. Strickland, Jr., Sidney L. Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007-5108; for MNNR, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Applicants have filed environmental and historic reports which address the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 15, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by August 10, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: August 3, 2005.

By the Board, David M. Konschnick,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 05-15761 Filed 8-9-05; 8:45 am]

BILLING CODE 4915-01-P

¹ By memorandum to the Board's Section of Environmental Analysis (SEA) dated June 24, 2005, MNNR amended its environmental and historic report in the above proceedings to reflect the correct location of the rail line and right-of-way. According to MNNR, the rail line is located in the City of Maplewood, MN, and in White Bear Township, not White Bear Lake, MN, and the outer portions of the right-of-way may be located in the municipalities of Vadnais Heights, MN, and White Bear Lake.

² In their notice filed on July 21, 2005, applicants proposed a consummation date of August 30, 2005. In a letter filed on July 28, 2005, applicants indicate that the correct consummation date is September 9, 2005, which is the earliest the exemption could become effective under 49 CFR 1152.50(d)(2).

³ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by SEA in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

⁴ Each OFA must be accompanied by the filing fee, which currently is set at \$1,200. See 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 8845**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8845, Indian Employment Credit.

DATES: Written comments should be received on or before October 11, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Indian Employment Credit.

OMB Number: 1545-1417.

Form Number: 8845.

Abstract: Under Internal Revenue Code section 45A, employers can claim an income tax credit for hiring American Indians or their spouses to work in a trade or business on an Indian reservation. Form 8845 is used by employers to claim the credit and by IRS to ensure that the credit is computed correctly.

Current Actions: There are no changes being made to the Form 8845 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,246.

Estimated Time Per Respondent: 9 hrs., 5 min.

Estimated Total Annual Burden Hours: 11,314.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05-15763 Filed 8-9-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 8621-A**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is

soliciting comments concerning Form 8621-A, Return by a Shareholder Making Certain Late Elections To End Treatment as a Passive Foreign Investment Company.

DATES: Written comments should be received on or before October 11, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Return by a Shareholder Making Certain Late Elections To End Treatment as a Passive Foreign Investment Company.

OMB Number: 1545-1950.

Form Number: 8621-A.

Abstract: Form 8621-A is used by certain taxpayer/investors to request ending of their treatment as investing in a Passive Foreign Investment Company. New regulations are being written in support of the new products. The underlying law is in IRC sections 1297 and 1298.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 65 hours, 24 minutes.

Estimated Total Annual Burden Hours: 65,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05-15764 Filed 8-9-05; 8:45 am]

BILLING CODE 4830-01-P



Federal Register

**Wednesday,
August 10, 2005**

Part II

**Federal
Communications
Commission**

**47 CFR Part 2, et al.
WRC-03 Omnibus; Final Rule**

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 2, 25, 73, 90, and 97**

[ET Docket No. 04-139; FCC 05-70]

WRC-03 Omnibus**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: This document implements allocation changes to the frequency range between 5900 kHz and 27.5 GHz in furtherance of decisions that were made at the World Radiocommunication Conference (Geneva, 2003) (WRC-03) and updates the Commission's Rules in this frequency range. The Federal Communications Commission (Commission) took this action in order to conform its Rules, to the extent practical, to the decisions that the international community made at WRC-03. This action will promote the advancement of new and expanded services and provide significant benefits to the American public.

DATES: Effective September 9, 2005.**FOR FURTHER INFORMATION CONTACT:** Tom Mooring, Policy and Rules Division, Office of Engineering and Technology, (202) 418-2450, Tom.Mooring@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket No. 04-139, FCC 05-70, adopted March 10, 2005 and released March 16, 2005. The full text of this document is available on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; e-mail FCC@BCPIWEB.COM.

Summary of the Report and Order

1. On March 29, 2004, we adopted a *Notice of Proposed Rulemaking* (Omnibus NPRM) in this proceeding, 69 FR 33698, June 16, 2004. In the *Report and Order* (R&O), we amended parts 2, 25, 73, 90, and 97 of the Commission's rules in order to implement allocation changes to the frequency range between 5900 kHz and 27.5 GHz in furtherance of decisions that were made at the World Radiocommunication Conference (Geneva, 2003) (WRC-03) and to

otherwise update our rules in this frequency range. We have taken the following significant actions for non-Federal operations: Realignment of the allocations near 7 MHz, which includes making the band 7100-7200 kHz immediately available to amateur operators in Regions 1 and 3; adoption of the Digital Radio Mondiale (DRM) standard and related actions, which are anticipated to reinvigorate the HF broadcasting (HFBC) service (also known as "shortwave broadcasting"); and raising the secondary Earth exploration satellite-service (EESS) allocation in the band 25.5-27 GHz to primary status, thereby meeting the needs of the commercial remote sensing industry for wider bandwidth operations. These and various other decisions adopted in the R&O conform the Commission's rules, to the extent practical, to the decisions that the international community made at WRC-03 and will collectively promote the advancement of new and expanded services and provide significant benefits to the American public.

Executive Summary

2. In this summary, we expand on our discussion of the most significant decisions that the Commission made in the Report and Order. First, the Commission describes the actions that affect non-Federal operations. These actions are limited to the HF (3-30 MHz), UHF (300-3000 MHz), and SHF (3-30 GHz) frequency ranges.

In the HF Frequency Range:

- Authorize the use of double sideband (DSB), single sideband (SSB), and digital transmissions in the HF bands between 5900 kHz and 26100 kHz that are allocated to the broadcasting service and adopt the ITU system specifications for their use.
- Adopt minimum operating power requirements for HFBC stations using SSB modulation (50 kilowatts (kW) peak envelope power (PEP)) and digital modulation (10 kW mean power).
- Require the use of the DRM standard for digital transmissions in the HFBC bands.

• Realign the allocations near 7 MHz to: Reallocate the band 7100-7200 kHz to the amateur service on a co-primary basis with the broadcasting service in the U.S. Pacific insular areas that are located in Region 3 until March 29, 2009, at which time this 100 kilohertz will be allocated exclusively to the amateur service; reallocate the band 7350-7400 kHz to the broadcasting service on a co-primary basis with the fixed service until March 29, 2009, at which time this 50 kilohertz will be

allocated exclusively for HFBC use; and raise the allocation status of the mobile service in the bands 6765-7000 kHz and 7400-8100 kHz to primary and slightly narrow the range of permitted services in those bands by prohibiting the aeronautical mobile route (R) service.

- Authorize FCC-licensed amateur operators that are located within Region 1 or Region 3, but that are not located in another country's area of authority, to operate in the band 7100-7200 kHz on a primary basis; however, until March 29, 2009, these amateur operations must not impose constraints on the HFBC service intended for use within Region 1 and Region 3.

In the UHF Frequency Range

- Conform the provisional feeder link allocations (uplinks at 1390-1392 MHz and downlinks at 1430-1432 MHz) for the Non-Voice Non-Geostationary Mobile-Satellite Service (popularly known as "Little LEOs") to the *WRC-03 Final Acts*.

In the SHF Frequency Range

- Allocate the band 5000-5010 MHz to the radionavigation-satellite service (RNSS) and limit the use of this allocation to Earth-to-space transmissions (RNSS uplinks) on a primary basis for Federal and non-Federal use.
- Allocate the band 5010-5030 MHz to the RNSS and limit the use of this allocation to space-to-Earth transmissions (RNSS downlinks) and to space-to-space transmissions on a primary basis for Federal and non-Federal use.
- Raise the secondary non-Federal EESS allocation in the band 25.5-27 GHz that is limited to space-to-Earth transmissions (EESS downlinks) to primary status.
- Replace the secondary non-Federal EESS allocation in the band 25.25-27.5 GHz that is limited to space-to-space transmissions with the broader inter-satellite service (ISS) allocation and limit its use to EESS and SRS applications and to transmissions of data originating from industrial and medical activities in space.

3. Second, at the request of the National Telecommunications and Information Administration (NTIA), we are making a number of allocation changes to the Federal Table of Frequency Allocations (Federal Table), three of which pertain to the space research service (SRS). These allocation changes involve spectrum primarily used by Federal agencies and are anticipated to have limited impact on non-Federal licensees that are authorized to operate in the affected

Federal bands. Specifically, we reflect changes to the Federal Table that: Allocate the band 432–438 MHz to the EESS (active) on a secondary basis for use mainly outside of the United States; raise the secondary radiolocation service allocation in the band 2900–3100 MHz to primary status; specify that the SRS (deep space) (Earth-to-space) allocation in the band 7145–7190 MHz has primary status; raise the secondary SRS allocation in the band 14.8–15.35 GHz to primary status; and allocate the band 25.5–27 GHz to the SRS (space-to-Earth) on a primary basis.

The 7 MHz Realignment and the WARC-92 HFBC Bands

4. We are implementing the proposed realignment of the allocations near 7 MHz with certain minor adjustments. We are making allocation decisions that affect HF broadcasting, a portion of the 40 meter amateur band (7100–7200 kHz), and the fixed and mobile services.

5. *HF Broadcasting.* We adopted international footnote 5.134 domestically. This footnote requires the use of seasonal planning in the HFBC bands that were adopted at the 1992 World Administrative Radio Conference (WARC-92) as of April 1, 2007, and thus finalizes the reallocation of the WARC-92 HFBC bands, which will be allocated exclusively to the broadcasting service on a worldwide basis as of April 1, 2007 (March 25, 2007 in the United States). Seasonal planning and the exclusive allocation of these bands to the broadcasting service will allow international broadcasters to make more extensive use of this spectrum.

6. Consistent with the *WRC-03 Final Acts*, we allocated the bands 7350–7400 kHz and 7400–7450 kHz to the broadcasting service on a co-primary basis with the fixed service until March 29, 2009. In accordance with the *ITU Radio Regulations*, the use of the band 7400–7450 kHz is limited to international broadcast stations that are located in the U.S. Pacific insular areas in Region 3 and that transmit to either Region 1 or Region 3. After March 29, 2009, the band 7350–7450 kHz (7400–7450 kHz only in Region 1 and Region 3) is allocated exclusively to the broadcasting service. At the conclusion of the WRC-03 transition period (March 29, 2009), this action replaces 100 kilohertz of exclusive Regional HFBC spectrum (7100–7200 kHz), which is being reallocated to the amateur service, with 50 kilohertz of exclusive global HFBC spectrum (7350–7400 kHz) and 50 kilohertz of exclusive Regional HFBC spectrum (7400–7450 kHz).

7. We reorganized § 73.702(f) of the Commission's rules in order to clarify

and correct existing rules and to add the band 7350–7450 kHz to these rules.

First, we subdivided § 73.702(f) into three paragraphs by establishing new paragraph (g) for the rules that will apply to co-primary HFBC allocations and new paragraph (h) for requirements that will apply to Regional HFBC operation. Section 73.702(f) will apply only to the frequency bands allocated exclusively to the HFBC service. Second, in order to recognize out-of-band operations, we have added the phrase "Where practical," to paragraph (f). Third, we are subdividing the exclusive HFBC allocations into worldwide allocations (which will be listed in § 73.702(f)(1)) and the Regional allocation (which will be listed in § 73.702(f)(2)). Fourth, we added an informational note that points to the definitions of the ITU Regions. Fifth, in new paragraph (g), we state that frequencies may be assigned from within the listed frequency bands that are allocated on a co-primary basis and thereafter this rule describes how the frequency bands are allocated. Sixth, the co-primary HFBC allocations are further grouped into worldwide allocations (which will be listed in paragraph (g)(1)) and Regional allocations (which will be listed in paragraph (g)(2)). Seventh, in order to recognize the co-primary status of the amateur service during the transition period and to provide guidance to HF broadcasters after March 27, 2005, new Section 73.702(g)(2)(i) of the rules. Eighth, we take note of continued co-primary fixed service use of the band 7350–7450 kHz in the 19 countries that are listed in international footnote 5.143C (most are in North Africa and the Middle East). Ninth, we have consolidated the requirements for Regional operation in paragraph (h). See the final rules for the text of paragraphs (f), (g), and (h) of § 73.702.

8. *The 40-Meter Band.* Absent any Commission action to the contrary, the Commission generally governs the operation of stations located in the U.S. Pacific insular areas in Region 3 consistent with the Region 3 Table. Therefore, in accordance with the Region 3 Table, we reallocated the band 7100–7200 kHz to the amateur service on a primary basis in the U.S. Pacific insular areas located in Region 3. In accordance with international footnote 5.141C, the band 7100–7200 kHz remains allocated, until March 29, 2009, to the broadcasting service on a primary basis in the U.S. Pacific insular areas in Region 3. At the end of the WRC-03 transition period (*i.e.*, after March 29, 2009), the band 7100–7200 kHz is allocated exclusively to the amateur

service in the U.S. Pacific insular areas in Region 3.

9. Based on comments of the ARRL, the National Association for Amateur Radio (ARRL) and others, we are authorizing FCC-licensed amateur operators that are located within either Region 1 or Region 3 and that are outside an area where the amateur service is regulated by an authority other than the Commission to make immediate use of the band 7.1–7.2 MHz. This action effectively increases the number of channels available worldwide to amateur stations and allows amateur stations to make more effective use of their frequency bands. In order to implement this decision, we amended § 97.301 of the Commission's rules to add 7.1–7.2 MHz as an authorized frequency segment in Region 1 and Region 3. Specifically, we are authorizing a station having a control operator who has been granted an operator license of Amateur Extra Class or Advanced Class to use all frequencies within the segment 7.0–7.2 MHz when operating in Region 1 or Region 3. Consistent with their operating authority in Region 2, we are also authorizing a station having a control operator who has been granted an operator license of General Class, Novice Class, or Technician Class to use an additional 50 kilohertz when operating in Region 1 or Region 3 as follows. General Class licensees may operate within the segment 7.025–7.150 MHz and Novice Class and Technician Class licensees may operate within the segments 7.050–7.075 MHz and 7.100–7.150 MHz.

10. Currently, phone emissions may be transmitted in the segment 7.075–7.100 MHz by amateur stations located in Regions 1 and 3, and by amateur stations located within Region 2 that are west of 130° west longitude or south of 20° north latitude. In the Report and Order, we authorized those amateur stations that the Commission regulates in Region 1 and Region 3 with the same emission privileges for the band 7.100–7.200 MHz that we currently authorize for stations in Region 2. We note that one commenter requested that the frequency band for authorized phone emissions in the United States be expanded. We previously proposed in a separate proceeding to expand the 40-meter phone band from 7.150–7.300 MHz to 7.125–7.300 MHz. For this reason, we find that the request is outside the scope of the instant proceeding.

11. We observe that the amateur and broadcasting services will share the band 7.1–7.2 MHz on a co-primary basis for about four years. In this regard, we

want to make clear that the seasonal schedule for international broadcasting constitutes "first in" and thus, amateur operators are expected to keep themselves apprised of the changing seasonal schedules and to avoid transmissions that are likely to interfere with the reception of international broadcast programs. In addition, we are concerned about blanketing interference and note that, in areas where homes are packed closely together, an amateur station could disrupt several listeners' reception of international broadcast programming. Therefore, at the request of the Broadcasting Board of Governors (BBG), we will make explicit our expectation that amateur operators are to eliminate any interference problem that they cause while transmitting in the band 7.1–7.2 MHz. We believe that this action is necessary because of the novel co-primary sharing situation that will go on for approximately four years. Accordingly, we adopted a new United States footnote, (US395).

12. *The WARC–92 HFBC Bands.* In the *Below 28 MHz Report and Order*, 68 FR 25512, May 13, 2003, the Commission adopted footnote US366 and stated that it would cease to issue licenses for new non-Federal stations in the fixed and mobile services in the WARC–92 HFBC bands on April 1, 2007. We observe that this implementation date lags behind the start of Schedule A for international broadcasting in 2007 (March 25) by one week. Because a significant number of international broadcast stations are currently operating in frequency bands not allocated to the broadcasting service, we conclude that it is highly likely that international broadcasters will attempt to use the WARC–92 HFBC bands more intensely beginning on March 25, 2007 (not April 1, 2007). We observe that the *WARC–92 Final Acts* provided incumbent licensees in the fixed and mobile services a 15 year transition period (April 1, 1992 to April 1, 2007) during which these licensees could have relocated their operations to other frequency bands. Moreover, except in Alaska and the U.S. Pacific insular areas, the Commission does not seek international protection for assignments to stations in the fixed and land mobile services that operate in frequency bands below 25 MHz, and thus, the Commission will not accept responsibility for the protection of these circuits from harmful interference caused by foreign operations. Because of its concern for potential harmful interference to these unprotected circuits, the Commission has long required that equipment in the fixed

and land mobile services operating in the frequency bands below 25 MHz to be tunable. Thus, the 219 licenses authorized under § 90.266 that currently operate in a WARC–92 HFBC band will be able to operate outside the reallocated spectrum with minimal effort. We find that advancing the implementation date for the WARC–92 HFBC bands by one week is prudent, in the public interest, and of a de minimus nature. Because the allocation change does not take effect until 2007, fixed and mobile licensees that are still operating in the WARC–92 HFBC bands now have advance notice of this situation. Accordingly, we revised footnote US366 and our licensing policy to align the implementation date for the WARC–92 HFBC bands in the United States with the start of the A07 seasonal schedule.

13. BBG recommends that we delete unused fixed and mobile allocations from the non-Federal Table in the WARC–92 HFBC bands. Our licensing records show that there are no non-Federal licensees authorized to operate stations in the: Aeronautical mobile service in two of the WARC–92 HFBC bands (5900–5950 kHz and 7300–7350 kHz) and in the WRC–03 HFBC band (7350–7400 kHz); and fixed service in three of the WARC–92 HFBC bands (13570–13600 kHz, 17480–17550 kHz, and 18900–19020 kHz). Accordingly, we are deleting these unused allocations from the non-Federal Table and from footnote US366.

14. We are moving the transition plan for the band 7300–7350 kHz, which is currently shown in footnote US366, to a new United States footnote that is discussed in paragraph 17, of this document. Finally, our review finds that footnote US366 inadvertently expands the mobile service allocations in the WARC–92 HFBC bands and we are therefore correcting this error. Taking all these factors into account, we have revised footnote US366.

15. As of our most recent review (March 5, 2005), the Commission has issued 249 licenses for the authority to operate stations in the fixed or mobile services in spectrum that has been reallocated internationally to the HFBC service. We anticipate that a significant number of international broadcast stations, which currently are operating in bands not allocated to the broadcasting service (out-of-band operations), will relocate to the WARC–92 HFBC bands beginning March 25, 2007, and to the band 7350–7400 kHz beginning March 29, 2009. We recommend that licensees in the fixed and mobile except aeronautical mobile services carefully evaluate whether their

operations can coexist with these high-powered stations without causing interference to the reception of international broadcast programming. In this regard, we remind non-Federal licensees in the fixed and mobile except aeronautical mobile services that, as of March 25, 2007 for the WARC–92 HFBC bands and as of March 29, 2009 for the band 7350–7400 kHz, their operation is subject to immediate termination if the Commission determines that their operation is causing interference to the broadcasting service.

16. *WRC–03's Impact on the Fixed and Mobile Services.* Consistent with the WRC–03 transition plan, we are moving the existing primary fixed and secondary mobile service allocations in the band 7350–7400 kHz, which are listed directly in the U.S. Table, to new United States footnote US396, and we are maintaining the current allocation status of the fixed and mobile services in this band until the end of the WRC–03 HFBC transition period (March 29, 2009). Thereafter, stations in the fixed and mobile services will operate on an unprotected, non-interference basis to the HFBC service. Because the aeronautical mobile service portion of the mobile service allocation is unused, we will limit mobile service use to the mobile except aeronautical mobile service.

17. The Commission has previously reallocated the band 7300–7350 MHz (a WARC–92 HFBC band) to the broadcasting service on a co-primary basis with the fixed service until April 1, 2007, at which time this 50 kilohertz is allocated exclusively for HFBC use. Because the only difference between the reallocation of the band 7300–7350 kHz and the band 7350–7400 kHz is the transition period, we conclude that the reallocation of the band 7300–7400 kHz to the broadcasting service should be shown in a consistent manner. Therefore, we are moving the transition plan for the band 7300–7350 kHz from footnote US366 to new United States footnote US396, which will contain our transition plans for both the band 7300–7350 MHz and the band 7350–7400 kHz. In addition, we will cease the licensing of new non-Federal stations in the fixed and mobile services in the band 7350–7400 kHz on March 29, 2009.

18. With regard to incumbent stations in the fixed or mobile services in the band 7350–7400 kHz, it is not necessary to make special provision for the licensees in the Industrial/Business Radio Pool because most (101 of 102 licenses) are required to operate equipment that is tunable throughout the bands specified for long distance communications. We also decline to

make special provision for the three coast stations that are licensed to operate in the band 7350–7400 kHz because these stations can continue to operate on their licensed frequencies on a non-interference, unprotected basis to the HFBC service or these coast station licensees can move their operations to other frequency bands that are allocated to the fixed or mobile services. Our staff has reviewed the current seasonal schedule for the HFBC service. Because of the extremely light use of HFBC spectrum directed toward Alaska, we conclude that it is not necessary to place further burdens on the Alaska private-fixed stations, and therefore, will not reallocate the 2.8 kilohertz of spectrum used by these 18 licensees (the sub-band 7368.5–7371.3 kHz). Accordingly, we are adopting new United States footnote US396.

19. It is longstanding Commission policy that, absent any Commission action to the contrary, the operation of stations located in the U.S. Pacific insular areas in Region 3 are governed by the Region 3 Table. Therefore, in accordance with the Region 3 Table, the band 7350–7450 kHz is reallocated to the broadcasting service on a primary basis in the U.S. Pacific insular areas located in Region 3. In accordance with international footnote 5.143A, the band 7350–7450 kHz remains allocated, until March 29, 2009, to the fixed service on a primary basis and to the land mobile service on a secondary basis in the U.S. Pacific insular areas in Region 3. At the end of the WRC–03 transition period (i.e., after March 29, 2009), the band 7350–7450 kHz is allocated exclusively to the broadcasting service in the U.S. Pacific insular areas in Region 3.

20. In order to highlight the WARC–92 and WRC–03 transition plans in part 90 of the Commission's rules, we are adding new limitation (88) to the frequency range 2000 to 10,000 kHz in the Public Safety Pool Frequency Table, see § 90.20 of the rules.

21. Likewise, in order to highlight the WARC–92 and WRC–03 transition plans in Industrial/Business Pool Frequency Table in Part 90 of the Commission's Rules, we are adding new limitation (90) to the frequency range 2000 to 25,000 kHz, see § 90.30 of the Commission's rules.

22. Consistent with the *WRC–03 Final Acts*, we are allocating the bands 6765–7000 kHz and 7400–8100 kHz to the mobile except aeronautical mobile (R) service on a primary basis for Federal and non-Federal use. This action grants licensees increased flexibility and is expected to facilitate adaptive techniques, which together with automation techniques, can reduce the

burden on the operator while making these mobile service radios more responsive to changing HF propagation conditions.

23. We adopted WRC–03's phased-in approach for the allocation upgrade in the band 6765–7000 kHz. However, because this spectrum is allocated to the mobile service in the United States (rather than the more limited land mobile service), we are adding a new footnote to the U.S. Table that maintains this secondary mobile service allocation until the end of the transition period, and that otherwise parallels international footnote 5.138A. Accordingly, we adopted footnote US394.

24. We allocated the band 7400–8100 kHz (7450–8100 kHz in the U.S. Pacific insular areas in Region 3) to the mobile except aeronautical mobile (R) service on a primary basis for Federal and non-Federal use and, at the request of NTIA, we are making this allocation upgrade effective as of the effective date of this Report and Order, in lieu of WRC–03's phased-in approach. Doing so will allow for primary mobile use of this band approximately four years earlier than under the phased-in approach. We received no comments opposing this action.

Service Rule Amendments for International Broadcast Stations

25. We revised the Commission's HFBC service rules to authorize SSB and digital transmissions in the HF bands between 5900 kHz and 26100 kHz that are allocated to the broadcasting service. This action updates the Commission's HFBC rules so that they mirror Appendix 11 of the ITU *Radio Regulations*, which was recently revised at WRC–03. As a result, FCC-licensed international broadcast stations now have the flexibility to continue to transmit DSB signals or to transmit SSB or digital signals. The RF system specifications are shown in the final rules at § 73.756 (DSB), § 73.757 (SSB), and § 73.758 (digital) of the Commission's rules.

26. We adopted the DRM standard for digital transmissions in the HFBC bands. We observe that DRM is the world's only non-proprietary, digital system for international broadcasting. WRC–03 gave approval for DRM use in all the HFBC bands; there are no band restrictions on the use of DRM. Currently, seven international broadcasters are transmitting DRM signals to all or part of the 48 contiguous states. We also observe that there is a datacasting standard for DRM, which will permit FCC-licensed international broadcasters to offer wide-

area datacasting as well as high quality audio broadcasting. Other benefits of DRM include: Improved audio quality that is near-FM quality sound; many existing DSB transmitters can be easily modified to carry DRM signals; the robustness of the DRM signal can be chosen to match different propagation conditions; and DRM uses the same frequencies and bandwidth as DSB, which simplifies coordination.

27. We revised § 73.751 of the Commission's rules to state that no international broadcast station will be authorized to install, or be licensed for operation of, transmitter equipment with a peak envelope power of less than 50 kW if SSB modulation is used. This action is consistent with a commenter's request that the minimum power level for SSB transmissions be such that the SSB signal would at least be equivalent to a DSB signal over the same signal path from transmitter to listener. In this regard, we note that the International Bureau has previously waived § 73.751 in order to authorize HFBC licensees to operate SSB transmitters at 50 kW PEP because this power provides approximately the same coverage area as a DSB transmitter with a rated carrier power of 50 kW (even though this power is equivalent to only 15–20 kW relative to a DSB transmitter).

28. We revised § 73.751 of the Commission's rules to state that no international broadcast station will be authorized to install, or be licensed for operation of, transmitter equipment with a mean power of less than 10 kW if digital modulation is used. We take this action at the request of the National Association of Shortwave Broadcasters (NASB) and BBG. In making this decision, our engineering staff has reviewed the DRM Broadcasters' User Manual. The key statement is paraphrased below:

Under current coordination procedures, DRM transmissions are first coordinated as if the service were an analog DSB service and then a DRM transmission is substituted with a power level at least 7 dB lower than the allowable analog transmission.

Our engineering staff had originally recommended a minimum mean power of 20 kW. However, we observe that, using its Morocco transmitting station, "BBG provided demonstrations of digital HFBC to the attendees of WRC–03 in Geneva. These very successful demonstrations used power levels of 10 kW." After considering these new facts and also recognizing that some international broadcast stations use rhombic antennas that can provide 10–15 dB of gain, we are persuaded to

adopt the minimum mean power level that NASB requests.

29. Finally, we agree with commenters that it is unnecessary to require that new HFBC transmitters have a digital modulation capability at this time because manufacturers are already building in provisions for digital modulation.

SRS and EESS Downlinks at 25.5–27 GHz and ISS at 25.25–27.5 GHz

30. We raised the secondary non-Federal EESS downlink allocation in the band 25.5–27 GHz to primary status. We find that this allocation upgrade is necessary to meet the requirements of the commercial remote sensing industry and that it is consistent with the new national policy for commercial remote sensing space capabilities that the President authorized on April 25, 2003. In order to implement this decision, we revised footnote US258 by including the band 25.5–27 GHz in its text. Consistent with our existing policy for the band 8025–8400 MHz, the Commission will issue licenses for operation in the band 25.5–27 GHz only after coordination under footnote US258 has been completed.

31. By adding the band 25.5–27 GHz to footnote US258, we are also making each non-Federal authorization subject to a case-by-case electromagnetic compatibility (EMC) analysis. Because of existing and planned Federal SRS and EESS requirements in the band 25.5–27 GHz, we find that it is important that non-Federal EESS downlinks operated in this band be designed to ensure compatibility with Federal systems. We are also adding international footnote 5.536A to the non-Federal Table in the band 25.5–27 GHz. This action provides guidance to earth station applicants, *e.g.*, Annex 1 provides a methodology for estimating needed separation distances between EESS earth stations and fixed stations, and alerts commercial remote sensing operators of the EESS downlink allocation's status in border areas (providing notice that, where possible, these operators should consider placing their receive earth stations away from border areas).

32. In order to protect Federal terrestrial receivers, we are requiring that non-Federal EESS space stations transmitting in the band 25.5–27 GHz meet the power flux-density (pfd) limits contained in Article 21 of the ITU *Radio Regulations*. We are codifying this requirement by adding these pfd limits to part 25 of the Commission's rules. The record does not demonstrate the need for additional technical constraints on EESS applicants, and therefore, we

decline to adopt the additional constraints that were suggested by NTIA.

33. We are also broadening the secondary non-Federal EESS (space-to-space) allocation in the band 25.25–27.5 GHz to a secondary ISS allocation. However, we are also adopting international footnote 5.536, which limits the use of this ISS allocation to SRS and EESS applications, and also to transmissions of data originating from industrial and medical activities in space. This restriction is necessary to ensure that this frequency band meets the needs of the scientific community without being overtaken for use by the FSS or mobile-satellite service (MSS). In order to protect Federal terrestrial receivers, we are requiring that non-Federal ISS space stations transmitting in the band 25.25–27.5 GHz meet the pfd limits contained in Article 21 of the ITU *Radio Regulations*. The ISS pfd requirements and the EESS pfd requirements are the same and would be shown once in part 25 of the Commission's rules.

34. At NTIA's request, we are allocating the band 25.5–27 GHz to the SRS (space-to-Earth) on a primary basis for Federal use. This action will provide a primary SRS allocation to satisfy Federal requirements for high data rate space science missions.

35. Finally, we note that the allocation changes that we are making today in no way prevent radio frequency devices that operate in accordance with the requirements codified in part 15 from operating in the band 25.25–27.5 GHz.

RNSS and the Radiolocation Service

36. We did not receive any comments that addressed our proposals for the RNSS and the radiolocation service. Accordingly, we adopted our proposals. First, we are entering "RADIONAVIGATION–SATELLITE (space-to-Earth) (space-to-space)" in the U.S. Table for the band 1164–1215 MHz. We adopted international footnote 5.328A, which requires that RNSS stations in the band 1164–1215 MHz operate in accordance with Resolution 609 (WRC–03) and that they not claim protection from the aeronautical radionavigation service in the band 960–1215 MHz. At the request of NTIA, we added footnote G132 to the Federal Table.

37. Because the record indicated no interest on the matter by any party, we decline to expand the RNSS allocation at 1215–1240 MHz, which is currently limited to Federal use, to the band 1215–1300 MHz and to make it

available for both Federal and non-Federal use.

38. Second, we allocated the band 5000–5030 MHz to the RNSS on a primary basis for Federal and non-Federal use and we are limiting the use of the segment 5000–5010 MHz to uplink transmissions and the segment 5010–5030 MHz to downlink and crosslink transmissions. Consequently, we replaced footnote US370 with international footnote 5.444, thereby removing the band 5000–5030 MHz from the spectrum in which the Microwave Landing System (MLS) has precedence over other uses. In order to protect MLS operations above 5030 MHz and radio astronomy observations in the band 4990–5000 MHz, we are limiting the adjacent band pfd at the Earth's surface from RNSS operations in the band 5010–5030 MHz through the adoption of international footnote 5.443B.

39. Third, at the request of NTIA, we are raising the allocation status of the Federal radiolocation service in the band 2900–3100 MHz to primary and we are adding international footnote 5.424A to the Federal Table in order to protect important ship navigation systems. This allocation upgrade will increase the usefulness of this spectrum without causing any burden on existing operations. In particular, we note that, mainly as a result of newer radar design features that mitigate received radar-to-radar interference, NTIA reports that radionavigation radars operating in the band 2900–3100 MHz have demonstrated compatible operations with radiolocation systems. Because the record indicated no interest on the matter by any party, we decline to upgrade the allocation status of the non-Federal radiolocation service in the band 2900–3100 MHz.

Allocation Status of the Little LEO Feeder Link Bands

40. WRC–03 allocated spectrum for Little LEO feeder links on a secondary basis throughout the world and resolved that use of these allocations is contingent on the subsequent completion of spectrum sharing studies to determine the impact of these NGSO FSS operations on incumbent services, including passive service operations in the adjacent band 1400–1427 MHz. Furthermore, Resolution 745 indicates that any Little LEO use of these bands is subject to additional decisions on compatibility issues that may be adopted at the 2007 World Radiocommunication Conference (WRC–07). For these reasons, we disagree with Final Analysis Communication Services, Inc. (Final

Analysis) that the conditions set forth in footnote US368 have been met. The *27 MHz Report and Order*, 67 FR 6172, February 11, 2002, which added footnote US368, adopted the conditional co-primary allocation in anticipation of the completion of studies and adoption of a like allocation at WRC-03. By contrast, WRC-03 adopted worldwide secondary allocations for the band, added further conditions on its use, and continued to require studies of the band. These developments were not anticipated by the text of the *27 MHz Report and Order* nor by the terms of footnote US368.

41. Although the decision made at WRC-03 is inconsistent with the provisions outlined in footnote US368, we find it serves the public interest to maintain but revise the conditional allocations to reflect the WRC-03 action. Thus, we adopt our proposal to implement WRC-03's decision regarding Little LEO feeder links. We will require the completion of ITU-R studies on all identified compatibility issues as shown in Annex 1 of Resolution 745 (WRC-2003) and make any use of the worldwide feeder links subject to any further compatibility decisions by WRC-07. Accordingly, we are amending the Table entries for the FSS uplink allocation in the band 1390-1392 MHz and the FSS downlink allocation in the band 1430-1432 MHz to show secondary status in lieu of primary status, and we have revised footnote US368.

42. We reject as speculative Final Analysis' assertion that we should maintain a conditional co-primary allocation because WRC-07 may change the secondary international allocation to primary status. We do not believe it serves the public interest to preserve a provisional co-primary allocation in the band that is inconsistent with the WRC-03 decision, particularly because we cannot predict whether the contingencies provided in footnote US368 will be successfully met. Regardless of the provisional allocation afforded to Little LEO use of the band, parties interested in using the frequencies for feeder link operations will have to take into account the unresolved status of the band and potential added expense associated with planning for its use. Alternately, they may continue to use the spectrum that has already been made available for Little LEO feeder and service link operations, and that is free of any contingencies.

43. Finally, we note that the Little LEO feeder links protection requirements for passive services are specified in footnote US368 and that

these requirements go beyond the more general protection criteria described in footnote US74. Therefore, in order to ensure that readers of footnote US74 do not overlook the specific restrictions embodied in US368, we are adding a cross reference to footnote US368 in footnote US74. We are also using the term "unwanted emissions" in place of "extraband radiation" in footnote US74. Finally, we are also adding a statement in our rules that airborne and space-to-Earth operations are prohibited in the Government transfer bands 1390-1400 MHz and 1427-1432 MHz, with the exception of Little LEO feeder downlinks in the band 1430-1432 MHz. This action makes explicit our previous decisions not to allocate additional spectrum in this frequency range to airborne or downlink operations and has been requested by NTIA. Accordingly, we have adopted a new United States footnote US398.

Remaining Space Radiocommunication Service Issues

44. At the request of NTIA, we are making allocation changes to three frequency bands. First, we are allocating the band 432-438 MHz to the EESS (active) on a secondary basis for Federal use and are requiring that space stations operating under this allocation not cause harmful interference to, nor claim protection from, the radiolocation, amateur, and amateur-satellite services in the United States. This action will permit NASA to perform limited pre-operational testing of its systems within line-of-sight of its U.S. control stations and appears to be feasible given the evidence of NASA's good relations with the amateur community as reflected in the record. Accordingly, we have adopted footnote US397.

45. Second, we are displaying the Federal SRS deep space uplink allocation, which is currently authorized in footnote US252, as a table entry in the Federal Table for the band 7145-7190 MHz. This action clarifies that the band 7145-7190 MHz is allocated to the SRS (deep space) (Earth-to-space) on a primary basis for Federal use and highlights that this SRS uplink use is limited to deep space communications. In addition, we are maintaining the non-Federal SRS deep space uplink allocation as a footnote allocation, are specifying that this unused allocation has secondary status, and are moving this allocation and the Goldstone site restriction to footnote US262. Accordingly, footnotes US252 and US262 have been revised.

46. NTIA has recently limited the use of the Federal SRS uplink allocation in

the band 7190-7235 MHz by its adoption of footnote G133.

47. Third, we are raising the secondary SRS allocation in the band 14.8-15.35 GHz to primary status for Federal use, except in segment 15.2-15.35 GHz where SRS (passive) operations would continue to be authorized on a secondary basis. We find that the United States has developed extensive SRS operations in this band at great expense and these operations merit the protection that a primary allocation provides. We have revised footnote US310 by using a reference bandwidth that is more appropriate for today's digital transmissions than a reference bandwidth based on an analog channel. See the final rules for footnote US310's revised text.

ITU Terms and Definitions

48. In order to reflect additions and revisions to the terms and definitions listed in the *ITU Radio Regulations* and in the *WRC-03 Final Acts*, we are amending § 2.1 of the Commission's rules to: Add definitions for adaptive system, high altitude platform station (HAPS), out-of-band domain of an emission, and spurious domain of an emission; revise the definitions for coordinated universal time (UTC), coordination area, coordination distance, facsimile, geostationary satellite, harmful interference, inclination of an orbit of an earth satellite, telegraphy, and telephony; and make minor editorial modifications to the definitions for administration, broadcasting service, mobile service, permissible interference, power, public correspondence, radio, radiocommunication, safety service, semi-duplex operation, telecommunication, and telegram. In addition, we have corrected a typographical error in the definition for telemetry in § 2.1 and we have revised the definition for UTC in § 73.701. The definitions of these terms are shown in the final rules.

Editorial Amendments

49. We have taken this opportunity to make various non-substantive changes to parts 2, 90, and 97 the Commission's rules. In part 2, we have updated and corrected § 2.1 through § 2.106. The main effect of these actions is to reflect the *WRC-03 Final Acts* in these rule sections; to use consistent terminology in these rules, e.g., Federal and non-Federal; to remove confusing and unnecessary material from the U.S. Table; and to update the FCC rule part cross references. In addition, we have corrected a typographical error in part

90 and revised part 97 to reflect the realignment of allocations above 71 GHz and made other needed editorial revisions.

Final Regulatory Flexibility Analysis

50. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (Omnibus NPRM)* in ET Docket No. 04–139.² The Commission sought written public comment on the proposals in the *Omnibus NPRM*, including comment on the IRFA. No written public comments were received concerning the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

51. In the *Omnibus Report and Order*, the Commission amends parts 2, 25, 73, 90, and 97 of its rules in order to complete its implementation of various allocation decisions from the World Radiocommunication Conference (Geneva, 2003) (WRC–03) concerning the frequency bands between 5900 kHz and 27.5 GHz and to otherwise update its Rules in this frequency range. In general, these changes provide additional licensing opportunities and flexibility for Commission licensees, e.g., international broadcast stations are authorized the use of single sideband and digital transmissions—in addition to double sideband transmissions—in the HF bands between 5900 kHz and 26100 kHz that are allocated to the broadcasting service. The decisions adopted in the *Omnibus Report and Order* conform to the Commission's rules, to the extent practical, to the decisions that the international community made at WRC–03 and will collectively promote the advancement of new and expanded services and provide significant benefits to the American public.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

52. There were no comments filed directly in response to the IRFA.

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

² 19 FCC Rcd 6592, 6715 (2004).

³ 5 U.S.C. 604.

C. Description and Estimate of the Number of Small Entities to Which the Final Rule Will Apply

53. 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.⁴ 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, unless the Commission has developed one or more definitions that are appropriate for its activities.⁵ Under the Small Business Act, a “small business concern” is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁶

54. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁷ Nationwide, there are approximately 1.6 million small organizations.⁸ “Small governmental jurisdiction” generally means “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.”⁹ As of 1997, there were approximately 87,453 governmental entities in the United States.¹⁰ This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000 and 1,498 have populations of 500,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be approximately 84,098 or fewer.

55. *Satellite Telecommunications.* The SBA has developed a small business size standard for Satellite Telecommunications, which consists of

⁴ *Id.* at 604(a)(3).

⁵ 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*.”

⁶ 15 U.S.C. 632.

⁷ 5 U.S.C. 601(4).

⁸ Independent Sector, *The New Nonprofit Almanac and Desk Reference* (2002).

⁹ 5 U.S.C. 601(5).

¹⁰ U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299–300, Tables 490 and 492.

all such firms having \$12.5 million or less in annual receipts.¹¹ According to Census Bureau data for 1997, there were 324 firms in this category that operated for the entire year.¹² Of this total, 273 firms had annual receipts of under \$10 million, and an additional twenty-four firms had receipts of \$10 million to \$24,999,999.¹³ Thus, under this size standard, the majority of firms can be considered small.

56. *Little LEO licensees* operate non-geostationary mobile-satellite systems that provide non-voice services. There are two Little LEO licensees (ORBCOMM and Volunteers in Technical Assistance (VITA)) currently in operation. Another Little LEO licensee (Final Analysis Communication Services, Inc.) has expressed interest in the Little LEO feeder link bands, but it does not yet provide service. The last-listed licensee here is a small business, and the other two might also be small.

57. *Licensees in the Earth Exploration-Satellite Service (EESS)* provide remote sensing services. While there are currently no EESS licensees in the band 25.5–27 GHz, two companies (DigitalGlobe, Inc. and Space Imaging LLC) have expressed interest in using this band in the future. Neither of these EESS licensees (which currently operate in the band 8025–8400 MHz) are small businesses.

58. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless small businesses in the category of Cellular and Other Wireless Telecommunications.¹⁴ Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. According to Commission data,¹⁵ 975 companies reported that they were engaged in the provision of wireless service. Of these 975 companies, an estimated 767 have 1,500 or fewer employees and 208 have more than 1,500 employees.¹⁶ Consequently, the Commission estimates that most wireless service providers are small entities.

59. *Licensees in the Fixed and Mobile Services* in the band 7350–7400 kHz provide conventional Industrial/

¹¹ 13 CFR 121.201, NAICS code 517410 (changed from 513340 in October 2002).

¹² U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 513340 (issued October 2000).

¹³ *Id.*

¹⁴ 13 CFR 121.201, NAICS code 517212.

¹⁵ FCC, *Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service* at Table 5.3, page 5–5 (May 2004). This source uses data that are current as of October 22, 2003. These estimates include paging.

¹⁶ *Id.*

Business Pool services (41 licenses with 102 licenses), operate Alaska private-fixed stations (11 licensees with 18 licenses), and operate coast stations (3 licensees, each with a single license). We believe that some of the licensees providing conventional Industrial/Business Pool services are small businesses; that almost all of the licensees providing Alaska group services are small businesses; and that all of the licensees providing coast station services are small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

60. The final rules require that:¹⁷

- After March 29, 2009, authority to operate in the band 7350–7400 kHz shall not be extended to new non-Federal stations in the fixed and mobile except aeronautical mobile services. After March 29, 2009, non-Federal stations in the fixed and mobile except aeronautical mobile services shall: (1) Be limited to communications wholly within the United States and its insular areas; (2) not cause harmful interference to the broadcasting service; (3) be limited to the minimum power needed to achieve communications; and (4) take account of the seasonal use of frequencies by the broadcasting service published in accordance with Article 12 of the ITU *Radio Regulations*.

- Licensees in the Non-Voice Non-Geostationary Mobile-Satellite Service that use the bands 1390–1392 MHz and 1430–1432 MHz for feeder links (Little LEO feeder links) operate on a secondary basis. The completion of ITU-R studies on all identified compatibility issues as shown in Annex 1 of Resolution 745 (WRC–2003) are required prior to the use of the Little LEO feeder links. Any use of these feeder link allocations are subject to further compatibility decisions by 2007 World Radiocommunication Conference. Engineering skills would be needed in order to perform the required studies.

- EESS applicants in the band 25.5–27 GHz are required to do a technical analysis of the interference potential between their proposed operations and Federal operations, *i.e.*, an electromagnetic compatibility analysis.¹⁸ Engineering skills would be needed in order to perform the analysis. The power flux-density at the Earth's surface produced by emissions from an EESS space station must be in

accordance with the ITU *Radio Regulations*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.

61. 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.¹⁹

62. The Commission reallocated the band 7350–7400 kHz from the fixed and mobile services to the broadcasting service, effective March 29, 2009, and will cease issuing licenses for new stations in the fixed and mobile services as of that date. The phase-in of these rules provide affected entities, including small entities, with a reasonable amount of time in which to relocate to other spectrum allocated to the fixed and mobile services, thus minimizing the impact of our actions. In addition, the new broadcasting service allocation will provide new opportunities for international broadcasters that are small businesses.

63. The Commission had conditionally allocated the Little LEO feeder links on a primary basis, subject to the outcome of WRC–03. At WRC–03, the United States was unable to secure a primary allocation, but was able to garner conditional support for a worldwide secondary allocation for Little LEO feeder links. Based on the international allocation, the Commission has changed the allocation status of the Little LEO feeder links from primary to secondary. Because the Commission has not yet licensed the Little LEO feeder links, no licensee is directly impacted by this decision. Continued allocation for Little LEO feeder links in this band will provide opportunities for small businesses within the context of international agreements.

64. *Report to Congress:* The Commission will send a copy of the Report and Order, including this FRFA, in a report to Congress and the Government Accountability Office,

pursuant to the Congressional Review Act.²⁰ In addition, the Commission will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

65. Pursuant to sections 1, 4(i), 7(a), 301, 302(a), 303(c), 303(f), 303(g), 303(r), 307, 308, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 157(a), 301, 302(a), 303(c), 303(f), 303(g), 303(r), 307, 308, 316, and 332, the report and order is hereby adopted.

66. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this report and order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

Part 2

Radio, telecommunications.

Part 25

Radio, satellites.

Parts 73, 90 and 97

Radio.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 25, 73, 90, and 97 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS;

General Rules and Regulations

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.1 is amended as follows:

■ a. By revising paragraph (b);

■ b. In paragraph (c), by adding the definitions of Adaptive System, Administration, Frequency Assignment Subcommittee, Government Master File, High Altitude Platform Station, Interdepartment Radio Advisory Committee, International Telecommunication Union, National Telecommunications and Information Administration, Out-of-band domain (of an emission), Spurious domain (of an emission);

■ c. In paragraph (c), by revising the definitions of Broadcasting Service,

¹⁷ See also *Omnibus Report and Order* at paragraph 2 (Executive Summary).

¹⁸ See paragraphs 87–88 of the Report and Order.

¹⁹ 5 U.S.C. 603(c).

²⁰ See 5 U.S.C. 801(a)(1)(A).

Coordinated Universal Time, Coordination Area, Coordination Distance, Facsimile, Geostationary Satellite, Harmful Interference, Inclination of an Orbit (of an earth satellite), Mobile Service, Permissible Interference, Power, Public Correspondence, Radio, Radiocommunication, Safety Service, Semi-Duplex Operation, Simplex Operation, Telecommunication, Telegram, Telegraphy, Telemetry, and Telephony; and

■ d. In paragraph (c), by revising the designation of Footnote 2 in the definition of Duplex Operations to be designated as Footnote 3.

The additions and revisions read as follows:

§ 2.1 Terms and definitions.

(a) * * *

(b) The source of each definition is indicated as follows:

CS—Annex to the Constitution of the International Telecommunication Union (ITU)

CV—Annex to the Convention of the ITU

FCC—Federal Communications Commission

RR—ITU Radio Regulations

(c) The following terms and definitions are issued:

* * * * *

Adaptive System. A radiocommunication system which varies its radio characteristics according to channel quality. (RR)

Administration. Any governmental department or service responsible for discharging the obligations undertaken in the Constitution of the International Telecommunication Union, in the Convention of the International Telecommunication Union and in the Administrative Regulations. (CS)

* * * * *

Broadcasting Service. A radiocommunication service in which the transmissions are intended for direct reception by the general public. This service may include sound transmissions, television transmissions or other types of transmission. (CS)

* * * * *

Coordinated Universal Time (UTC). Time scale, based on the second (SI), as defined in Recommendation ITU-R TF.460-6.

Note: For most practical purposes associated with the ITU *Radio Regulations*, UTC is equivalent to mean solar time at the prime meridian (0° longitude), formerly expressed in GMT. (RR)

Coordination Area. When determining the need for coordination,

the area surrounding an earth station sharing the same frequency band with terrestrial stations, or surrounding a transmitting earth station sharing the same bidirectionally allocated frequency band with receiving earth stations, beyond which the level of permissible interference will not be exceeded and coordination is therefore not required. (RR)

* * * * *

Coordination Distance. When determining the need for coordination, the distance on a given azimuth from an earth station sharing the same frequency band with terrestrial stations, or from a transmitting earth station sharing the same bidirectionally allocated frequency band with receiving earth stations, beyond which the level of permissible interference will not be exceeded and coordination is therefore not required. (RR)

* * * * *

Facsimile. A form of telegraphy for the transmission of fixed images, with or without half-tones, with a view to their reproduction in a permanent form. (RR)

* * * * *

Frequency Assignment Subcommittee (FAS). A subcommittee of the Interdepartment Radio Advisory Committee (IRAC) within NTIA that develops and executes procedures for the assignment and coordination of Federal radio frequencies. (FCC)

* * * * *

Geostationary Satellite. A geosynchronous satellite whose circular and direct orbit lies in the plane of the Earth's equator and which thus remains fixed relative to the Earth; by extension, a geosynchronous satellite which remains approximately fixed relative to the Earth. (RR)

Government Master File (GMF). NTIA's database of Federal assignments. It also includes non-Federal authorizations coordinated with NTIA for the bands allocated for shared Federal and non-Federal use. (FCC)

* * * * *

Harmful Interference. Interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service operating in accordance with [the ITU] Radio Regulations. (CS)

High Altitude Platform Station (HAPS). A station located on an object at an altitude of 20 to 50 km and at a specified, nominal, fixed point relative to the Earth. (RR)

* * * * *

Inclination of an Orbit (of an earth satellite). The angle determined by the plane containing the orbit and the plane of the Earth's equator measured in degrees between 0° and 180° and in counter-clockwise direction from the Earth's equatorial plane at the ascending node of the orbit. (RR)

* * * * *

Interdepartment Radio Advisory Committee (IRAC). A committee of the Federal departments, agencies, and administrations that advises NTIA in assigning frequencies to Federal radio stations and in developing and executing policies, programs, procedures, and technical criteria pertaining to the allocation, management, and use of the spectrum. The IRAC consists of a main committee, subcommittees, and several ad hoc groups that consider various aspects of spectrum management policy. The FCC serves as a member of the Frequency Assignment Subcommittee and as Liaison Representative on the main committee, all other subcommittees and ad hoc groups. (FCC)

International Telecommunication Union (ITU). An international organization within the United Nations System where governments and the private sector coordinate global telecom networks and services. The ITU is headquartered in Geneva, Switzerland and its internet address is www.itu.int. (FCC)

* * * * *

Mobile Service. A radiocommunication service between mobile and land stations, or between mobile stations. (CV)

* * * * *

National Telecommunications and Information Administration (NTIA). An agency of the United States Department of Commerce that serves as the President's principal advisor on telecommunications and information policy issues. NTIA manages Federal use of the radio spectrum and coordinates Federal use with the FCC. NTIA sets forth regulations for Federal use of the radio spectrum within its *Manual of Regulations & Procedures for Federal Radio Frequency Management (NTIA Manual)*. (FCC)

* * * * *

Out-of-band domain (of an emission). The frequency range, immediately outside the necessary bandwidth but excluding the spurious domain, in which out-of-band emissions generally predominate. Out-of-band emissions, defined based on their source, occur in the out-of-band domain and, to a lesser extent, in the spurious domain. Spurious emissions likewise may occur

in the out-of-band domain as well as in the spurious domain. (RR)

* * * * *

*Permissible Interference.*³ Observed or predicted interference which complies with quantitative interference and sharing criteria contained in these [ITU Radio] Regulations or in ITU-R Recommendations or in special Recommendations as provided for in these Regulations. (RR)

* * * * *

Power. Whenever the power of a radio transmitter, *etc.* is referred to it shall be expressed in one of the following forms, according to the class of emission, using the arbitrary symbols indicated:

- (1) Peak envelope power (PX or pX);
- (2) Mean power (PY or pY);
- (3) Carrier power (PZ or pZ).

Note 1: For different classes of emission, the relationships between peak envelope power, mean power and carrier power, under the conditions of normal operation and of no modulation, are contained in ITU-R Recommendations which may be used as a guide.

Note 2: For use in formulae, the symbol p denotes power expressed in watts and the symbol P denotes power expressed in decibels relative to a reference level. (RR)

* * * * *

Public Correspondence. Any telecommunication which the offices and stations must, by reason of their being at the disposal of the public, accept for transmission. (CS)

* * * * *

Radio. A general term applied to the use of radio waves. (RR)

* * * * *

Radiocommunication.

Telecommunication by means of radio waves. (CS) (CV)

* * * * *

Safety Service. Any radiocommunication service used permanently or temporarily for the safeguarding of human life and property. (RR)

* * * * *

*Semi-Duplex Operation.*⁴ A method which is simplex operation on one end of the circuit and duplex operation at the other. (RR)

* * * * *

*Simplex Operation.*⁴ Operating method in which transmission is made possible alternatively in each direction of a telecommunication channel, for example, by means of manual control.

* * * * *

Spurious domain (of an emission): The frequency range beyond the out-of-band domain in which spurious emissions generally predominate. (RR)

* * * * *

Telecommunication. Any transmission, emission or reception of signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems. (CS)

* * * * *

Telegram. Written matter intended to be transmitted by telegraphy for delivery to the addressee. This term also includes radiotelegrams unless otherwise specified. (CS)

Note: In this definition the term telegraphy has the same general meaning as defined in the Convention.

*Telegraphy.*⁵ A form of telecommunication in which the transmitted information is intended to be recorded on arrival as a graphic document; the transmitted information may sometimes be presented in an

alternative form or may be stored for subsequent use. (CS)

Telemetry. The use of telecommunication for automatically indicating or recording measurements at a distance from the measuring instrument. (RR)

Telephony. A form of telecommunication primarily intended for the exchange of information in the form of speech. (CS)

* * * * *

■ 3. Section 2.100 is revised to read as follows:

§2.100 International regulations in force.

The ITU *Radio Regulations*, edition of 2004, have been incorporated to the extent practicable in Subparts A and B of this part.

■ 4. Section 2.101 is revised to read as follows:

§2.101 Frequency and wavelength bands.

(a) The radio spectrum shall be subdivided into nine frequency bands, which shall be designated by progressive whole numbers in accordance with the following table. As the unit of frequency is the hertz (Hz), frequencies shall be expressed:

- (1) In kilohertz (kHz), up to and including 3 000 kHz;
- (2) In megahertz (MHz), above 3 MHz, up to and including 3 000 MHz;
- (3) In gigahertz (GHz), above 3 GHz, up to and including 3 000 GHz.

(b) However, where adherence to these provisions would introduce serious difficulties, for example in connection with the notification and registration of frequencies, the lists of frequencies and related matters, reasonable departures may be made.

Band number	Symbols	Frequency range (lower limit exclusive, upper limit inclusive)	Corresponding metric subdivision	Metric abbreviations for the bands
4	VLF	3 to 30 kHz	Myriametric waves	B.Mam.
5	LF	30 to 300 kHz	Kilometric waves	B.km.
6	MF	300 to 3 000 kHz	Hectometric waves	B.hm.
7	HF	3 to 30 MHz	Decametric waves	B.dam.
8	VHF	30 to 300 MHz	Metric waves	B.m.
9	UHF	300 to 3 000 MHz	Decimetric waves	B.dm.
10	SHF	3 to 30 GHz	Centimetric waves	B.cm.
11	EHF	30 to 300 GHz	Millimetric waves	B.mm.
12 .....	.....	300 to 3 000 GHz	Decimillimetric waves .....	.....

Note 1: "Band N" (N = band number) extends from 0.3×10^N Hz to 3×10^N Hz.

Note 2: Prefix: k = kilo (10^3), M = mega (10^6), G = giga (10^9).

(c) In communications between administrations and the ITU, no names, symbols or abbreviations should be used

for the various frequency bands other than those specified in this section.

■ 5. Section 2.102 is amended by revising paragraphs (a), (b)(3), (c) introductory text, (c)(1), (c)(3), (c)(4), (e),

³ See footnote under Accepted Interference.

⁴ See footnote under Duplex Operation.

⁵ A graphic document records information in a permanent form and is capable of being filed and

consulted; it may take the form of written or printed matter or of a fixed image.

(g) introductory text, and (h) introductory text to read as follows.

§ 2.102 Assignment of frequencies.

(a) Except as otherwise provided in this section, the assignment of frequencies and bands of frequencies to all stations and classes of stations and the licensing and authorizing of the use of all such frequencies between 9 kHz and 275 GHz, and the actual use of such frequencies for radiocommunication or for any other purpose, including the transfer of energy by radio, shall be in accordance with the Table of Frequency Allocations in § 2.106.

(b) * * *

(3) Experimental stations, pursuant to part 5 of this chapter, may be authorized the use of any frequency or frequency band not exclusively allocated to the passive services (including the radio astronomy service).

* * * * *

(c) Non-Federal stations may be authorized to use Federal frequencies in the bands above 25 MHz if the Commission finds, after consultations with the appropriate Federal agency or agencies, that such use is necessary for coordination of Federal and non-Federal activities: Provided, however, that:

(1) Non-Federal operation on Federal frequencies shall conform with the conditions agreed upon by the Commission and NTIA (the more important of which are contained in paragraphs (c)(2), (c)(3), and (c)(4) of this section);

* * * * *

(3) Such operations shall not cause harmful interference to Federal stations and, should harmful interference result, that the interfering non-Federal operation shall immediately terminate; and

(4) Non-Federal operation has been certified as necessary by the Federal agency involved and this certification has been furnished, in writing, to the non-Federal licensee with which communication is required.

* * * * *

(e) Non-Federal services operating on frequencies in the band 25–50 MHz must recognize that it is shared with various services of other countries; that harmful interference may be caused by skywave signals received from distant stations of all services of the United States and other countries radiating power on frequencies in this band; and that no protection from such harmful interference generally can be expected. Persons desiring to avoid such harmful interference should consider operation on available frequencies higher in the

radio spectrum not generally subject to this type of difficulty.

* * * * *

(g) In the bands above 25 MHz which are allocated to the non-Federal land mobile service, fixed stations may be authorized on the following conditions:

* * * * *

(h) Special provisions regarding the use of spectrum allocated to the fixed and land mobile services below 25 MHz by non-Federal stations.

* * * * *

■ 6. Section 2.103 is amended by revising the section heading and paragraphs (a) introductory text, (a)(1), (a)(3), (a)(4), and (b).

§ 2.103 Federal use of non-Federal frequencies.

(a) Federal stations may be authorized to use non-Federal frequencies in the bands above 25 MHz (except the 764–776 MHz and 794–806 MHz public safety bands) if the Commission finds that such use is necessary for coordination of Federal and non-Federal activities: Provided, however, that:

(1) Federal operation on non-Federal frequencies shall conform with the conditions agreed upon by the Commission and NTIA (the more important of which are contained in paragraphs (a)(2), (a)(3) and (a)(4) of this section);

* * * * *

(3) Such operations shall not cause harmful interference to non-Federal stations and, should harmful interference result, that the interfering Federal operation shall immediately terminate; and

(4) Federal operation has been certified as necessary by the non-Federal licensees involved and this certification has been furnished, in writing, to the Federal agency with which communication is required.

(b) Federal stations may be authorized to use channels in the 764–776 MHz, 794–806 MHz and 4940–4990 MHz public safety bands with non-Federal entities if the Commission finds such use necessary; where:

(1) The stations are used for interoperability or part of a Federal/non-Federal shared or joint-use system;

(2) The Federal entity obtains the approval of the non-Federal (State/local government) licensee(s) or applicant(s) involved;

(3) Federal operation is in accordance with the Commission’s Rules governing operation of this band and conforms with any conditions agreed upon by the Commission and NTIA; and

(4) Interoperability, shared or joint-use systems are the subject of a mutual

agreement between the Federal and non-Federal entities. This section does not preclude other arrangements or agreements as permitted under part 90 of the rules. See 47 CFR 90.179 and 90.421 of this chapter.

■ 7. Section 2.104 is amended by revising paragraphs (b)(1), (b)(3), (c)(2), (c)(4)(ii)(B), (c)(4)(iii), (g), and (h)(5).

§ 2.104 International Table of Frequency Allocations.

* * * * *

(b) * * *

(1) Region 1. Region 1 includes the area limited on the east by line A (lines A, B and C are defined below) and on the west by line B, excluding any of the territory of the Islamic Republic of Iran which lies between these limits. It also includes the whole of the territory of Armenia, Azerbaijan, the Russian Federation, Georgia, Kazakhstan, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan, Turkey and Ukraine and the area to the north of the Russian Federation which lies between lines A and C.

* * * * *

(3) Region 3. Region 3 includes the area limited on the east by line C and on the west by line A, except any of the territory of Armenia, Azerbaijan, the Russian Federation, Georgia, Kazakhstan, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan, Turkey and Ukraine and the area to the north of the Russian Federation. It also includes that part of the territory of the Islamic Republic of Iran lying outside of those limits.

* * * * *

(c) * * *

(2) The “European Broadcasting Area” is bounded on the west by the western boundary of Region 1, on the east by the meridian 40° East of Greenwich and on the south by the parallel 30° North so as to include the northern part of Saudi Arabia and that part of those countries bordering the Mediterranean within these limits. In addition, Iraq, Jordan and that part of the territory of the Syrian Arab Republic, Turkey and Ukraine lying outside the above limits are included in the European Broadcasting Area.

* * * * *

(4) * * *

(ii) * * *

(B) That part of Libyan Arab Jamahiriya north of parallel 30° North.

(iii) In Region 2, the Tropical Zone may be extended to parallel 33° North, subject to special agreements between the countries concerned in that Region

(see Article 6 of the ITU *Radio Regulations*).

* * * * *

(g) *Miscellaneous provisions.* (1)

Where it is indicated in the International Table that a service or stations in a service may operate in a specific frequency band subject to not causing harmful interference to another service or to another station in the same service, this means also that the service which is subject to not causing harmful interference cannot claim protection from harmful interference caused by the other service or other station in the same service.

(2) Where it is indicated in the International Table that a service or stations in a service may operate in a specific frequency band subject to not claiming protection from another service or from another station in the same service, this means also that the service which is subject to not claiming protection shall not cause harmful interference to the other service or other station in the same service.

(3) Except if otherwise specified in a footnote, the term "fixed service", where appearing in the International Table, does not include systems using ionospheric scatter propagation.

(h) * * *

(5) The footnote references which appear in the International Table below the allocated service or services apply to more than one of the allocated services, or to the whole of the allocation concerned.

* * * * *

■ 8. Section 2.105 is amended by revising paragraphs (a), (b), (c)(1) introductory text, (d)(1), (d)(2), (d)(3), and (d)(5), by removing paragraph (d)(6), and by adding paragraphs (e) and (f) to read as follows:

§ 2.105 United States Table of Frequency Allocations.

(a) The United States Table of Frequency Allocations (United States Table) is subdivided into the Federal Table of Frequency Allocations (Federal Table, column 4 of § 2.106) and the non-Federal Table of Frequency Allocations (non-Federal Table, column 5 of § 2.106). The United States Table is based on the Region 2 Table because the relevant area of jurisdiction is located primarily in Region 2¹ (*i.e.*, the 50 States, the District of Columbia, the Caribbean insular areas,² and some of

the Pacific insular areas),^{3 4} The Federal Table is administered by NTIA⁵ and the non-Federal Table is administered by the Federal Communications Commission (FCC).⁶

(b) In the United States, radio spectrum may be allocated to either Federal or non-Federal use exclusively, or for shared use. In the case of shared use, the type of service(s) permitted need not be the same [*e.g.*, Federal FIXED, non-Federal MOBILE]. The terms used to designate categories of services and allocations⁷ in columns 4 and 5 of § 2.106 correspond to the terms in the ITU *Radio Regulations*.

(c) * * *

(1) Any segment of the radio spectrum may be allocated to the Federal and/or non-Federal sectors either on an exclusive or shared basis for use by one or more radio services. In the case where an allocation has been made to more than one service, such services are listed in the following order:

* * * * *

(d) * * *

(1) The frequency band referred to in each allocation, column 4 for Federal operations and column 5 for non-Federal operations, is indicated in the left-hand top corner of the column. If there is no service or footnote indicated for a band of frequencies in column 4, then the Federal sector has no access to that band except as provided for by § 2.103. If there is no service or footnote indicated for a band of frequencies in column 5, then the non-Federal sector has no access to that band except as provided for by § 2.102.

(2) When the Federal Table and the non-Federal Table are exactly the same for a shared band, the line between columns 4 and 5 is deleted and the allocations are shown once.

(3) The Federal Table, given in column 4, is included for informational purposes only.

* * * * *

(5) The following symbols are used to designate footnotes in the United States Table:

(i) Any footnote consisting of "5." followed by one or more digits, *e.g.*, 5.53, denotes an international footnote.

³ The Pacific insular areas located in Region 2 are Johnston Atoll and Midway Atoll.

⁴ The operation of stations in the Pacific insular areas located in Region 3 are generally governed by the Region 3 Table (*i.e.*, column 3 of 2.106). The Pacific insular areas located in Region 3 are American Samoa, Guam, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Kingman Reef, Palmyra Island, and Wake Island.

⁵ Section 305(a) of the Communications Act of 1934, as amended. See Public Law 102-538, 106 Stat. 3533 (1992).

⁶ The Communications Act of 1934, as amended.

⁷ The radio services are defined in § 2.1.

Where an international footnote is applicable, without modification, to both Federal and non-Federal operations, the Commission places the footnote in both the Federal Table and the non-Federal Table (columns 4 and 5) and the international footnote is binding on both Federal users and non-Federal licensees. If, however, an international footnote pertains to a service allocated only for Federal or non-Federal use, the international footnote will be placed only in the affected Table. For example, footnote 5.142 pertains only to the amateur service, and thus, footnote 5.142 is shown only in the non-Federal Table.

(ii) Any footnote consisting of the letters "US" followed by one or more digits, *e.g.*, US7, denotes a stipulation affecting both Federal and non-Federal operations. United States footnotes appear in both the Federal Table and the non-Federal Table.

(iii) Any footnote consisting of the letters "NG" followed by one or more digits, *e.g.*, NG2, denotes a stipulation applicable only to non-Federal operations. Non-Federal footnotes appear solely in the non-Federal Table (column 5).

(iv) Any footnote consisting of the letter "G" following by one or more digits, *e.g.*, G2, denotes a stipulation applicable only to Federal operations. Federal footnotes appear solely in the Federal Table (column 4).

(e) *Rule Part Cross References.* If a frequency or frequency band has been allocated to a radiocommunication service in the non-Federal Table, then a cross reference may be added for the pertinent FCC Rule part (column 6 of § 2.106). For example, the band 849–851 MHz is allocated to the aeronautical mobile service for non-Federal use, rules for the use of the 849–851 MHz band have been added to Part 22—Public Mobile Services (47 CFR part 22), and a cross reference, Public Mobile (22), has been added in column 6 of § 2.106. The exact use that can be made of any given frequency or frequency band (*e.g.*, channelling plans, allowable emissions, *etc.*) is given in the FCC Rule part(s) so indicated. The FCC Rule parts in this column are not allocations and are provided for informational purposes only. This column also may contain explanatory notes for informational purposes only.

(f) The Commission updates § 2.106 shortly after a final rule that revises that section is released. The address for the FCC Radio Spectrum Home Page, which includes the FCC Online Table of Frequency Allocations and the FCC Allocation History File, is <http://www.fcc.gov/oet/spectrum/>.

¹ See 2.104(b) for definitions of the ITU Regions.

² The Caribbean insular areas are Puerto Rico, the United States Virgin Islands, and Navassa Island.

■ 9. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Revise the entire Table.

■ b. In the list of International footnotes, revise footnotes 5.56, 5.58, 5.68, 5.70, 5.79A, 5.82, 5.87, 5.96, 5.98, 5.99, 5.107, 5.112, 5.114, 5.117, 5.118, 5.134, 5.136, 5.139, 5.140, 5.142, 5.143, 5.146, 5.151, 5.152, 5.154, 5.155, 5.163, 5.164, 5.174, 5.177, 5.179, 5.181, 5.203B, 5.204, 5.210, 5.212, 5.221, 5.237, 5.254, 5.262, 5.271, 5.273, 5.277, 5.287, 5.288, 5.294, 5.296, 5.311, 5.312, 5.316, 5.323, 5.328A, 5.329, 5.330, 5.331, 5.334, 5.338, 5.345, 5.347, 5.348, 5.348A, 5.351A, 5.355, 5.359, 5.362B, 5.369, 5.381, 5.382, 5.386, 5.387, 5.388A, 5.395, 5.396, 5.400, 5.416, 5.418, 5.418A, 5.418B, 5.418C, 5.422, 5.428, 5.429, 5.430, 5.431, 5.443B, 5.444, 5.444A, 5.447E, 5.453, 5.454, 5.455, 5.456, 5.457A, 5.460, 5.466, 5.468, 5.469, 5.473, 5.477, 5.478, 5.481, 5.482, 5.483, 5.494, 5.495, 5.500, 5.501, 5.502, 5.503, 5.504C, 5.505, 5.506A, 5.506B, 5.508,

5.508A, 5.509A, 5.512, 5.514, 5.516B, 5.521, 5.530, 5.536A, 5.537A, 5.538, 5.543A, 5.545, 5.546, 5.547C, 5.548, 5.549, 5.550, 5.551I, and 5.552A; add footnotes 5.138A, 5.141A, 5.141B, 5.141C, 5.143A, 5.143B, 5.143C, 5.143D, 5.143E, 5.256A, 5.279A, 5.339A, 5.347A, 5.348B, 5.348C, 5.379B, 5.379C, 5.379D, 5.379E, 5.380A, 5.388B, 5.417A, 5.417B, 5.417C, 5.417D, 5.424A, 5.516A, 5.536C, 5.549A, and 5.555B; and remove footnotes 5.377, 5.389D, 5.421, 5.443A, 5.467, 5.503A, 5.534, 5.551A, and 5.555A.

■ c. In the list of United States (US) footnotes, revise footnotes US18, US25, US32, US41, US44, US48, US49, US50, US51, US53, US58, US74, US77, US80, US81, US82, US87, US104, US106, US107, US108, US110, US112, US116, US209, US210, US217, US218, US220, US224, US225, US229, US230, US231, US240, US244, US252, US258, US262, US266, US268, US275, US281, US282, US283, US296, US298, US300, US303,

US310, US316, US319, US320, US321, US324, US325, US334, US335, US339, US340, US342, US344, US347, US348, US349, US350, US351, US352, US359, US360, US361, US362, US366, US367, US368, US378, US380, US382, US384, US389, US390, and US391; remove footnotes US238, US370, US385, and US386; and add footnotes US394, US395, US396, US397, and US398.

■ d. In the list of non-Federal Government (NG) footnotes, revise footnotes NG42, NG134, NG142, NG152, NG160, and NG169; and remove footnotes NG129, NG151, and NG176.

■ e. In the list of Federal Government (G) footnotes, revise footnotes G2, G8, G11, G31, G32, G42, G56, G59, G110, G117, G118, G123, G124, G129, G130, G131; and add footnotes G132 and G133.

§2.106 Table of Frequency Allocations.

The revisions and additions read as follows:

BILLING CODE 6712-01-P

Table of Frequency Allocations			0-275 kHz (VLF/LF)		Page 1	
International Table		United States Table			FCC Rule Part(s)	
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table		
Below 9 (Not Allocated) 5.53 5.54 9-14 RADIONAVIGATION			Below 9 (Not Allocated) 5.53 5.54 9-14 RADIONAVIGATION US18 US294			
14-19.95 FIXED MARITIME MOBILE 5.57 5.55 5.56 19.95-20.05 STANDARD FREQUENCY AND TIME SIGNAL (20 kHz)			14-19.95 FIXED MARITIME MOBILE 5.57 US294	14-19.95 FIXED MARITIME MOBILE 5.57 US294		
20.05-70 FIXED MARITIME MOBILE 5.57			19.95-20.05 STANDARD FREQUENCY AND TIME SIGNAL (20 kHz) US294 20.05-59 FIXED MARITIME MOBILE 5.57 US294	20.05-59 FIXED MARITIME MOBILE 5.57 US294		
5.56 5.58 70-72 RADIONAVIGATION 5.60	70-90 FIXED MARITIME MOBILE 5.57 MARITIME RADIONAVIGATION 5.60 Radiolocation	70-72 FIXED Maritime mobile 5.57 5.59 72-84 FIXED MARITIME MOBILE 5.57 RADIONAVIGATION 5.60	59-61 STANDARD FREQUENCY AND TIME SIGNAL (60 kHz) US294 61-70 FIXED MARITIME MOBILE 5.57 US294	61-70 FIXED MARITIME MOBILE 5.57 US294	70-90 FIXED Radiolocation	Private Land Mobile (90)
72-84 FIXED MARITIME MOBILE 5.57 RADIONAVIGATION 5.60 5.56 84-86 RADIONAVIGATION 5.60		84-86 RADIONAVIGATION 5.60 FIXED Maritime mobile 5.57 5.59 86-90 FIXED MARITIME MOBILE 5.57 RADIONAVIGATION 5.60				
86-90 FIXED MARITIME MOBILE 5.57 RADIONAVIGATION 5.56	5.61					

90-110 RADIONAVIGATION 5.62 Fixed	110-112 FIXED MARITIME MOBILE RADIONAVIGATION 5.60	110-112 FIXED MARITIME MOBILE RADIONAVIGATION 5.60	90-110 RADIONAVIGATION 5.62 US18	Aviation (87) Private Land Mobile (90)
5.64	110-130 FIXED MARITIME MOBILE RADIONAVIGATION 5.60 Radiolocation	110-130 FIXED MARITIME MOBILE RADIONAVIGATION 5.60 Radiolocation	US104 US294	Maritime (80) Private Land Mobile (90)
110-112 FIXED MARITIME MOBILE RADIONAVIGATION 5.60	112-115 RADIONAVIGATION 5.60	112-117.6 Fixed Maritime mobile	110-130 FIXED MARITIME MOBILE RADIONAVIGATION 5.60 Radiolocation	
115-117.6 RADIONAVIGATION 5.60 Fixed Maritime mobile	5.64 5.66	5.64 5.65		
117.6-126 FIXED MARITIME MOBILE RADIONAVIGATION 5.60	5.64 5.66	117.6-126 FIXED MARITIME MOBILE RADIONAVIGATION 5.60		
126-129 RADIONAVIGATION 5.60	5.64	5.64		
129-130 FIXED MARITIME MOBILE RADIONAVIGATION 5.60	5.61 5.64	126-129 RADIONAVIGATION 5.60 Fixed Maritime mobile	5.64 US294	
130-148.5 FIXED MARITIME MOBILE	130-160 FIXED MARITIME MOBILE	129-130 FIXED MARITIME MOBILE RADIONAVIGATION 5.60	130-160 FIXED MARITIME MOBILE	Maritime (80)
5.64 5.67	5.64	5.64	160-190 FIXED MARITIME MOBILE US294	
148.5-255 BROADCASTING	160-190 FIXED	160-190 FIXED Aeronautical radionavigation	160-190 FIXED MARITIME MOBILE US294	Aviation (87)
	190-200 AERONAUTICAL RADIONAVIGATION	190-200 AERONAUTICAL RADIONAVIGATION	190-200 AERONAUTICAL RADIONAVIGATION US18 US226 US294	
5.68 5.69 5.70	200-275 AERONAUTICAL RADIONAVIGATION Aeronautical mobile	200-285 AERONAUTICAL RADIONAVIGATION Aeronautical mobile	200-275 AERONAUTICAL RADIONAVIGATION US18 Aeronautical mobile US294	
255-283.5 BROADCASTING AERONAUTICAL RADIONAVIGATION	5.70 5.71			

Table of Frequency Allocations		275-2065 kHz (LF/MF)		United States Table		FCC Rule Part(s)
International Table		Region 3 Table		Federal Table	Non-Federal Table	
Region 1 Table	Region 2 Table	Region 3 Table		Federal Table	Non-Federal Table	
(See previous page)	275-285 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Maritime radionavigation (radiobeacons) 5.73	(See previous page)		275-285 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Maritime radionavigation (radiobeacons) US18 US294		Aviation (87)
5.72 5.74	285-315 AERONAUTICAL RADIONAVIGATION MARITIME RADIONAVIGATION (radiobeacons) 5.73	285-315 AERONAUTICAL RADIONAVIGATION MARITIME RADIONAVIGATION (radiobeacons) 5.73		285-325 MARITIME RADIONAVIGATION (radiobeacons) Aeronautical radionavigation (radiobeacons)		
315-325	315-325 MARITIME RADIONAVIGATION (radiobeacons) 5.73	315-325 AERONAUTICAL RADIONAVIGATION MARITIME RADIONAVIGATION (radiobeacons) 5.73		US18 US294 US364		
AERONAUTICAL RADIONAVIGATION Maritime radionavigation (radiobeacons) 5.73	325-335 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Maritime radionavigation (radiobeacons)	325-335 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Maritime radionavigation (radiobeacons)		325-335 AERONAUTICAL RADIONAVIGATION (radiobeacons) Aeronautical mobile Maritime radionavigation (radiobeacons)		
5.72 5.75	325-405 AERONAUTICAL RADIONAVIGATION	325-405 AERONAUTICAL RADIONAVIGATION Aeronautical mobile		US18 US294		
325-405	325-405 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Maritime radionavigation (radiobeacons)	325-405 AERONAUTICAL RADIONAVIGATION Aeronautical mobile		335-405 AERONAUTICAL RADIONAVIGATION (radiobeacons) US18 Aeronautical mobile US294		
AERONAUTICAL RADIONAVIGATION	405-415 RADIONAVIGATION 5.76 Aeronautical mobile	405-415 RADIONAVIGATION 5.76 Aeronautical mobile		405-415 RADIONAVIGATION 5.76 US18 Aeronautical mobile US294		Maritime (80) Aviation (87)
5.72	415-435 MARITIME MOBILE 5.79 5.79A AERONAUTICAL RADIONAVIGATION 5.80	415-435 MARITIME MOBILE 5.79 5.79A Aeronautical radionavigation 5.80		415-435 MARITIME MOBILE 5.79 AERONAUTICAL RADIONAVIGATION US294		
435-495	435-495 MARITIME MOBILE 5.79 5.79A Aeronautical radionavigation	435-495 MARITIME MOBILE 5.79 5.79A Aeronautical radionavigation		435-495 MARITIME MOBILE 5.79 5.79A Aeronautical radionavigation 5.82 US231 US294	435-495 MARITIME MOBILE 5.79 5.79A	Maritime (80)
5.72 5.82	495-505 MOBILE (distress and calling)	495-505 MOBILE (distress and calling)		495-505 MOBILE (distress and calling) 5.83		Maritime (80) Aviation (87)
5.83	505-510 MARITIME MOBILE 5.79 5.84 AERONAUTICAL RADIONAVIGATION	505-510 MARITIME MOBILE 5.79 5.79A 5.84 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Land mobile		505-510 MARITIME MOBILE 5.79 510-525 MARITIME MOBILE (ships only) 5.79A 5.84 AERONAUTICAL RADIONAVIGATION (radiobeacons) US18 US14 US225		Maritime (80) Aviation (87)
MARITIME MOBILE 5.79 5.84 AERONAUTICAL RADIONAVIGATION	510-525 MOBILE 5.79A 5.84 AERONAUTICAL RADIONAVIGATION	510-525 MOBILE 5.79A 5.84 AERONAUTICAL RADIONAVIGATION				Maritime (80) Aviation (87)
5.72						

525-535 BROADCASTING AERONAUTICAL RADIATIONAVIGATION	525-535 BROADCASTING AERONAUTICAL RADIATIONAVIGATION	525-535 AERONAUTICAL RADIATIONAVIGATION (radiobeacons) US18 MOBILE US221	Aviation (87) Private Land Mobile (90)
535-1605 BROADCASTING	535-1605 BROADCASTING	535-1605 BROADCASTING US321 NG128	Radio Broadcast (AM)(73) Auxiliary Broadcast (74) Alaska Fixed (80)
1605-1625 BROADCASTING 5.89	1605-1625 BROADCASTING 5.89	1605-1615 MOBILE US221	
5.90 RADIATIONAVIGATION	5.90 RADIATIONAVIGATION	US321 1615-1705	
1625-1705 FIXED MOBILE BROADCASTING 5.89 Radiolocation	1625-1705 FIXED MOBILE BROADCASTING 5.89 Radiolocation	US299 US321 1705-1800 FIXED MOBILE RADIATIONAVIGATION	Maritime (80) Private Land Mobile (90)
5.92 5.96 1800-1810 RADIATIONAVIGATION	5.92 5.96 1800-1810 RADIATIONAVIGATION	US240 1800-1900	Amateur (97)
5.93 1810-1850 AMATEUR	5.93 1810-1850 AMATEUR		
5.98 5.99 5.100 5.101 1850-2000 FIXED MOBILE except aeronautical mobile	5.98 5.99 5.100 5.101 1850-2000 FIXED MOBILE except aeronautical mobile	1800-1900 AMATEUR	
5.92 5.96 5.103 2000-2025 FIXED MOBILE except aeronautical mobile (R)	5.92 5.96 5.103 2000-2025 FIXED MOBILE except aeronautical mobile	1900-2000 RADIATIONAVIGATION	Private Land Mobile (90) Amateur (97)
5.92 5.103 2025-2045 FIXED MOBILE except aeronautical mobile (R) Meteorological aids 5.104 5.92 5.103	5.92 5.103 2025-2045 FIXED MOBILE except aeronautical mobile (R) Meteorological aids 5.104 5.92 5.103	US290 2000-2065 FIXED MOBILE	Maritime (80)
		US340	

Table of Frequency Allocations 2065-4438 kHz (MF/HF) Page 5

International Table		United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table
2045-2160 FIXED MARITIME MOBILE LAND MOBILE	(See previous page) 2065-2107 MARITIME MOBILE 5.105 5.106		(See previous page) 2065-2107 MARITIME MOBILE 5.105 US296 US340	Maritime (80)
5.92 RADIOLOCATION	2107-2170 FIXED MOBILE		2107-2170 FIXED LAND MOBILE MARITIME MOBILE NG19 US340	Maritime (80) Private Land Mobile (90)
5.93 5.107 2170-2173.5 MARITIME MOBILE			2170-2173.5 MARITIME MOBILE (telephony) US340	Maritime (80)
2173.5-2190.5 MOBILE (distress and calling) 5.108 5.109 5.110 5.111			2173.5-2190.5 MOBILE (distress and calling) 5.108 5.109 5.110 5.111 US279 US340	Maritime (80) Aviation (87)
2190.5-2194 MARITIME MOBILE			2190.5-2194 MARITIME MOBILE (telephony) US340	Maritime (80)
2194-2300 FIXED MOBILE except aeronautical mobile (R)	2194-2300 FIXED MOBILE		2194-2495 FIXED LAND MOBILE MARITIME MOBILE NG19 US340	Maritime (80) Aviation (87) Private Land Mobile (90)
5.92 5.103 5.112 2300-2498 FIXED MOBILE except aeronautical mobile (R) BROADCASTING 5.113	2300-2495 FIXED MOBILE BROADCASTING 5.113		2495-2501 US340	
5.103 STANDARD FREQUENCY AND TIME SIGNAL (2500 kHz)	2495-2501 STANDARD FREQUENCY AND TIME SIGNAL (2500 kHz)		2495-2501 STANDARD FREQUENCY AND TIME SIGNAL (2500 kHz) US340	
2501-2502 STANDARD FREQUENCY AND TIME SIGNAL Space research			2501-2502 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	
2502-2625 FIXED MOBILE except aeronautical mobile (R)	2502-2505 STANDARD FREQUENCY AND TIME SIGNAL		2502-2505 STANDARD FREQUENCY AND TIME SIGNAL US340	
5.92 5.103 5.114 2625-2650 MARITIME MOBILE MARITIME RADIONAVIGATION	2505-2850 FIXED MOBILE		2505-2850 FIXED LAND MOBILE MARITIME MOBILE US285 US340	Maritime (80) Aviation (87) Private Land Mobile (90)
5.92 2650-2850 FIXED MOBILE except aeronautical mobile (R)				

2850-3025 AERONAUTICAL MOBILE (R) 5.111 5.115	2850-3025 AERONAUTICAL MOBILE (R) 5.111 5.115 US283 US340	Aviation (87)
3025-3155 AERONAUTICAL MOBILE (OR)	3025-3155 AERONAUTICAL MOBILE (OR) US340	
3155-3200 FIXED MOBILE except aeronautical mobile (R) 5.116 5.117	3155-3230 FIXED MOBILE except aeronautical mobile (R)	Maritime (80) Private Land Mobile (90)
3200-3230 FIXED MOBILE except aeronautical mobile (R) BROADCASTING 5.113 5.116	3230-3400 FIXED MOBILE except aeronautical mobile Radiolocation US340	Maritime (80) Aviation (87) Private Land Mobile (90)
3400-3500 AERONAUTICAL MOBILE (R)	3400-3500 AERONAUTICAL MOBILE (R) US283 US340	Aviation (87)
3500-3800 AMATEUR FIXED MOBILE except aeronautical mobile 5.92	3500-3900 AMATEUR FIXED MOBILE 3500-4000 AMATEUR	Amateur (97)
3800-3900 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	3900-3950 AERONAUTICAL MOBILE BROADCASTING	
3900-3950 AERONAUTICAL MOBILE (OR)	3950-4000 FIXED BROADCASTING	
5.123	5.122 5.125	
4000-4063 FIXED MARITIME MOBILE 5.127 5.126	4000-4063 FIXED MARITIME MOBILE US340	Maritime (80)
4063-4438 MARITIME MOBILE 5.79A 5.109 5.110 5.130 5.131 5.132 5.128 5.129	4063-4438 MARITIME MOBILE 5.79A 5.109 5.110 5.130 5.131 5.132 US82 US296 US340	Maritime (80) Aviation (87)

Table of Frequency Allocations		4438-8100 kHz (HF)		Page 7	
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4438-4650 FIXED MOBILE except aeronautical mobile (R)		4438-4650 FIXED MOBILE except aeronautical mobile	4438-4650 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Aviation (87) Private Land Mobile (90)
4650-4700 AERONAUTICAL MOBILE (R)			4650-4700 AERONAUTICAL MOBILE (R) US282 US283 US340		Aviation (87)
4700-4750 AERONAUTICAL MOBILE (OR)			4700-4750 AERONAUTICAL MOBILE (OR) US340		
4750-4850 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE BROADCASTING 5.113	4750-4850 FIXED MOBILE except aeronautical mobile (R) BROADCASTING 5.113	4750-4850 FIXED BROADCASTING 5.113 Land mobile	4750-4850 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Private Land Mobile (90)
4850-4995 FIXED LAND MOBILE BROADCASTING 5.113			4850-4995 FIXED MOBILE US340	4850-4995 FIXED US340	Aviation (87) Private Land Mobile (90)
4995-5003 STANDARD FREQUENCY AND TIME SIGNAL (5000 kHz)			4995-5003 STANDARD FREQUENCY AND TIME SIGNAL (5000 kHz) US340		
5003-5005 STANDARD FREQUENCY AND TIME SIGNAL Space research			5003-5005 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	5003-5005 STANDARD FREQUENCY AND TIME SIGNAL US340	
5005-5060 FIXED BROADCASTING 5.113			5005-5060 FIXED US340		Maritime (80) Aviation (87) Private Land Mobile (90)
5060-5250 FIXED Mobile except aeronautical mobile 5.133			5060-5450 FIXED Mobile except aeronautical mobile		Maritime (80) Aviation (87) Private Land Mobile (90) Amateur (97)
5250-5450 FIXED MOBILE except aeronautical mobile			US212 US340 US381 5450-5680 AERONAUTICAL MOBILE (R)		Aviation (87)
5450-5480 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5450-5480 AERONAUTICAL MOBILE (R) LAND MOBILE	5450-5480 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5.111 5.115 US283 US340 5680-5730 AERONAUTICAL MOBILE (OR) 5.111 5.115 US340		

5730-5900 FIXED LAND MOBILE	5730-5900 FIXED MOBILE except aeronautical mobile (R)	Maritime (80) Aviation (87) Private Land Mobile (90)			
5900-5950 BROADCASTING 5.134				5900-5950 BROADCASTING 5.134 FIXED MOBILE except aeronautical mobile	Radio Broadcast (HF)(73) Maritime (80)
5.136 BROADCASTING				US340 US366 BROADCASTING	Radio Broadcast (HF)(73)
5950-6200 BROADCASTING				5950-6200 BROADCASTING	
6200-6525 MARITIME MOBILE 5.109 5.110 5.130 5.132 5.137	6200-6525 MARITIME MOBILE 5.109 5.110 5.130 5.132			6200-6525 MARITIME MOBILE 5.109 5.110 5.130 5.132 US82 US296 US340	Maritime (80)
6525-6685 AERONAUTICAL MOBILE (R)				6525-6685 AERONAUTICAL MOBILE (R)	Aviation (87)
6685-6765 AERONAUTICAL MOBILE (OR)				US283 US340 6685-6765 AERONAUTICAL MOBILE (OR)	
6765-7000 FIXED MOBILE except aeronautical mobile (R)				6765-7000 FIXED MOBILE except aeronautical mobile (R)	ISM Equipment (18) Private Land Mobile (90)
5.138 5.138A 5.139 7000-7100 AMATEUR AMATEUR-SATELLITE				5.138 US340 US394 7000-7100 AMATEUR AMATEUR-SATELLITE	Amateur (97)
5.140 5.141 5.141A 7100-7200 AMATEUR				US340 7100-7300 AMATEUR	Radio Broadcast (HF)(73) Amateur (97)
5.141A 5.141B 5.141C 5.142 7200-7300 BROADCASTING		7200-7300 BROADCASTING		US340 US395 7300-7400 BROADCASTING 5.134	Radio Broadcast (HF)(73) Maritime (80) Private Land Mobile (90)
7300-7400 BROADCASTING 5.134				US340 US396 7400-8100 FIXED MOBILE except aeronautical mobile (R)	Radio Broadcast (HF)(73) Maritime (80) Aviation (87) Private Land Mobile (90)
5.143 5.143A 5.143B 5.143C 5.143D 7400-7450 BROADCASTING		7400-7450 BROADCASTING		5.142 US340 US395	
5.143B 5.143C 7450-8100 FIXED MOBILE except aeronautical mobile (R)		5.143A 5.143C		US340	
5.143E 5.144					

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International Table		United States Table		FCC Rule Part(s)	
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
8100-8195 FIXED MARITIME MOBILE			8100-8195 FIXED MARITIME MOBILE US340		Maritime (80)
8195-8815 MARITIME MOBILE 5.109 5.110 5.132 5.145	5.145		8195-8815 MARITIME MOBILE 5.109 5.110 5.132 5.145 US82 5.111 US296 US340		Maritime (80) Aviation (87)
8815-8965 AERONAUTICAL MOBILE (R)			8815-8965 AERONAUTICAL MOBILE (R) US340		Aviation (87)
8965-9040 AERONAUTICAL MOBILE (OR)			8965-9040 AERONAUTICAL MOBILE (OR) US340		
9040-9400 FIXED			9040-9400 FIXED US340		Maritime (80) Private Land Mobile (90)
9400-9500 BROADCASTING 5.134			9400-9500 BROADCASTING 5.134 FIXED US340 US366		Radio Broadcast (HF)(73) Maritime (80)
9500-9900 BROADCASTING			9500-9900 BROADCASTING 5.147 US340 US367		Radio Broadcast (HF)(73)
9900-9995 FIXED			9900-9995 FIXED US340		Private Land Mobile (90)
9995-10003 STANDARD FREQUENCY AND TIME SIGNAL (10000 kHz)			9995-10003 STANDARD FREQUENCY AND TIME SIGNAL (10000 kHz) 5.111 US340		
10003-10005 STANDARD FREQUENCY AND TIME SIGNAL Space research			10003-10005 STANDARD FREQUENCY AND TIME SIGNAL 5.111 US340 G106	10003-10005 STANDARD FREQUENCY AND TIME SIGNAL	
10005-10100 AERONAUTICAL MOBILE (R)			10005-10100 AERONAUTICAL MOBILE (R) 5.111 US283 US340		Aviation (87)
10100-10150 FIXED Amateur			10100-10150 FIXED US247 US340	10100-10150 AMATEUR US247 US340	Amateur (97)
10150-11175 FIXED Mobile except aeronautical mobile (R)			10150-11175 FIXED Mobile except aeronautical mobile (R) US340		Private Land Mobile (90)

11175-11275 AERONAUTICAL MOBILE (OR)	11175-11275 AERONAUTICAL MOBILE (OR)		
US340	US340		
11275-11400 AERONAUTICAL MOBILE (R)	11275-11400 AERONAUTICAL MOBILE (R)		Aviation (87)
US283 US340	US283 US340		
11400-11600 FIXED	11400-11600 FIXED		Private Land Mobile (90)
US340	US340		
11600-11650 BROADCASTING 5.134	11600-11650 BROADCASTING 5.134		Radio Broadcast (HF)(73)
FIXED	FIXED		
US340 US366	US340 US366		
5.146			
11650-12050 BROADCASTING	11650-12050 BROADCASTING		
5.147	US340 US367		
12050-12100 BROADCASTING 5.134	12050-12100 BROADCASTING 5.134		
FIXED	FIXED		
US340 US366	US340 US366		
5.146			
12100-12230 FIXED	12100-12230 FIXED		Private Land Mobile (90)
US340	US340		
12230-13200 MARITIME MOBILE 5.109 5.110 5.132 5.145	12230-13200 MARITIME MOBILE 5.109 5.110 5.132 5.145 US82		Maritime (80)
US296 US340	US296 US340		
13200-13260 AERONAUTICAL MOBILE (OR)	13200-13260 AERONAUTICAL MOBILE (OR)		
US340	US340		
13260-13360 AERONAUTICAL MOBILE (R)	13260-13360 AERONAUTICAL MOBILE (R)		
US283 US340	US283 US340		Aviation (87)
13360-13410 FIXED	13360-13410 RADIO ASTRONOMY		
RADIO ASTRONOMY	RADIO ASTRONOMY		
5.149	US342 G115		
13410-13570 FIXED	13410-13570 FIXED		
Mobile except aeronautical mobile (R)	Mobile except aeronautical mobile (R)		ISM Equipment (18) Private Land Mobile (90)
5.150	5.150 US340		
13570-13600 BROADCASTING 5.134	13570-13600 BROADCASTING 5.134		Radio Broadcast (HF)(73)
FIXED	FIXED		
Mobile except aeronautical mobile	Mobile except aeronautical mobile		
US340 US366	US340 US366		

Table of Frequency Allocations			13600-19800 kHz (HF)		Page 11	
International Table		United States Table			FCC Rule Part(s)	
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table		
13600-13800 BROADCASTING			13600-13800 BROADCASTING US340		Radio Broadcast (HF)(73)	
13800-13870 BROADCASTING 5.134			13800-13870 BROADCASTING 5.134 FIXED Mobile except aeronautical mobile US340 US366	13800-13870 BROADCASTING 5.134 FIXED		
5.151 13870-14000 FIXED Mobile except aeronautical mobile (R)			13870-14000 FIXED Mobile except aeronautical mobile (R) US340	US340 US366 13870-14000 FIXED	Private Land Mobile (90)	
14000-14250 AMATEUR AMATEUR-SATELLITE			14000-14250 AMATEUR AMATEUR-SATELLITE US340	14000-14250 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)	
14250-14350 AMATEUR			14250-14350 AMATEUR US340	14250-14350 AMATEUR US340		
5.152 14350-14990 FIXED Mobile except aeronautical mobile (R)			14350-14990 FIXED Mobile except aeronautical mobile (R) US340	14350-14990 FIXED US340	Private Land Mobile (90)	
14990-15005 STANDARD FREQUENCY AND TIME SIGNAL (15000 kHz)			14990-15005 STANDARD FREQUENCY AND TIME SIGNAL (15000 kHz) 5.111 US340			
15005-15010 STANDARD FREQUENCY AND TIME SIGNAL Space research			15005-15010 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	15005-15010 STANDARD FREQUENCY AND TIME SIGNAL US340		
15010-15100 AERONAUTICAL MOBILE (OR)			15010-15100 AERONAUTICAL MOBILE (OR) US340			
15100-15600 BROADCASTING			15100-15600 BROADCASTING US340		Radio Broadcast (HF)(73)	
15600-15800 BROADCASTING 5.134			15600-15800 BROADCASTING 5.134 FIXED US340 US366			
5.146 15800-16360 FIXED			15800-16360 FIXED US340		Private Land Mobile (90)	
5.153						

16360-17410 MARITIME MOBILE 5.109 5.110 5.132 5.145	16360-17410 MARITIME MOBILE 5.109 5.110 5.132 5.145 US82 US296 US340	Maritime (80)
17410-17480 FIXED	17410-17480 FIXED US340	Private Land Mobile (90)
17480-17550 BROADCASTING 5.134	17480-17550 BROADCASTING 5.134 FIXED US340 US366	Radio Broadcast (HF)(73)
5.146 17550-17900 BROADCASTING	17550-17900 BROADCASTING US340	
17900-17970 AERONAUTICAL MOBILE (R)	17900-17970 AERONAUTICAL MOBILE (R) US283 US340	Aviation (87)
17970-18030 AERONAUTICAL MOBILE (OR)	17970-18030 AERONAUTICAL MOBILE (OR) US340	
18030-18052 FIXED	18030-18068 FIXED	Maritime (80) Private Land Mobile (90)
18052-18068 FIXED		
Space research		
18068-18168 AMATEUR AMATEUR-SATELLITE	18068-18168 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
5.154 18168-18780 FIXED		
Mobile except aeronautical mobile		
18780-18900 MARITIME MOBILE	18780-18900 MARITIME MOBILE US82 US296 US340	Maritime (80)
18900-19020 BROADCASTING 5.134	18900-19020 BROADCASTING 5.134 FIXED US340 US366	Radio Broadcast (HF)(73)
5.146 19020-19680 FIXED	19020-19680 FIXED US340	Private Land Mobile (90)
19680-19800 MARITIME MOBILE 5.132	19680-19800 MARITIME MOBILE 5.132 US340	Maritime (80)

Table of Frequency Allocations		19800-29950 kHz (HF)		Page 13	
International Table		United States Table		FCC Rule Part(s)	
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
19800-19990 FIXED			19800-19990 FIXED US340		Private Land Mobile (90)
19990-19995 STANDARD FREQUENCY AND TIME SIGNAL Space research			19990-20010 STANDARD FREQUENCY AND TIME SIGNAL (20000 kHz)	19990-20010 STANDARD FREQUENCY AND TIME SIGNAL (20000 kHz)	
5.111					
19995-20010 STANDARD FREQUENCY AND TIME SIGNAL (20000 kHz)			5.111 US340 G106	5.111 US340	
5.111					
20010-21000 FIXED Mobile			20010-21000 FIXED Mobile US340	20010-21000 FIXED US340	Private Land Mobile (90)
21000-21450 AMATEUR AMATEUR-SATELLITE			21000-21450 US340	21000-21450 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
21450-21850 BROADCASTING			21450-21850 BROADCASTING US340		Radio Broadcast (HF)(73)
21850-21870 FIXED 5.155A			21850-21924 FIXED		Aviation (87) Private Land Mobile (90)
5.155					
21870-21924 FIXED 5.155B					
21924-22000 AERONAUTICAL MOBILE (R)			21924-22000 AERONAUTICAL MOBILE (R) US340		Aviation (87)
22000-22855 MARITIME MOBILE 5.132			22000-22855 MARITIME MOBILE 5.132 US82		Maritime (80)
5.156			US296 US340		
22855-23000 FIXED			22855-23000 FIXED US340		Private Land Mobile (90)
5.156					
23000-23200 FIXED Mobile except aeronautical mobile (R)			23000-23200 FIXED Mobile except aeronautical mobile (R) US340	23000-23200 FIXED US340	
5.156					
23200-23350 FIXED 5.156A AERONAUTICAL MOBILE (OR)			23200-23350 AERONAUTICAL MOBILE (OR) US340		

23350-24000 FIXED MOBILE except aeronautical mobile 5.157	23350-24890 FIXED MOBILE except aeronautical mobile	23350-24890 FIXED	Private Land Mobile (90)
24000-24890 FIXED LAND MOBILE	US340 24890-24990	US340 24890-24990	Amateur (97)
24890-24990 AMATEUR AMATEUR-SATELLITE	US340	AMATEUR AMATEUR-SATELLITE US340	
24990-25005 STANDARD FREQUENCY AND TIME SIGNAL (25000 kHz)	24990-25005 STANDARD FREQUENCY AND TIME SIGNAL (25000 kHz)	US340	
25005-25010 STANDARD FREQUENCY AND TIME SIGNAL Space research	25005-25010 STANDARD FREQUENCY AND TIME SIGNAL	25005-25010 STANDARD FREQUENCY AND TIME SIGNAL US340	
25010-25070 FIXED MOBILE except aeronautical mobile	25010-25070 US340 G106	25010-25070 LAND MOBILE US340 NG112	Private Land Mobile (90)
25070-25210 MARITIME MOBILE	25070-25210 MARITIME MOBILE US82 US281 US296 US340	25070-25210 MARITIME MOBILE US82 US281 US296 US340 NG112	Maritime (80) Private Land Mobile (90)
25210-25550 FIXED MOBILE except aeronautical mobile	25210-25330 US340 25330-25550 FIXED MOBILE except aeronautical mobile US340	25210-25330 LAND MOBILE US340 25330-25550	Private Land Mobile (90)
25550-25670 RADIO ASTRONOMY 5.149	25550-25670 RADIO ASTRONOMY US74 US342	US340	
25670-26100 BROADCASTING	25670-26100 BROADCASTING US25 US340	25670-26100 BROADCASTING US25 US340	Radio Broadcast (HF)(73) Remote Pickup (74D)
26100-26175 MARITIME MOBILE 5.132	26100-26175 MARITIME MOBILE 5.132 US25 US340	26100-26175 MARITIME MOBILE 5.132 US25 US340	Remote Pickup (74D) Maritime (80)
26175-27500 FIXED MOBILE except aeronautical mobile	26175-26480 US340 26480-26950 FIXED MOBILE except aeronautical mobile US340	26175-26480 LAND MOBILE US340 26480-26950	Remote Pickup (74D)
5.150		US340	

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Region 1 Table (See previous page)	International Table		FCC Rule Part(s)
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			United States Table
			Non-Federal Table
			26.95-26.96 FIXED
			5.150 US340
			26.96-27.23 MOBILE except aeronautical mobile
			5.150 US340
			27.23-27.41 FIXED
			MOBILE except aeronautical mobile
			5.150 US340
			27.41-27.54 FIXED
			LAND MOBILE
			US340
			27.54-28
			US298 US340
			28-29.7
			AMATEUR
			AMATEUR-SATELLITE
			US340
			29.7-29.8
			LAND MOBILE
			US340
			29.8-29.89
			FIXED
			US340
			29.89-29.91
			FIXED
			MOBILE
			US340
			29.91-30
			FIXED
			US340
			30-30.56
			FIXED
			MOBILE
			US340
			30.005-30.01
			SPACE OPERATION (satellite identification)
			FIXED
			MOBILE
			SPACE RESEARCH
			30.01-37.5
			FIXED
			MOBILE

30.56-32 FIXED LAND MOBILE	30.56-32 FIXED LAND MOBILE	Private Land Mobile (90)
32-33 FIXED MOBILE	32-33 FIXED LAND MOBILE	
33-34	33-34 FIXED LAND MOBILE	Private Land Mobile (90)
34-35 FIXED MOBILE	34-35 FIXED LAND MOBILE	
35-36	35-36 FIXED LAND MOBILE	Public Mobile (22) Private Land Mobile (90)
36-37 FIXED MOBILE	36-37 FIXED LAND MOBILE	
US220	US220	
37-37.5	37-37.5 LAND MOBILE	Private Land Mobile (90)
37.5-38 Radio astronomy	37.5-38 LAND MOBILE Radio astronomy	
US342	US342 NG59 NG124	
38-38.25 FIXED MOBILE	38-38.25 RADIO ASTRONOMY	
US81 US342	US81 US342	
38.25-39 FIXED MOBILE	38.25-39	
39-40	39-40 LAND MOBILE	Private Land Mobile (90)
40-42 FIXED MOBILE	40-42	ISM Equipment (18) Private Land Mobile (90)
5.150	5.150 US210 US220	

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		International Table		United States Table	
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	FCC Rule Part(s)
40.98-41.015 FIXED MOBILE Space research 5.160 5.161			(See previous page)		
41.015-44 FIXED MOBILE			42-46.6	42-43.69 FIXED LAND MOBILE NG124 NG141	Public Mobile (22) Private Land Mobile (90)
5.160 5.161 44-47 FIXED MOBILE			46.6-47 FIXED MOBILE	43.69-46.6 LAND MOBILE NG124 NG141 46.6-47	Private Land Mobile (90)
5.162 5.162A 47-68 BROADCASTING		47-50 FIXED MOBILE BROADCASTING	47-49.6	47-49.6 LAND MOBILE NG124	Private Land Mobile (90)
		5.162A	49.6-50 FIXED MOBILE	49.6-50	
			50-54 AMATEUR	50-54 AMATEUR	Amateur (97)
		5.162A 5.163 5.164 5.165 5.169 5.171	54-68 BROADCASTING Fixed Mobile	54-72 BROADCASTING	Broadcast Radio (TV)(73) Auxiliary Broadcasting (74)
5.162A 5.163 5.164 5.165 5.169 5.171		5.162A	54-68 FIXED MOBILE BROADCASTING		
68-74.8 FIXED MOBILE except aeronautical mobile		68-74.8 FIXED MOBILE	68-74.8 FIXED MOBILE		
			72-73 FIXED MOBILE	NG115 NG128 NG142 NG149 72-73 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Aviation (87) Private Land Mobile (90) Personal Radio (95)
			73-74.6 RADIO ASTRONOMY 5.178		
			74.6-74.8 FIXED MOBILE		
5.149 5.174 5.175 5.177 5.179		5.149 5.176 5.179	73-74.6 RADIO ASTRONOMY US74 US246		
			74.6-74.8 FIXED MOBILE		
			US273		Aviation (87) Private Land Mobile (90)

74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180 5.181	74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180	Aviation (87)
75.2-87.5 FIXED MOBILE except aeronautical mobile	75.2-75.4 FIXED MOBILE US273	Private Land Mobile (90)
75.4-76 FIXED MOBILE	75.4-76 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
76-88 BROADCASTING Fixed Mobile	76-88 BROADCASTING	Broadcast Radio (TV)(73) Auxiliary Broadcasting (74)
5.175 5.179 5.184 5.187	NG115 NG128 NG142 NG149	
87.5-100 BROADCASTING	88-108 BROADCASTING NG2	Broadcast Radio (FM)(73) Auxiliary Broadcasting (74)
5.190 100-108 BROADCASTING	US93 NG128	
5.192 5.194	US93	
108-117.975 AERONAUTICAL RADIONAVIGATION	108-117.975 AERONAUTICAL RADIONAVIGATION	Aviation (87)
5.197 5.197A	US93 US343	
117.975-137 AERONAUTICAL MOBILE (R)	117.975-121.9375 AERONAUTICAL MOBILE (R)	
	5.111 5.198 5.199 5.200 US26 US28	
	121.9375-123.0875	121.9375-123.0875 AERONAUTICAL MOBILE
	5.198 US30 US31 US33 US80 US102 US213	5.198 US30 US31 US33 US80 US102 US213
	123.0875-123.5875	
	AERONAUTICAL MOBILE	
	5.198 5.200 US32 US33 US112	
	123.5875-128.8125	
	AERONAUTICAL MOBILE (R)	
	5.198 US26	
	128.8125-132.0125	128.8125-132.0125 AERONAUTICAL MOBILE (R)
	5.198	5.198
	132.0125-136	
	AERONAUTICAL MOBILE (R)	
	5.198 US26	
	136-137	136-137 AERONAUTICAL MOBILE (R)
	US244	US244
5.111 5.198 5.199 5.200 5.201 5.202 5.203 5.203A 5.203B		

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Region 1 Table	Region 2 Table	Region 3 Table	Non-Federal Table	
137-137.025 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.209 SPACE RESEARCH (space-to-Earth) Fixed Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208			137-137.025 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US319 US320 SPACE RESEARCH (space-to-Earth)	Satellite Communications (25)
137.025-137.175 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Fixed Mobile-satellite (space-to-Earth) 5.208A 5.209 Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208			5.208 137.025-137.175 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Mobile-satellite (space-to-Earth) US319 US320	
137.175-137.825 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.209 SPACE RESEARCH (space-to-Earth) Fixed Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208			5.208 137.175-137.825 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US319 US320 SPACE RESEARCH (space-to-Earth)	
137.825-138 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Fixed Mobile-satellite (space-to-Earth) 5.208A 5.209 Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208			5.208 137.825-138 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Mobile-satellite (space-to-Earth) US319 US320	
138-143.6 AERONAUTICAL MOBILE (OR) 5.210 5.211 5.212 5.214 143.6-143.65 AERONAUTICAL MOBILE (OR) SPACE RESEARCH (space-to-Earth) 5.211 5.212 5.214 143.65-144 AERONAUTICAL MOBILE (OR) 5.210 5.211 5.212 5.214	138-143.6 FIXED MOBILE RADIOLOCATION Space research (space-to-Earth) 143.6-143.65 FIXED MOBILE RADIOLOCATION SPACE RESEARCH (space-to-Earth) 143.65-144 FIXED MOBILE RADIOLOCATION Space research (space-to-Earth)	138-143.6 FIXED MOBILE Space research (space-to-Earth) 5.207 5.213 143.6-143.65 FIXED MOBILE SPACE RESEARCH (space-to-Earth) 5.207 5.213 143.65-144 FIXED MOBILE Space research (space-to-Earth) 5.207 5.213	138-144 FIXED MOBILE 138-144	
			5.208 G30	

144-146 AMATEUR AMATEUR-SATELLITE 5.216	144-146 AMATEUR AMATEUR-SATELLITE	144-148	144-148 AMATEUR AMATEUR-SATELLITE	Amateur (97)
146-148 FIXED MOBILE except aeronautical mobile (R)	146-148 AMATEUR FIXED MOBILE 5.217	146-148 AMATEUR FIXED MOBILE 5.217	146-148 AMATEUR	
148-149.9 FIXED MOBILE except aeronautical mobile (R) MOBILE-SATELLITE (Earth-to-space) 5.209	148-149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.209	148-149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.209	148-149.9 MOBILE-SATELLITE (Earth-to-space) US319 US320 US323 US325	Satellite Communications (25)
5.218 5.219 5.221	5.218 5.219 5.221	5.218 5.219 G30	5.218 5.219	
149.9-150.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.224A RADIONAVIGATION-SATELLITE 5.224B	149.9-150.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.224A RADIONAVIGATION-SATELLITE 5.224B	149.9-150.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.224A RADIONAVIGATION-SATELLITE 5.224B	149.9-150.05 MOBILE-SATELLITE (Earth-to-space) US319 US320 RADIONAVIGATION-SATELLITE	
5.220 5.222 5.223	5.220 5.222 5.223	5.223	5.223	
150.05-153 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY	150.05-156.7625 FIXED MOBILE	150.05-150.8 FIXED MOBILE US216 G30 150.8-152.855	150.05-150.8 FIXED MOBILE US216 150.8-152.855 FIXED LAND MOBILE NG4 NG51 NG112 US216 NG124 152.855-154 LAND MOBILE NG4	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
5.149	5.149	US216	US216	
153-154 FIXED MOBILE except aeronautical mobile (R) Meteorological aids	153-154 FIXED MOBILE except aeronautical mobile (R) Meteorological aids	152.855-156.2475	152.855-154 LAND MOBILE NG4	Auxiliary Broadcasting (74) Private Land Mobile (90)
154-156.7625 FIXED MOBILE except aeronautical mobile (R)	154-156.7625 FIXED MOBILE except aeronautical mobile (R)	154-156.7625	154-156.7625 FIXED LAND MOBILE NG112 5.226 NG117 NG124 NG148	Maritime (80) Private Land Mobile (90) Personal Radio (95)
5.226 5.227 156.7625-156.8375 MARITIME MOBILE (distress and calling) 5.111 5.226	5.225 5.226 5.227	156.2475-157.0375 MARTIME MOBILE US77 US106 US107 NG117	5.226 NG117 NG124 NG148 156.2475-157.0375 MARTIME MOBILE US77 US106 US107 NG117 5.226 5.227 US266	Maritime (80) Aviation (87)

Table of Frequency Allocations		157.0375-267 MHz (VHF)		Page 21	
International Table		United States Table		FCC Rule Part(s)	
Region 1 Table	Region 2 Table	Federal Table	Non-Federal Table		
156.8375-174 FIXED MOBILE except aeronautical mobile	156.8375-174 FIXED MOBILE	(See previous page) 157.0375-157.1875 MARTIME MOBILE US214	157.0375-157.1875	Maritime (80) Private Land Mobile (90)	
		5.226 US266 G109	5.226 US214 US266		
		157.1875-161.575	157.1875-157.45 LAND MOBILE US266 MARTIME MOBILE		
			5.226 NG111		
			157.45-161.575 FIXED LAND MOBILE NG28 NG111	Public Mobile (22) Auxiliary Broadcasting (74) Maritime (80) Private Land Mobile (90)	
			5.226 NG6 NG70 NG112 NG124 NG148 NG155		
		161.575-161.625	161.575-161.625 MARTIME MOBILE US77	Public Mobile (22) Maritime (80)	
		5.226 US77	5.226 NG6 NG17		
		161.625-161.775	161.625-161.775 LAND MOBILE NG6	Public Mobile (22) Auxiliary Broadcasting (74)	
			5.226		
		161.775-162.0125	161.775-162.0125 LAND MOBILE US266 NG6 MARTIME MOBILE	Public Mobile (22) Maritime (80) Private Land Mobile (90)	
		5.226 US266	5.226		
		162.0125-173.2 FIXED US13 MOBILE	162.0125-173.2	Auxiliary Broadcasting (74) Maritime (80) Private Land Mobile (90)	
		5.226 US8 US11 US216 US300 US312 G5	5.226 US8 US11 US13 US216 US300 US312		
		173.2-173.4	173.2-173.4 FIXED Land mobile	Private Land Mobile (90)	
		173.4-174 FIXED MOBILE	173.4-174		
5.226 5.229	5.226 5.230 5.231 5.232				

174-223 BROADCASTING	174-216 BROADCASTING Fixed Mobile 5.234	174-223 FIXED MOBILE BROADCASTING	174-216	174-216 BROADCASTING	Broadcast Radio (TV)(73) Auxiliary Broadcasting (74)
5.243 5.237 5.243	216-220 FIXED MARITIME MOBILE Radiolocation 5.241	5.233 5.238 5.240 5.245	216-217 Fixed Land mobile Radiolocation 5.241 G2	NG115 NG128 NG142 NG149	Maritime (80) Private Land Mobile (90) Personal Radio (95)
223-230 Broadcasting Fixed Mobile	5.242 220-225 AMATEUR FIXED MOBILE Radiolocation 5.241	223-230 FIXED MOBILE BROADCASTING AERONAUTICAL RADIONAVIGATION Radiolocation 5.250	US210 US229 217-220 Fixed Mobile	US210 US229 NG173 219-220 FIXED MOBILE except aeronautical mobile Amateur NG152	Maritime (80) Private Land Mobile (90) Amateur (97)
5.247 5.246 5.247	225-235 FIXED MOBILE	230-235 FIXED MOBILE AERONAUTICAL RADIONAVIGATION 5.250	US210 US229 220-222 FIXED LAND MOBILE Radiolocation 5.241 G2	US210 US229 NG173 220-222 FIXED LAND MOBILE	Private Land Mobile (90)
230-235 FIXED MOBILE			US335 222-225 Radiolocation 5.241 G2	US335 222-225 AMATEUR	Amateur (97)
5.247 5.251 5.252			G27	225-235	
235-267 FIXED MOBILE			235-267 FIXED MOBILE	235-267	
5.111 5.199 5.252 5.254 5.256 5.256A			5.111 5.199 5.256 G27 G100	5.111 5.199 5.256	

Table of Frequency Allocations		267-410 MHz (VHF/UHF)		Page 23	
		International Table		United States Table	
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	FCC Rule Part(s)
267-272 FIXED MOBILE Space operation (space-to-Earth)			267-322 FIXED MOBILE	267-322	
5.254 5.257					
272-273 SPACE OPERATION (space-to-Earth)					
FIXED MOBILE					
5.254					
273-312 FIXED MOBILE					
5.254					
312-315 FIXED MOBILE					
Mobile-satellite (Earth-to-space) 5.254 5.255					
315-322 FIXED MOBILE					
5.254			G27 G100		
322-328.6 FIXED MOBILE RADIO ASTRONOMY			322-328.6 FIXED MOBILE	322-328.6	
5.149			US342 G27	US342	
328.6-335.4 AERONAUTICAL RADIONAVIGATION 5.258			328.6-335.4 AERONAUTICAL RADIONAVIGATION 5.258		
5.259					
335.4-387 FIXED MOBILE				335.4-399.9	
5.254					
387-390 FIXED MOBILE					
Mobile-satellite (space-to-Earth) 5.208A 5.254 5.255					
390-399.9 FIXED MOBILE					
5.254			G27 G100		

<p>399.9-400.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.224A RADIONAVIGATION-SATELLITE 5.222 5.224B 5.260 5.220</p>	<p>399.9-400.05 MOBILE-SATELLITE (Earth-to-space) US319 US320 RADIONAVIGATION-SATELLITE 5.260</p>	<p>Satellite Communications (25)</p>
<p>400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261 5.262</p>	<p>400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261</p>	<p>Satellite Communications (25)</p>
<p>400.15-401 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.209 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth)</p>	<p>400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US319 US320 US324 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth) 5.264</p>	<p>Satellite Communications (25)</p>
<p>5.262 5.264 401-402 METEOROLOGICAL AIDS SPACE OPERATION (space-to-Earth) EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile</p>	<p>401-402 METEOROLOGICAL AIDS (radiosonde) US70 SPACE OPERATION (space-to-Earth) EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) US384</p>	<p>Personal Radio (95)</p>
<p>402-403 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile</p>	<p>402-403 METEOROLOGICAL AIDS (radiosonde) US70 Earth exploration-satellite (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) US345 US384</p>	<p>Personal Radio (95)</p>
<p>403-406 METEOROLOGICAL AIDS Fixed Mobile except aeronautical mobile</p>	<p>403-406 METEOROLOGICAL AIDS (radiosonde) US70 US345 G6</p>	<p>Private Land Mobile (90)</p>
<p>406-406.1 MOBILE-SATELLITE (Earth-to-space) 5.266 5.267 406.1-410 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY</p>	<p>406-406.1 MOBILE-SATELLITE (Earth-to-space) 5.266 5.267 406.1-410 FIXED US13 MOBILE RADIO ASTRONOMY US74 US117 G5 G6</p>	<p>Private Land Mobile (90)</p>
<p>5.149</p>	<p>US13 US117</p>	<p>Private Land Mobile (90)</p>

Table of Frequency Allocations		410-614 MHz (UHF)		United States Table		FCC Rule Part(s)
		International Table		Non-Federal Table		
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	United States Table		
410-420 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-space) 5.268			410-420 FIXED US13 MOBILE SPACE RESEARCH (space-to-space) 5.268 G5	410-420		Private Land Mobile (90)
420-430 FIXED MOBILE except aeronautical mobile Radiolocation 5.269 5.270 5.271			420-450 RADIOLOCATION US217 G2 G129	US13 420-450 Amateur US7 NG135		Private Land Mobile (90) Amateur (97)
430-432 AMATEUR RADIOLOCATION 5.271 5.272 5.273 5.274 5.275 5.276 5.277	430-432 RADIOLOCATION Amateur		5.271 5.276 5.277 5.278 5.279			
432-438 AMATEUR RADIOLOCATION Earth exploration-satellite (active) 5.279A	432-438 RADIOLOCATION Amateur Earth exploration-satellite (active) 5.279A		5.271 5.276 5.277 5.278 5.279 5.281 5.282			
438-440 AMATEUR RADIOLOCATION 5.271 5.273 5.274 5.275 5.276 5.277 5.283	438-440 RADIOLOCATION Amateur		5.271 5.276 5.277 5.278 5.279 5.279			
440-450 FIXED MOBILE except aeronautical mobile Radiolocation 5.269 5.270 5.271 5.284 5.285 5.286			5.286 US7 US87 US230 US397 G8 450-454 LAND MOBILE 5.286 US87 NG112 NG124 454-456 FIXED LAND MOBILE NG12 NG112 NG148 455-456 LAND MOBILE	5.282 5.286 US87 US217 US230 US397		Auxiliary Broadcasting (74) Private Land Mobile (90)
450-455 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E	455-456 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.209	455-456 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E				Public Mobile (22) Maritime (80) Auxiliary Broadcasting (74)

Table of Frequency Allocations		614-941 MHz (UHF)		Page 27		
International Table		United States Table		FCC Rule Part(s)		
Region 1 Table (See previous page)	Region 2 Table	Region 3 Table (See previous page)	Federal Table 614-869	Non-Federal Table		
	614-806 BROADCASTING Fixed Mobile			614-698 BROADCASTING NG115 NG128 NG142 NG149 698-764 FIXED MOBILE BROADCASTING NG115 NG128 NG142 NG159 764-776 FIXED MOBILE NG115 NG128 NG142 NG158 NG159 776-794 FIXED MOBILE BROADCASTING NG115 NG128 NG142 NG159 794-806 FIXED MOBILE NG115 NG128 NG142 NG158 NG159 806-809 LAND MOBILE 809-821 FIXED LAND MOBILE NG31 821-824 LAND MOBILE 824-849 FIXED LAND MOBILE 849-851 AERONAUTICAL MOBILE 851-854 LAND MOBILE 854-869 FIXED LAND MOBILE NG31 869-894 FIXED LAND MOBILE US116 US268 G2		Broadcast Radio (TV)(73) Auxiliary Broadcasting (74) Wireless Communication (27) Broadcast Radio (TV)(73) Auxiliary Broadcasting (74) Private Land Mobile (90) Auxiliary Broadcasting (74) Private Land Mobile (90) Wireless Communications (27) Broadcast Radio (TV)(73) Auxiliary Broadcasting (74) Private Land Mobile (90) Auxiliary Broadcasting (74) Private Land Mobile (90) Private Land Mobile (90) Public Mobile (22) Private Land Mobile (90) Private Land Mobile (90) Public Mobile (22) Private Land Mobile (90) Public Mobile (22) Private Land Mobile (90) Public Mobile (22)
790-862 FIXED BROADCASTING	5.293 5.309 5.311 806-890 FIXED MOBILE BROADCASTING					
5.312 5.314 5.315 5.316 5.319 5.321 862-890 FIXED MOBILE except aeronautical mobile BROADCASTING 5.322 5.319 5.323						

<p>890-942 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 Radiolocation</p>	<p>890-942 FIXED MOBILE 5.317A BROADCASTING Radiolocation</p>	<p>894-902 AERONAUTICAL MOBILE US116 US268 896-901 FIXED LAND MOBILE US116 US268 901-902 FIXED MOBILE US116 US268 902-928 RADIOLOCATION G59 5.150 US215 US218 US267 US275 G11 928-932</p>	<p>894-896 AERONAUTICAL MOBILE US116 US268 896-901 FIXED LAND MOBILE US116 US268 901-902 FIXED MOBILE US116 US268 902-928</p>	<p>Public Mobile (22) Private Land Mobile (90) Personal Communications (24) ISM Equipment (18) Private Land Mobile (90) Amateur (97)</p>
<p>5.318 5.325 902-928 FIXED Amateur Mobile except aeronautical mobile 5.325A Radiolocation</p>	<p>5.150 US215 US218 US267 US275 G11 928-932</p>	<p>928-929 FIXED US116 US215 US268 NG120 929-930 FIXED LAND MOBILE US116 US215 US268 930-931 FIXED MOBILE US116 US215 US268 931-932 FIXED LAND MOBILE US116 US215 US268 932-935 FIXED US215 US268 NG120 935-940 FIXED LAND MOBILE US116 US215 US268 940-941 FIXED MOBILE US116 US268</p>	<p>928-929 FIXED US116 US215 US268 NG120 929-930 FIXED LAND MOBILE US116 US215 US268 930-931 FIXED MOBILE US116 US215 US268 931-932 FIXED LAND MOBILE US116 US215 US268 932-935 FIXED US215 US268 NG120 935-940 FIXED LAND MOBILE US116 US215 US268 940-941 FIXED MOBILE US116 US268</p>	<p>Public Mobile (22) Private Land Mobile (90) Fixed Microwave (101) Private Land Mobile (90) Personal Communications (24) Public Mobile (22) Public Mobile (22) Fixed Microwave (101) Private Land Mobile (90) Personal Communications (24)</p>
<p>5.150 5.325 5.326 928-942 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation</p>	<p>5.150 US215 US218 US267 US275 G11 928-932</p>	<p>US116 US215 US268 G2 932-935 FIXED US215 US268 G2 935-940 US116 US215 US268 G2 940-941 US116 US268 G2</p>	<p>US116 US215 US268 G2 932-935 FIXED US215 US268 G2 935-940 US116 US215 US268 G2 940-941 US116 US268 G2</p>	<p>Public Mobile (22) Private Land Mobile (90) Fixed Microwave (101) Private Land Mobile (90) Personal Communications (24) Public Mobile (22) Public Mobile (22) Fixed Microwave (101) Private Land Mobile (90) Personal Communications (24)</p>
<p>890-942 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 Radiolocation</p>	<p>890-942 FIXED MOBILE 5.317A BROADCASTING Radiolocation</p>	<p>US116 US215 US268 G2 932-935 FIXED US215 US268 G2 935-940 US116 US215 US268 G2 940-941 US116 US268 G2</p>	<p>US116 US215 US268 G2 932-935 FIXED US215 US268 G2 935-940 US116 US215 US268 G2 940-941 US116 US268 G2</p>	<p>Public Mobile (22) Private Land Mobile (90) Fixed Microwave (101) Private Land Mobile (90) Personal Communications (24)</p>

941-1435 MHz (UHF)				Page 29
Table of Frequency Allocations		International Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	United States Table	
(See previous page)			Federal Table	Non-Federal Table
942-960 FIXED	942-960 FIXED	942-960 FIXED	941-944 FIXED	941-944 FIXED
MOBILE except aeronautical mobile 5.317A	MOBILE 5.317A	MOBILE 5.317A	US268 US301 US302 G2	US268 US301 US302 NG120
BROADCASTING 5.322		BROADCASTING	944-960	944-960
5.323		5.320		
960-1164 AERONAUTICAL RADIONAVIGATION 5.328			960-1164 AERONAUTICAL RADIONAVIGATION 5.328	
1164-1215 AERONAUTICAL RADIONAVIGATION 5.328 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B			US224 1164-1215 AERONAUTICAL RADIONAVIGATION 5.328 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space)	
5.328A			5.328A US224	
1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329 5.329A SPACE RESEARCH (active)			1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) G132 SPACE RESEARCH (active)	1215-1240 Earth exploration-satellite (active) Space research (active)
5.330 5.331 5.332			5.332	
1240-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329 5.329A SPACE RESEARCH (active) Amateur			1240-1300 AERONAUTICAL RADIONAVIGATION EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 SPACE RESEARCH (active)	1240-1300 AERONAUTICAL RADIONAVIGATION Earth exploration-satellite (active) Space research (active) Amateur
5.282 5.330 5.331 5.332 5.335 5.335A			5.332 5.335	5.282
1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 RADIOLOCATION RADIONAVIGATION-SATELLITE (Earth-to-space)			1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation G2	1300-1350 AERONAUTICAL RADIONAVIGATION 5.337
5.149 5.337A			US342	US342
1350-1400 FIXED MOBILE RADIOLOCATION	1350-1400 RADIOLOCATION		1350-1390 FIXED MOBILE RADIOLOCATION G2	1350-1390
			5.334 5.339 US311 US342 G27 G114	5.334 5.339 US311 US342

<p>1390-1395</p>	<p>1390-1392 FIXED MOBILE except aeronautical mobile Fixed-satellite (Earth-to-space) US368</p>	<p>1390-1392 FIXED MOBILE except aeronautical mobile Fixed-satellite (Earth-to-space) US368</p>	<p>5.339 US311 US342 US351 US398 1392-1395 FIXED MOBILE except aeronautical mobile</p>	<p>Wireless Communications (27)</p>
<p>5.339 US311 US342 US351 US398 1395-1400 LAND MOBILE (medical telemetry and medical telecommand)</p>	<p>5.339 US311 US342 US351 US398</p>	<p>5.339 US311 US342 US351 US398</p>	<p>5.339 US311 US342 US351 US398</p>	<p>Personal (95)</p>
<p>5.341 5.338 5.339 5.339A 1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive)</p>	<p>5.149 5.334 5.339 5.339A</p>	<p>5.149 5.334 5.339 5.339A</p>	<p>5.341 5.338 5.339 5.339A 1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive)</p>	<p>Personal (95)</p>
<p>5.340 5.341 1427-1429 SPACE OPERATION (Earth-to-space) FIXED MOBILE except aeronautical mobile</p>	<p>5.341 5.342 5.343</p>	<p>5.341 5.342 5.343</p>	<p>5.341 5.342 5.343</p>	<p>Private Land Mobile (90) Personal (95)</p>
<p>5.341 1429-1452 FIXED MOBILE except aeronautical mobile</p>	<p>1429-1452 FIXED MOBILE 5.343</p>	<p>5.341 US350 US352 US398 1429.5-1432</p>	<p>5.341 US350 US352 US398 1429.5-1430 FIXED (telemetry) LAND MOBILE (telemetry)</p>	<p>Private Land Mobile (90) Personal (95)</p>
<p>5.339A 5.341 5.342</p>	<p>5.339A 5.341</p>	<p>5.341 US350 US352 US398 1432-1435</p>	<p>5.341 US350 US352 US398 1432-1435 FIXED MOBILE except aeronautical mobile</p>	<p>Wireless Communications (27)</p>

Table of Frequency Allocations 1435-1668.4 MHz (UHF)

Region 1 Table		International Table		United States Table		FCC Rule Part(s)
(See previous page)		Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
1452-1492 FIXED MOBILE except aeronautical mobile BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347 5.347A	1452-1492 FIXED MOBILE 5.343 BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347 5.347A	5.341 5.342 1492-1518 FIXED MOBILE 5.343 5.341 5.344	1492-1518 FIXED MOBILE 5.341	1435-1525 MOBILE (aeronautical telemetry)		Aviation (87)
5.341 5.342 1492-1518 FIXED MOBILE 5.343 5.341 5.344	5.341 5.344 1492-1518 FIXED MOBILE 5.343 5.341 5.344	1518-1525 FIXED MOBILE 5.343 MOBILE-SATELLITE (space-to-Earth) 5.348 5.348A 5.348B 5.348C	1518-1525 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.348 5.348A 5.348B 5.348C 5.341	5.341 US78 1525-1535 MOBILE-SATELLITE (space-to-Earth) US315 US380		Satellite Communications (25) Maritime (80)
5.341 5.342 1530-1535 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.343	5.341 5.351 5.354 1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.343	5.341 5.344 1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.349	5.341 5.344 1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.349	5.341 5.351 1535-1559 MOBILE-SATELLITE (space-to-Earth) US308 US309 US315 US380		Satellite Communications (25) Maritime (80) Aviation (87)
5.341 5.342 5.350 5.351 5.352A 5.354 1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A 5.353A Earth exploration-satellite Fixed Mobile 5.343	5.341 5.351 5.354 1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.343	5.341 5.344 1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.349	5.341 5.344 1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.349	5.341 5.351 1535-1559 MOBILE-SATELLITE (space-to-Earth) US308 US309 US315 US380		Satellite Communications (25) Maritime (80) Aviation (87)
5.341 5.342 5.351 5.354 1535-1559 MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A	5.341 5.351 5.354 1535-1559 MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A	5.341 5.344 1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.349	5.341 5.344 1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.349	5.341 5.351 1535-1559 MOBILE-SATELLITE (space-to-Earth) US308 US309 US315 US380		Satellite Communications (25) Maritime (80) Aviation (87)
5.341 5.351 5.353A 5.354 5.355 5.356 5.357 5.357A 5.359 5.362A 1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329A	5.341 5.351 5.354 1535-1559 MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A	5.341 5.344 1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.349	5.341 5.344 1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.349	5.341 5.351 1535-1559 MOBILE-SATELLITE (space-to-Earth) US308 US309 US315 US380		Satellite Communications (25) Maritime (80) Aviation (87)
5.341 5.362B 5.362C 5.363	5.341 5.351 5.354 1535-1559 MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A	5.341 5.344 1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.349	5.341 5.344 1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.349	5.341 5.351 1535-1559 MOBILE-SATELLITE (space-to-Earth) US308 US309 US315 US380		Satellite Communications (25) Maritime (80) Aviation (87)

1930-1970 FIXED MOBILE 5.388A 5.388B	1930-1970 FIXED MOBILE 5.388A 5.388B Mobile-satellite (Earth-to-space)	1930-1970 FIXED MOBILE 5.388A 5.388B	1850-2025	1850-2000 FIXED MOBILE	RF Devices (15) Personal Communications (24) Fixed Microwave (101)
5.388	5.388	5.388			
1970-1980 FIXED MOBILE 5.388A 5.388B					
5.388					
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A				NG177 2000-2020 MOBILE-SATELLITE (Earth-to-space) US380	Satellite Communications (25)
5.388 5.389A 5.389B 5.389F					
2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)		2010-2025 FIXED MOBILE MOBILE 5.388A 5.388B		NG156 2020-2025 FIXED MOBILE	
5.388	5.388 5.389C 5.389E 5.390	5.388		NG177	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space)			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) 5.391 5.392 US90 US222 US346 US347 US393	2025-2110 FIXED NG118 MOBILE 5.391	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)
5.392				5.392 US90 US222 US346 US347 US393	
2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space)			2110-2120	2110-2155 FIXED MOBILE	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)
5.388					
2120-2160 FIXED MOBILE 5.388A 5.388B		2120-2170 FIXED MOBILE 5.388A 5.388B	US252 2120-2200	US252 2155-2160 FIXED	Wireless Communications (27) Fixed Microwave (101)
5.388	2120-2160 FIXED MOBILE 5.388A 5.388B Mobile-satellite (space-to-Earth)				
2160-2170 FIXED MOBILE 5.388A 5.388B		2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)		2160-2180 FIXED NG153 MOBILE	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)
5.388 5.392A	5.388 5.389C 5.389E 5.390	5.388			
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A				NG178 2180-2200 MOBILE-SATELLITE (space-to-Earth) US380 NG168	Satellite Communications (25)
5.388 5.389A 5.389F 5.392A					

Table of Frequency Allocations 2200-2655 MHz (UHF) Page 35

International Table		United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Federal Table	Non-Federal Table	
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)	Region 3 Table	2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-space) FIXED (line-of-sight only) MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)	2200-2290	
5.392 2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)		5.392 US303 2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	US303 2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE Amateur Radiolocation	2300-2450 FIXED MOBILE RADIOLOCATION Amateur	2300-2305 G123 2305-2310 US338 G123 2310-2320 Fixed Mobile US339 Radiolocation G2 G120 US327 2320-2345 Fixed Radiolocation G2 G120 US327 2345-2360 Fixed Mobile US339 Radiolocation G2 G120 US327 2360-2390 MOBILE US276 RADIOLOCATION G2 G120 Fixed 2390-2395 MOBILE US276	2300-2305 Amateur 2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US338 2310-2320 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE 5.396 US327 2320-2345 BROADCASTING-SATELLITE 5.396 US327 2345-2360 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE 5.396 US327 2360-2390 MOBILE US276 2390-2395 MOBILE US276 AMATEUR	Amateur (97) Wireless Communications (27) Amateur (97) Wireless Communications (27) Aviation (87) Satellite Communications (25) Wireless Communications (27) Aviation (87) Aviation (87) Aviation (87) Amateur (97)

5.150 5.282 5.395 2450-2483.5 FIXED MOBILE RADIOLOCATION	5.150 5.282 5.393 5.394 5.396 2450-2483.5 FIXED MOBILE RADIOLOCATION	2395-2400 G122 2400-2402 5.150 G123 2402-2417 5.150 G122 2417-2450 Radiolocation G2 5.150 G124 2450-2483.5	2395-2400 AMATEUR 2400-2417 AMATEUR 5.150 5.282 2417-2450 Amateur 5.150 5.282 2450-2483.5 FIXED MOBILE Radiolocation 5.150 US41 2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 US391 RADIO DETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 2500-2655	Amateur (97) ISM Equipment (18) Amateur (97) ISM Equipment (18) TV Auxiliary Broadcasting (74F) Private Land Mobile (90) Fixed Microwave (101) ISM Equipment (18) Satellite Communications (25) ISM Equipment (18) Satellite Communications (25) Wireless Communications (27) Wireless Communications (27)
5.150 5.397 2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A Radiolocation	5.150 5.394 2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION RADIO DETERMINATION-SATELLITE (space-to-Earth) 5.398	5.150 US41 2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 US391 RADIO DETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 2500-2655	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) 5.398 5.150 5.400 5.402 2500-2520 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.351A 5.403 5.404 5.407 5.414 5.415A 2520-2655 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.351A 5.403 5.403 5.415A 2535-2655 FIXED 5.409 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.403 5.417C 5.417D 5.418B 5.418C	
5.150 5.371 5.397 5.398 5.399 5.400 5.402 2500-2520 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.351A 5.403 5.405 5.407 5.412 5.414 2520-2655 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416	5.150 5.402 2500-2520 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.351A 5.403 5.404 5.407 5.414 5.415A 2520-2655 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.351A 5.403 5.403 5.415A 2535-2655 FIXED 5.409 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.403 5.417C 5.417D 5.418B 5.418C	5.150 5.402 US41 2500-2655 MOBILE except aeronautical mobile FIXED US205 MOBILE except aeronautical mobile	5.339 US205 5.339	Wireless Communications (27)

Table of Frequency Allocations		2655-4990 MHz (UHF/SHF)		United States Table		FCC Rule Part(s)
International Table		Region 3 Table		Federal Table	Non-Federal Table	
Region 1 Table	Region 2 Table	Region 3 Table				
2655-2670 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.347A 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive)	2655-2670 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive)	2655-2670 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.347A 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive)	2655-2690 FIXED US205 MOBILE except aeronautical mobile (passive) US269 Earth exploration-satellite (passive) Radio astronomy Space research (passive)	2655-2690 Earth exploration-satellite (passive) Radio astronomy US269 Space research (passive)	FIXED US205 MOBILE except aeronautical mobile Earth exploration-satellite (passive) Radio astronomy Space research (passive)	Wireless Communications (27)
5.149 5.412 5.420 2670-2690 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) 5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive)	5.149 5.420 5.347A 2670-2690 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.347A 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) 5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive)	5.149 5.420 2670-2690 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) 5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive)	US205 2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)	US205 2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)	US269	
5.340 5.422 2700-2900 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation	5.340 5.422 2700-2900 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation		US246 2700-2900 AERONAUTICAL RADIONAVIGATION 5.337 METEOROLOGICAL AIDS Radiolocation G2	US246 2700-2900 AERONAUTICAL RADIONAVIGATION 5.337 METEOROLOGICAL AIDS Radiolocation G2	2700-2900	
5.423 5.424 2900-3100 RADIOLOCATION 5.424A RADIONAVIGATION 5.426	5.423 5.424 2900-3100 RADIOLOCATION 5.424A RADIONAVIGATION 5.426		5.423 US18 G15 2900-3100 RADIOLOCATION 5.424A G56 MARITIME RADIONAVIGATION	5.423 US18 G15 2900-3100 RADIOLOCATION 5.424A G56 MARITIME RADIONAVIGATION	5.423 US18 2900-3100 MARITIME RADIONAVIGATION Radiolocation US44	Maritime (80) Private Land Mobile (90)
5.425 5.427 3100-3300 RADIOLOCATION Earth exploration-satellite (active) Space research (active)	5.425 5.427 3100-3300 RADIOLOCATION Earth exploration-satellite (active) Space research (active)		5.427 US44 US316 3100-3300 RADIOLOCATION G59 Earth exploration-satellite (active) Space research (active)	5.427 US44 US316 3100-3300 RADIOLOCATION G59 Earth exploration-satellite (active) Space research (active)	5.427 US316 3100-3300 Radiolocation Space research (active) US342	Private Land Mobile (90)
5.149 5.428						

3300-3400 RADIOLOCATION	3300-3400 RADIOLOCATION Amateur Fixed Mobile 5.149 5.429 5.430	3300-3400 RADIOLOCATION Amateur 5.149 5.429	3300-3500 RADIOLOCATION US108 G31	3300-3500 Amateur Radiolocation US108	Private Land Mobile (90) Amateur (97)
5.149 5.429 5.430 3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Mobile Radiolocation	3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile Radiolocation 5.433 5.282 5.432	5.149 5.430	US342 3500-3600 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 US245 3650-3700	5.282 US342 3500-3600 Radiolocation 3600-3650 FIXED-SATELLITE (space-to-Earth) US245 Radiolocation 3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 NG185 MOBILE except aeronautical mobile US348 US349	Private Land Mobile (90)
5.431 3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile	5.435 3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		US348 US349 3700-4200	3700-4200 FIXED NG41 FIXED-SATELLITE (space-to-Earth) NG180	Satellite Communications (25) Private Land Mobile (90)
4200-4400 AERONAUTICAL RADIONAVIGATION 5.438 5.439 5.440 4400-4500 FIXED MOBILE 4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE 4800-4990 FIXED MOBILE 5.442 Radio astronomy	4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261 4400-4500 FIXED MOBILE 4500-4800 FIXED MOBILE US245 4800-4940 FIXED MOBILE US203 US342 4940-4990	4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261 4400-4500 FIXED MOBILE 4500-4800 FIXED MOBILE US245 4800-4940 FIXED MOBILE US203 US342 4940-4990	4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261 4400-4500 FIXED MOBILE 4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245 4800-4940 FIXED MOBILE except aeronautical mobile 5.339 US311 US342 G122	4400-4500 4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245 4800-4940 FIXED MOBILE except aeronautical mobile 5.339 US311 US342	Aviation (87)
5.149 5.339 5.443			5.339 US311 US342 G122	US203 US342 4940-4990 FIXED MOBILE except aeronautical mobile 5.339 US311 US342	Private Land Mobile (90)

Table of Frequency Allocations		4990-5925 MHz (SHF)		Page 39	
		International Table		United States Table	
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	FCC Rule Part(s)
4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive)	5.149		4990-5000 RADIO ASTRONOMY US74 Space research (passive)		
5000-5010 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (Earth-to-space)	5.367		US246 5000-5010 AERONAUTICAL RADIONAVIGATION US260 RADIONAVIGATION-SATELLITE (Earth-to-space) 5.367 US211 US344		Satellite Communications (25) Aviation (87)
5010-5030 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.443B	5.367		5010-5030 AERONAUTICAL RADIONAVIGATION US260 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.443B 5.367 US211 US344		
5030-5150 AERONAUTICAL RADIONAVIGATION	5.367 5.444 5.444A		5030-5150 AERONAUTICAL RADIONAVIGATION US260 5.367 5.444 5.444A US211 US344		
5150-5250 AERONAUTICAL RADIONAVIGATION FIXED-SATELLITE (Earth-to-space) 5.447A MOBILE except aeronautical mobile 5.446A 5.446B	5.446 5.447 5.447B 5.447C		5150-5250 AERONAUTICAL RADIONAVIGATION US260 FIXED-SATELLITE (Earth-to-space) 5.447A US344 5.447C US211 US307		RF Devices (15) Satellite Communications (25) Aviation (87)
5250-5255 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.447D MOBILE except aeronautical mobile 5.446A 5.447F	5.447E 5.448 5.448A		5250-5255 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G69 SPACE RESEARCH (active) 5.447D 5.448A		RF Devices (15) Private Land Mobile (90)
5255-5350 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) MOBILE except aeronautical mobile 5.446A 5.447F	5.447E 5.448 5.448A		5255-5350 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.448A		
5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B SPACE RESEARCH (active) 5.448C AERONAUTICAL RADIONAVIGATION 5.449 RADIOLOCATION 5.448D	5.447E 5.448 5.448A		5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B SPACE RESEARCH (active) 5.448C AERONAUTICAL RADIONAVIGATION 5.449 RADIOLOCATION G56 US390 G130		Aviation (87) Private Land Mobile (90)

5460-5470 RADIIONAVIGATION 5.449 EARTH EXPLORATION-SATELLITE (active) SPACE RESEARCH (active) RADIOLOCATION 5.448B	5460-5470 RADIIONAVIGATION 5.449 US65 EARTH EXPLORATION-SATELLITE (active) SPACE RESEARCH (active) RADIOLOCATION G56	5460-5470 RADIIONAVIGATION 5.449 US65 Earth exploration-satellite (active) Space research (active) Radiolocation	Private Land Mobile (90)
5.448B 5470-5570 MARITIME RADIIONAVIGATION MOBILE except aeronautical mobile 5.446A 5.450A EARTH EXPLORATION-SATELLITE (active) SPACE RESEARCH (active) RADIOLOCATION 5.450B	5470-5570 MARITIME RADIIONAVIGATION US65 EARTH EXPLORATION-SATELLITE (active) SPACE RESEARCH (active) RADIOLOCATION G56	5470-5570 MARITIME RADIIONAVIGATION US65 RADIOLOCATION Earth exploration-satellite (active) Space research (active)	RF Devices (15) Maritime (80) Private Land Mobile (90)
5.448B 5.450 5.451 5570-5650 MARITIME RADIIONAVIGATION MOBILE except aeronautical mobile 5.446A 5.450A RADIOLOCATION 5.450B	5.448B US49 G130 5470-5570 MARITIME RADIIONAVIGATION US65 EARTH EXPLORATION-SATELLITE (active) SPACE RESEARCH (active) RADIOLOCATION G56	5.448B US49 5470-5570 MARITIME RADIIONAVIGATION US65 RADIOLOCATION Earth exploration-satellite (active) Space research (active)	
5.450 5.451 5.452 5650-5725 RADIOLOCATION MOBILE except aeronautical mobile 5.446A 5.450A Amateur Space research (deep space)	5570-5600 MARITIME RADIIONAVIGATION US65 RADIOLOCATION G56 US50 G131	5570-5600 MARITIME RADIIONAVIGATION US65 RADIOLOCATION US50	
5.282 5.451 5.453 5.454 5.455 5725-5830 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur	5600-5650 MARITIME RADIIONAVIGATION US65 METEOROLOGICAL AIDS RADIOLOCATION G56 5.452 US50 G131 5650-5925 RADIOLOCATION G2	5600-5650 MARITIME RADIIONAVIGATION US65 METEOROLOGICAL AIDS RADIOLOCATION 5.452 US50 5650-5830 Amateur	RF Devices (15) ISM Equipment (18) Amateur (97)
5.150 5.451 5.453 5.455 5.456 5830-5850 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur	5.150 5.453 5.455 5830-5850 RADIOLOCATION Amateur	5.150 5.282 5830-5850 Amateur	ISM Equipment (18) Amateur (97)
5.150 5.451 5.453 5.455 5.456 5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	5.150 5.453 5.455 5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Radiolocation	5.150 5850-5925 FIXED-SATELLITE (Earth-to-space) US245 MOBILE NG160 Amateur	ISM Equipment (18) Private Land Mobile (90) Personal Radio (95) Amateur (97)
5.150	5.150	5.150 US245	

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5925-6700 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B MOBILE			5925-6425 FIXED NG41 FIXED-SATELLITE (Earth-to-space) NG181 6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE 5.440 5.458 6525-6700 5.458 US342 6700-7125	5925-6425 FIXED NG41 FIXED-SATELLITE (Earth-to-space) NG181 6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE 5.440 5.458 6525-6700 FIXED FIXED-SATELLITE (Earth-to-space) 5.458 US342 6700-6875 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 5.458 5.458A 5.458B 6875-7025 FIXED NG118 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE NG171 5.458 5.458A 5.458B 7025-7075 FIXED NG118 FIXED-SATELLITE (Earth-to-space) NG172 MOBILE NG171 5.458 5.458A 5.458B 7075-7125 FIXED NG118 MOBILE NG171 5.458	International Fixed (23) Satellite Communications (25) Fixed Microwave (101) Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101) Satellite Communications (25) Fixed Microwave (101)	
5.149 5.440 5.458 6700-7075 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE			5.458 US342 6700-7125	5.458 US262 7190-7235	Auxiliary Broadcasting (74) Cable TV Relay (78)	
5.458 5.458A 5.458B 5.458C 7075-7145 FIXED MOBILE			5.458 7125-7145 FIXED 5.458 G116 7145-7190 FIXED SPACE RESEARCH (deep space) (Earth-to-space) US262 5.458 G116 7190-7235 FIXED SPACE RESEARCH (Earth-to-space) G133 5.458	5.458 7125-7190	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78)	
5.458 5.459 7145-7235 FIXED MOBILE SPACE RESEARCH (Earth-to-space) 5.460			5.458 G116 7145-7190 FIXED SPACE RESEARCH (deep space) (Earth-to-space) US262 5.458 G116 7190-7235 FIXED SPACE RESEARCH (Earth-to-space) G133 5.458	5.458 US262 7190-7235	Auxiliary Broadcasting (74) Cable TV Relay (78)	
5.458 5.459			5.458	5.458		

7235-7250 FIXED MOBILE	7235-7250 FIXED	7235-7250	
5.458	5.458	5.458	
7250-7300 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	7250-7300 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Fixed	7250-8025	
5.461	G117		
7300-7450 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile	7300-7450 FIXED FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth)		
5.461	G117		
7450-7550 FIXED FIXED-SATELLITE (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile	7450-7550 FIXED FIXED-SATELLITE (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth)		
5.461A	G104 G117		
7550-7750 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile	7550-7750 FIXED FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth)		
7750-7850 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) 5.461B MOBILE except aeronautical mobile	G117 7750-7850 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) 5.461B		
7850-7900 FIXED MOBILE except aeronautical mobile	7850-7900 FIXED		
7900-8025 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	7900-8025 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Fixed		
5.461	G117		

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8025-8175 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.463			8025-8175 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions)	8025-8400	
5.462A 8175-8215 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) MOBILE 5.463			US258 G117 8175-8215 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions)		
5.462A 8215-8400 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.463			US258 G104 G117 8215-8400 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions)		
5.462A 8400-8500 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-Earth) 5.465 5.466			US258 G117 8400-8450 FIXED SPACE RESEARCH (space-to-Earth) (deep space only)	US258 8400-8450 Space research (space-to-Earth) (deep space only)	
8500-8550 RADIOLOCATION			8450-8500 FIXED SPACE RESEARCH (space-to-Earth)	8450-8500 SPACE RESEARCH (space-to-Earth)	
5.468 5.469 8550-8650 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active)			8500-8550 RADIOLOCATION G59	8500-8550 Radiolocation	
5.468 5.469 5.469A			8550-8650 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	8550-8650 Earth exploration-satellite (active) Radiolocation Space research (active)	

8650-8750 RADIOLOCATION 5.468 5.469 8750-8850 RADIOLOCATION AERONAUTICAL RADIONAVIGATION 5.470 5.471 8850-9000 RADIOLOCATION MARITIME RADIONAVIGATION 5.472 5.473	8650-9000 RADIOLOCATION G59 US53 9000-9200 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation G2 US48 G19 9200-9300 MARITIME RADIONAVIGATION 5.472 Radiolocation US110 G59 5.474 9300-9500 RADIOLOCATION 5.476 US66 Radiolocation US51 G56 Meteorological aids 5.427 5.474 US67 US71 9500-9800 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.476A 9800-10000 RADIOLOCATION Fixed 5.477 5.478 5.479	8650-9000 Radiolocation US53 9000-9200 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation US48 9200-9300 MARITIME RADIONAVIGATION 5.472 Radiolocation US110 5.474 9300-9500 RADIOLOCATION 5.476 US66 Radiolocation US51 Meteorological aids 5.427 5.474 US67 US71 9500-9800 Earth exploration-satellite (active) Radiolocation Space research (active) 9800-10000 Radiolocation 5.479	Aviation (87)
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10.45-10.5 RADIOLOCATION Amateur-satellite 5.481	Private Land Mobile (90)							
10.5-10.55 FIXED MOBILE RADIOLLOCATION Radiolocation 10.55-10.6 FIXED MOBILE except aeronautical mobile Radiolocation	Private Land Mobile (90)							
10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482	Fixed Microwave (101)
10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.483								
10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A (Earth-to-space) 5.484 MOBILE except aeronautical mobile 11.7-12.5	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile 11.7-12.5	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile 11.7-12.5	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile 11.7-12.5	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile 11.7-12.5	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile 11.7-12.5	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile 11.7-12.5	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile 11.7-12.5	Satellite Communications (25) Fixed Microwave (101)
11.7-12.5 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE	Satellite Communications (25)							

5.487 5.487A 5.492	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING	12.2-12.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile BROADCASTING	12.2-12.75	12.2-12.7 FIXED BROADCASTING-SATELLITE	Satellite Communications (25) Fixed Microwave (101)
5.487A 5.488 5.490 5.492	12.5-12.75 FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space)	12.5-12.75 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A	5.487A 5.488 5.490 5.492	5.487A 5.488 5.490	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
5.494 5.495 5.496	12.7-12.75 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile	MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.493	12.7-12.75	12.7-12.75 FIXED NG118 FIXED-SATELLITE (Earth-to-space) MOBILE	
12.75-13.25	FIXED FIXED-SATELLITE (Earth-to-space) 5.441 MOBILE Space research (deep space) (space-to-Earth)		12.75-13.25	12.75-13.25 FIXED NG118 FIXED-SATELLITE (Earth-to-space) 5.441 NG104 MOBILE US251 NG63	
13.25-13.4	EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active)		13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active) 5.498A	13.25-13.4 AERONAUTICAL RADIONAVIGATION 5.497 Earth exploration-satellite (active) Space research (active)	Aviation (87)
5.498A 5.499			5.498A		
13.4-13.75	EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.501A Standard frequency and time signal-satellite (Earth-to-space)		13.4-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active) 5.501A Standard frequency and time signal-satellite (Earth-to-space) 5.501B	13.4-13.75 Earth exploration-satellite (active) Radiolocation Space research Standard frequency and time signal-satellite (Earth-to-space)	Private Land Mobile (90)
5.499 5.500 5.501 5.501B			5.499 5.500 5.501 5.501B		
13.75-14	FIXED-SATELLITE (Earth-to-space) 5.484A RADIOLOCATION Earth exploration-satellite Standard frequency and time signal-satellite (Earth-to-space) Space research		13.75-14 RADIOLOCATION G59 Standard frequency and time signal-satellite (Earth-to-space) Space research US337	13.75-14 FIXED-SATELLITE (Earth-to-space) US337 Radiolocation Standard frequency and time signal-satellite (Earth-to-space) Space research US356 US357	Satellite Communications (25) Private Land Mobile (90)
5.499 5.500 5.501 5.502 5.503			5.499 5.500 5.501 5.502 5.503		
14-14.25	FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.504C 5.506A Space research		14-14.25 RADIONAVIGATION US292 Space research	14-14.2 FIXED-SATELLITE (Earth-to-space) NG183 RADIONAVIGATION US292 Mobile-satellite (Earth-to-space) Space research	Satellite Communications (25) Maritime (80) Aviation (87)
5.504A 5.505			5.504A 5.505		

15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive)	15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)		
5.340 5.511 15.4-15.43 AERONAUTICAL RADIONAVIGATION	US246 15.4-15.43 AERONAUTICAL RADIONAVIGATION US260		Aviation (87)
5.511D 15.43-15.63 FIXED SATELLITE (Earth-to-space) 5.511A AERONAUTICAL RADIONAVIGATION	US211 15.43-15.63 AERONAUTICAL RADIONAVIGATION US260 FIXED SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION US260		Satellite Communications (25) Aviation (87)
5.511C 15.63-15.7 AERONAUTICAL RADIONAVIGATION	5.511C US211 US359 15.63-15.7 AERONAUTICAL RADIONAVIGATION US260		Aviation (87)
5.511D 15.7-16.6 RADIOLOCATION	US211 15.7-16.6 RADIOLOCATION G59		Private Land Mobile (90)
5.512 5.513 16.6-17.1 RADIOLOCATION Space research (deep space) (Earth-to-space)	16.6-17.1 RADIOLOCATION G59 Space research (deep space) (Earth-to-space)		
5.512 5.513 17.1-17.2 RADIOLOCATION	17.1-17.2 RADIOLOCATION G59		
5.512 5.513 17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active)	17.2-17.3 EARTH EXPLORATION- SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)		
5.512 5.513 5.513A 17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 (space-to-Earth) 5.516A 5.516B RADIOLLOCATION	17.3-17.7 Radiolocation US259 G59 FIXED-SATELLITE (Earth-to-space) US271 BROADCASTING-SATELLITE NG163 NG167 US259		Satellite Communications (25)
5.514 17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 BROADCASTING-SATELLITE Radiolocation	17.3-17.7 Radiolocation US259 G59 FIXED-SATELLITE (Earth-to-space) 5.516 Radiolocation 5.514 5.515 5.517		

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18.1-18.4 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B (Earth-to-space) 5.520 MOBILE 5.519 5.521			5.519 US334 18.3-18.6 FIXED-SATELLITE (space-to-Earth) G117	5.519 US334 NG144 18.3-18.6 FIXED-SATELLITE (space-to-Earth) NG164	Satellite Communications (25)	
18.4-18.6 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE			US334	US334 NG144		
18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A 5.522C 18.8-19.3 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.523A MOBILE 19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 5.523B 5.523C 5.523D 5.523E MOBILE	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A 18.8-19.3 FIXED-SATELLITE (space-to-Earth) 5.516B 5.523A MOBILE 19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 5.523B 5.523C 5.523D 5.523E MOBILE	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 G117 SPACE RESEARCH (passive) US254 US334 18.8-20.2 FIXED-SATELLITE (space-to-Earth) G117	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 NG164 SPACE RESEARCH (passive) US254 US334 NG144 18.8-19.3 FIXED-SATELLITE (space-to-Earth) NG165 US334 NG144 19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) NG166 US334 NG144	Satellite Communications (25) Auxiliary Broadcast (74) Cable TV Relay (78) Fixed Microwave (101)	
19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B Mobile-satellite (space-to-Earth) 5.524 20.1-20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528 5.529 5.528 5.524 5.525 5.526 5.527 5.528	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528 5.529 5.528 5.524	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B Mobile-satellite (space-to-Earth) 5.524	19.7-20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 5.529 US334 20.1-20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 US334	19.7-20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 5.529 US334 20.1-20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 US334	Satellite Communications (25)	

20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth)	20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth)	20.2-21.2 Standard frequency and time signal-satellite (space-to-Earth)	
5.524	G117		Fixed Microwave (101)
21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive)	21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263		
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5.149 22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive)	22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) US342 US263	22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive)	
5.149 5.532 22.5-22.55 FIXED MOBILE	22.5-22.55 FIXED MOBILE US211		Satellite Communications (25) Fixed Microwave (101)
22.55-23.55 FIXED INTER-SATELLITE MOBILE	22.55-23.55 FIXED INTER-SATELLITE US278 MOBILE US342		Fixed Microwave (101)
5.149 23.55-23.6 FIXED MOBILE	23.55-23.6 FIXED MOBILE		Fixed Microwave (101)

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		Federal Table	Non-Federal Table		
Region 1 Table	Region 2 Table	Region 3 Table			
23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) US246	23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246	23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246	23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
24-24.05 AMATEUR AMATEUR-SATELLITE	24-24.05 AMATEUR AMATEUR-SATELLITE	24-24.05 AMATEUR AMATEUR-SATELLITE	24-24.05 AMATEUR AMATEUR-SATELLITE	ISM Equipment (18) Amateur (97)	
5.150 RADIOLOCATION Amateur Earth exploration-satellite (active)	5.150 RADIOLOCATION Amateur Earth exploration-satellite (active)	5.150 RADIOLOCATION Amateur Earth exploration-satellite (active)	5.150 RADIOLOCATION Amateur Earth exploration-satellite (active)	ISM Equipment (18) Private Land Mobile (90) Amateur (97)	
24.25-24.45 FIXED	24.25-24.45 RADIOLOCATION FIXED	24.25-24.45 RADIOLOCATION FIXED	24.25-24.45 RADIOLOCATION FIXED	Fixed Microwave (101)	
24.45-24.75 FIXED INTER-SATELLITE	24.45-24.65 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)	24.45-24.65 FIXED INTER-SATELLITE MOBILE RADIOLOCATION-SATELLITE FIXED	24.45-24.65 INTER-SATELLITE RADIOLOCATION-SATELLITE FIXED	Satellite Communications (25)	
24.75-25.25 FIXED	24.75-25.25 FIXED-SATELLITE (Earth-to-space) 5.535	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.535 MOBILE	24.75-25.25 RADIOLOCATION-SATELLITE (Earth-to-space) FIXED-SATELLITE (Earth-to-space) NG167 RADIOLOCATION-SATELLITE (Earth-to-space) FIXED	Satellite Communications (25) Aviation (87)	
25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)	25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)	25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)	25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)	Satellite Communications (25) Fixed Microwave (101)	

<p>25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) 5.536B FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) 5.536C Standard frequency and time signal-satellite (Earth-to-space)</p>	<p>25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258</p>	<p>25.5-27 Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space)</p>	<p>Satellite Communications (25)</p>
<p>5.536A 27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE</p>	<p>27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE</p>	<p>5.536A US258 27-27.5 Inter-satellite 5.536</p>	<p>Satellite Communications (25) Fixed Microwave (101)</p>
<p>27.5-28.5 FIXED 5.537A FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE</p>	<p>27.5-30</p>	<p>27.5-29.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE</p>	<p>Satellite Communications (25) Fixed Microwave (101)</p>
<p>5.538 5.540 28.5-29.1 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.523A 5.539 MOBILE Earth exploration-satellite (Earth-to-space) 5.541</p>	<p>27.5-30</p>	<p>27.5-29.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE</p>	<p>Satellite Communications (25) Fixed Microwave (101)</p>
<p>5.540 29.1-29.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.516B 5.523C 5.523E 5.535A 5.539 5.541A MOBILE Earth exploration-satellite (Earth-to-space) 5.541</p>	<p>27.5-30</p>	<p>27.5-29.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE</p>	<p>Satellite Communications (25) Fixed Microwave (101)</p>
<p>5.540 29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space)</p>	<p>29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space)</p>	<p>29.5-29.9 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space)</p>	<p>Satellite Communications (25)</p>
<p>5.525 5.542 29.9-30 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) 5.541 5.543</p>	<p>29.5-29.9 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space)</p>	<p>29.5-29.9 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space)</p>	<p>Satellite Communications (25)</p>
<p>5.525 5.526 5.527 5.538 5.540 5.542</p>	<p>5.525 5.526 5.527 5.529</p>	<p>5.525 5.526 5.527 5.529</p>	<p>Satellite Communications (25)</p>

Table of Frequency Allocations				30-39.5 GHz (EHF)		United States Table		FCC Rule Part(s)
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Region 1 Table	Region 2 Table							
30-31 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Standard frequency and time signal-satellite (space-to-Earth)				30-31 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Standard frequency and time signal-satellite (space-to-Earth) G117	30-31 Standard frequency and time signal-satellite (space-to-Earth)			
5.542								
31-31.3 FIXED 5.543A MOBILE				31-31.3 Standard frequency and time signal-satellite (space-to-Earth)	31-31.3 FIXED MOBILE Standard frequency and time signal-satellite (space-to-Earth)			Fixed Microwave (101)
Standard frequency and time signal-satellite (space-to-Earth) Space research 5.544 5.545								
5.149					US211 US342			
31.3-31.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive)				31.3-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)				
5.340								
31.5-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile	31.5-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive)			31.5-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile				
5.149 5.546					US246			
31.8-32					31.8-32.3 RADIO NAVIGATION US69 SPACE RESEARCH (deep space) (space-to-Earth) US262			
FIXED 5.547A RADIO NAVIGATION SPACE RESEARCH (deep space) (space-to-Earth)								
5.547 5.547B 5.548								
32-32.3								
FIXED 5.547A RADIO NAVIGATION SPACE RESEARCH (deep space) (space-to-Earth)								
5.547 5.547C 5.548					5.548 US211			
32.3-33					32.3-33 INTER-SATELLITE US278 RADIO NAVIGATION US69			Aviation (87)
FIXED 5.547A INTER-SATELLITE RADIO NAVIGATION								
5.547 5.547D 5.548								
33-33.4								
FIXED 5.547A RADIO NAVIGATION								
5.547 5.547E					US360 G117			

Table of Frequency Allocations 39.5-50.2 GHz (EHF) Page 55

International Table		United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Federal Table	Non-Federal Table	
39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B MOBILE MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite (space-to-Earth)	5.516B MOBILE MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite (space-to-Earth)	39.5-40 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US382	39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE NG175	
5.547 40-40.5 EARTH EXPLORATION-SATELLITE (Earth-to-space) FIXED FIXED-SATELLITE (space-to-Earth) 5.516B MOBILE MOBILE-SATELLITE (space-to-Earth) SPACE RESEARCH (Earth-to-space) Earth exploration-satellite (space-to-Earth)	5.516B MOBILE MOBILE-SATELLITE (space-to-Earth) SPACE RESEARCH (Earth-to-space) Earth exploration-satellite (space-to-Earth)	G117 40-40.5 EARTH EXPLORATION-SATELLITE (Earth-to-space) FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) SPACE RESEARCH (Earth-to-space) Earth exploration-satellite (space-to-Earth) G117	US382 40-40.5 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25)
40.5-41 FIXED FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE Mobile	40.5-41 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B BROADCASTING BROADCASTING-SATELLITE Mobile Mobile-satellite (space-to-Earth)	40.5-41 FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth)	40.5-41 FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE Fixed Mobile Mobile-satellite (space-to-Earth)	
5.547 41-42.5 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B BROADCASTING BROADCASTING-SATELLITE Mobile	5.547 5.547 Mobile-satellite (space-to-Earth)	US211 G117 41-42.5	US211 41-42 FIXED FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE MOBILE	
5.547 5.551F 5.551H 5.551I 42.5-43.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE except aeronautical mobile RADIO ASTRONOMY	5.552 MOBILE except aeronautical mobile RADIO ASTRONOMY	US211 42.5-43.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile RADIO ASTRONOMY	US211 42.5-43.5 FIXED BROADCASTING BROADCASTING-SATELLITE MOBILE	Fixed Microwave (101)
5.149 5.547		US342	US342	

3.5-47 MOBILE 5.553 MOBILE-SATELLITE ADIONAVIGATION ADIONAVIGATION-SATELLITE	43.5-45.5 MOBILE-SATELLITE (Earth-to-space) FIXED-SATELLITE (Earth-to-space) G117 45.5-46.9 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO NAVIGATION-SATELLITE 5.554	43.5-45.5	
.554 7.47.2 MATEUR MATEUR-SATELLITE 7.2-47.5 IXED IXED-SATELLITE (Earth-to-space) 5.552 MOBILE .552A 7.5-47.9 IXED IXED-SATELLITE (Earth-to-space) 5.552 (space-to-Earth) 5.516B 5.554A MOBILE 7.9-48.2 IXED IXED-SATELLITE (Earth-to-space) 5.552 MOBILE .552A 8.2-48.54 IXED IXED-SATELLITE (Earth-to-space) 5.552 (space-to-Earth) 5.516B 5.554A 5.555B MOBILE 8.54-49.44 IXED IXED-SATELLITE (Earth-to-space) 5.552 MOBILE 1.49 5.340 5.555	46.9-47 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO NAVIGATION-SATELLITE FIXED 5.554 47.47.2 AMATEUR AMATEUR-SATELLITE 47.2-48.2 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE 48.2-50.2 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE US264 5.555 US342	Amateur (97) Satellite Communications (25)	
5.149 5.340 5.555			

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		International Table		United States Table	
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	FCC Rule Part(s)
49.44-50.2 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 (space-to-Earth) 5.516B 5.554A 5.555B MOBILE	(See previous page)		(See previous page)		
50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive)			50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive)		
5.340			US246		
50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Mobile-satellite (Earth-to-space)			50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space)	50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space)	
51.4-52.6 FIXED MOBILE			51.4-52.6 FIXED MOBILE		
5.547 5.556					
52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive)			52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive)		
5.340 5.556			US246		
54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive)			54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive)		
5.558B					
55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED 5.557A INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive)			55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive)		
5.547 5.557			US263 US353		
56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.558A MOBILE 5.558 SPACE RESEARCH (passive)			56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE G128 MOBILE 5.558 SPACE RESEARCH (passive)	56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE 5.558 SPACE RESEARCH (passive)	
5.547 5.557			US263	US263	

<p>57-58.2 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) 5.547 5.557</p>	<p>57-58.2 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) US263</p>	<p>RF Devices (15)</p>
<p>58.2-59 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) 5.547 5.556</p>	<p>58.2-59 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US353 US354</p>	
<p>59-59.3 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.556A MOBILE 5.558 RADIOLOCATION 5.559 SPACE RESEARCH (passive)</p>	<p>59-59.3 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.556A MOBILE 5.558 RADIOLOCATION 5.559 SPACE RESEARCH (passive) US353</p>	<p>59-59.3 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE 5.558 RADIOLOCATION 5.559 SPACE RESEARCH (passive) US353</p>
<p>59.3-64 FIXED INTER-SATELLITE MOBILE 5.558 RADIOLOCATION 5.559 5.138</p>	<p>59.3-64 FIXED INTER-SATELLITE MOBILE 5.558 RADIOLOCATION 5.559 5.138 US353</p>	<p>RF Devices (15) ISM Equipment (18)</p>
<p>64-65 FIXED INTER-SATELLITE MOBILE except aeronautical mobile 5.547 5.556</p>	<p>64-65 FIXED INTER-SATELLITE MOBILE except aeronautical mobile 5.547 5.556</p>	
<p>65-66 EARTH EXPLORATION-SATELLITE FIXED INTER-SATELLITE MOBILE except aeronautical mobile SPACE RESEARCH 5.547</p>	<p>65-66 EARTH EXPLORATION-SATELLITE FIXED INTER-SATELLITE MOBILE except aeronautical mobile SPACE RESEARCH 5.547</p>	
<p>66-71 INTER-SATELLITE MOBILE 5.553 5.558 MOBILE-SATELLITE RADIO NAVIGATION RADIO NAVIGATION-SATELLITE 5.554</p>	<p>66-71 INTER-SATELLITE MOBILE 5.553 5.558 MOBILE-SATELLITE RADIO NAVIGATION RADIO NAVIGATION-SATELLITE 5.554</p>	

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71-74 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth)			71-74 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth) US389		Fixed Microwave (101)
74-76 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE BROADCASTING BROADCASTING-SATELLITE Space research (space-to-Earth) 5.559A 5.561			74-76 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Space research (space-to-Earth) US387 US389	74-76 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE BROADCASTING BROADCASTING-SATELLITE Space research (space-to-Earth) US387 US389	
76-77.5 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth)			76-77.5 RADIO ASTRONOMY RADIOLOCATION Space research (space-to-Earth)	76-77 RADIO ASTRONOMY RADIOLOCATION Amateur Space research (space-to-Earth) US342	RF Devices (15) Amateur (97)
5.149 77.5-78 AMATEUR AMATEUR-SATELLITE Radio astronomy Space research (space-to-Earth) 5.149			US342 77.5-78 Radio astronomy Space research (space-to-Earth) US342	77-77.5 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) US342	Amateur (97)
78-79 RADIOLOCATION Amateur Amateur-satellite Radio astronomy Space research (space-to-Earth) 5.149 5.560			78-79 RADIOLOCATION RADIO ASTRONOMY Space research (space-to-Earth) 5.560 US342	78-79 RADIOLOCATION RADIO ASTRONOMY Amateur Amateur-satellite Space research (space-to-Earth) 5.560 US342	
79-81 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) 5.149			79-81 RADIO ASTRONOMY RADIOLOCATION Space research (space-to-Earth) US342	79-81 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) US342	

81-84 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY Space research (space-to-Earth) 5.149 5.561A	81-84 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY Space research (space-to-Earth) US342 US388 US389	Fixed Microwave (101)
84-86 FIXED FIXED-SATELLITE (Earth-to-space) 5.561B MOBILE RADIO ASTRONOMY 5.149	84-86 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY US342 US388 US389	
86-92 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340	86-92 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246	
92-94 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149	92-94 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION US342 US388	RF Devices (15) Fixed Microwave (101)
94-94.1 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) Radio astronomy 5.562 5.562A	94-94.1 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION Radio astronomy 94-94.1 RADIOLOCATION Radio astronomy 5.562A	RF Devices (15)
94.1-95 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149	94.1-95 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION US342 US388	RF Devices (15) Fixed Microwave (101)
95-100 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION RADIO NAVIGATION-SATELLITE 5.149 5.554	95-100 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION RADIO NAVIGATION-SATELLITE 5.554 US342	

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International Table		United States Table		FCC Rule Part(s)			
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table			
100-102	EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive)		100-102 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246				
5.340 5.341			102-105 FIXED MOBILE RADIO ASTRONOMY				
102-105			5.341 US342				
5.149 5.341			105-109.5 FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B				
105-109.5			5.341 US342				
5.149 5.341			109.5-111.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)				
109.5-111.8			5.341 US246				
5.340 5.341			111.8-114.25 FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B				
111.8-114.25			5.341 US342				
5.149 5.341			114.25-116 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)				
114.25-116			5.341 US246				
5.340 5.341			116-122.25 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562C SPACE RESEARCH (passive)				
116-119.98			5.341 US246				
5.340 5.341			5.138 5.341 US211		(ISM Equipment (18))		

122-25-123 FIXED INTER-SATELLITE MOBILE 5.558 Amateur 5.138	122-25-123 FIXED INTER-SATELLITE MOBILE 5.558 Amateur 5.138	122-25-123 FIXED INTER-SATELLITE MOBILE 5.558 Amateur 5.138	ISM Equipment (18) Amateur (97)
123-130 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) RADIONAVIGATION RADIONAVIGATION-SATELLITE Radio astronomy 5.562D 5.149 5.554	123-130 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) RADIONAVIGATION RADIONAVIGATION-SATELLITE Radio astronomy 5.554 US211 US342	123-130 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) RADIONAVIGATION RADIONAVIGATION-SATELLITE Radio astronomy 5.554 US211 US342	
130-134 EARTH EXPLORATION-SATELLITE (active) 5.562E FIXED INTER-SATELLITE MOBILE 5.558 RADIO ASTRONOMY 5.149 5.562A	130-134 EARTH EXPLORATION-SATELLITE (active) 5.562E FIXED INTER-SATELLITE MOBILE 5.558 RADIO ASTRONOMY 5.562A US342	130-134 EARTH EXPLORATION-SATELLITE (active) 5.562E FIXED INTER-SATELLITE MOBILE 5.558 RADIO ASTRONOMY 5.562A US342	
134-136 AMATEUR AMATEUR-SATELLITE Radio astronomy 136-141 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite 5.149	134-136 Radio astronomy 134-136 AMATEUR AMATEUR-SATELLITE Radio astronomy 136-141 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite US342	134-136 AMATEUR AMATEUR-SATELLITE Radio astronomy 136-141 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite US342	Amateur (97)
141-148.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149	141-148.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION US342	141-148.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION US342	
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5.340 167-174.5 FIXED FIXED-SATELLITE (space-to-Earth) INTER-SATELLITE MOBILE 5.558			164-167 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
5.149 5.562D 174.5-174.8 FIXED INTER-SATELLITE MOBILE 5.558			167-174.5 FIXED FIXED-SATELLITE (space-to-Earth) INTER-SATELLITE MOBILE 5.558 US211 US342		
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191.8-200 FIXED INTER-SATELLITE MOBILE 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.149 5.341 5.554	191.8-200 FIXED INTER-SATELLITE MOBILE 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.341 5.554 US211 US342
200-209 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341 5.563A	200-209 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 5.563A US246
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5.138 5.149 248-250 AMATEUR AMATEUR-SATELLITE Radio astronomy			5.138 US342 248-250 Radio astronomy	5.138 US342 248-250 AMATEUR AMATEUR-SATELLITE Radio astronomy	Amateur (97)
5.149 250-252 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive)			US342 250-252 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)	US342	
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5.149 5.554 265-275 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY			5.554 US211 US342 265-275 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY		
5.149 5.563A 275-1000 (Not allocated)			5.563A US342 275-1000 (Not allocated)		Amateur (97)
5.565			5.565		

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International Footnotes

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 5.56 The stations of services to which the bands 14–19.95 kHz and 20.05–70 kHz and in Region 1 also the bands 72–84 kHz and 86–90 kHz are allocated may transmit standard frequency and time signals. Such stations shall be afforded protection from harmful interference. In Armenia, Azerbaijan, Belarus, Bulgaria, the Russian Federation, Georgia, Kazakhstan, Mongolia, Kyrgyzstan, Slovakia, the Czech Rep., Tajikistan and Turkmenistan, the frequencies 25 kHz and 50 kHz will be used for this purpose under the same conditions.

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 5.58 *Additional allocation:* In Armenia, Azerbaijan, the Russian Federation, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan, the band 67–70 kHz is also allocated to the radionavigation service on a primary basis.

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 5.68 *Alternative allocation:* In Angola, Burundi, Congo (Rep. of the), Malawi, the Dem. Rep. of the Congo, Rwanda and South Africa, the band 160–200 kHz is allocated to the fixed service on a primary basis.

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 5.70 *Alternative allocation:* In Angola, Botswana, Burundi, Cameroon, the Central African Rep., Congo (Rep. of the), Ethiopia, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Nigeria, Oman, the Dem. Rep. of the Congo, Rwanda, South Africa, Swaziland, Tanzania, Chad, Zambia and Zimbabwe, the band 200–283.5 kHz is allocated to the aeronautical radionavigation service on a primary basis.

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 5.79A When establishing coast stations in the NAVTEX service on the frequencies 490 kHz, 518 kHz and 4209.5 kHz, administrations are strongly recommended to coordinate the operating characteristics in accordance with the procedures of the International Maritime Organization (IMO) (see Resolution 339 (Rev.WRC–97))³.

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 5.82 In the maritime mobile service, the frequency 490 kHz is, from the date of full implementation of the GMDSS (see Resolution 331 (Rev.WRC–97))³, to be used exclusively for the transmission by coast stations of navigational and meteorological warnings and urgent information to ships, by means of

narrow-band direct-printing telegraphy. The conditions for use of the frequency 490 kHz are prescribed in Articles 31 and 52. In using the band 415–495 kHz for the aeronautical radionavigation service, administrations are requested to ensure that no harmful interference is caused to the frequency 490 kHz.

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 5.87 *Additional allocation:* In Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland and Zimbabwe, the band 526.5–535 kHz is also allocated to the mobile service on a secondary basis.

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 5.96 In Germany, Armenia, Austria, Azerbaijan, Belarus, Denmark, Estonia, the Russian Federation, Finland, Georgia, Hungary, Ireland, Iceland, Israel, Kazakhstan, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Norway, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Rep., the United Kingdom, Sweden, Switzerland, Tajikistan, Turkmenistan and Ukraine, administrations may allocate up to 200 kHz to their amateur service in the bands 1715–1800 kHz and 1850–2000 kHz. However, when allocating the bands within this range to their amateur service, administrations shall, after prior consultation with administrations of neighbouring countries, take such steps as may be necessary to prevent harmful interference from their amateur service to the fixed and mobile services of other countries. The mean power of any amateur station shall not exceed 10 W.

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 5.98 *Alternative allocation:* In Angola, Armenia, Azerbaijan, Belarus, Belgium, Bulgaria, Cameroon, Congo (Rep. of the), Denmark, Egypt, Eritrea, Spain, Ethiopia, the Russian Federation, Georgia, Greece, Italy, Kazakhstan, Lebanon, Lithuania, Moldova, the Syrian Arab Republic, Kyrgyzstan, Somalia, Tajikistan, Tunisia, Turkmenistan, Turkey and Ukraine, the band 1810–1830 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

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 5.99 *Additional allocation:* In Saudi Arabia, Austria, Bosnia and Herzegovina, Iraq, the Libyan Arab Jamahiriya, Uzbekistan, Slovakia, Romania, Serbia and Montenegro, Slovenia, Chad, and Togo, the band 1810–1830 kHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

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 5.107 *Additional allocation:* In Saudi Arabia, Eritrea, Ethiopia, Iraq, the Libyan Arab Jamahiriya, Lesotho, Somalia and Swaziland, the band 2160–

2170 kHz is also allocated to the fixed and mobile, except aeronautical mobile (R), services on a primary basis. The mean power of stations in these services shall not exceed 50 W.

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 5.112 *Alternative allocation:* In Bosnia and Herzegovina, Denmark, Malta, Serbia and Montenegro, and Sri Lanka, the band 2194–2300 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

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 5.114 *Alternative allocation:* In Bosnia and Herzegovina, Denmark, Iraq, Malta, and Serbia and Montenegro, the band 2502–2625 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

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 5.117 *Alternative allocation:* In Bosnia and Herzegovina, Côte d'Ivoire, Denmark, Egypt, Liberia, Malta, Serbia and Montenegro, Sri Lanka and Togo, the band 3155–3200 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

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 5.118 *Additional allocation:* In the United States, Mexico, Peru and Uruguay, the band 3230–3400 kHz is also allocated to the radiolocation service on a secondary basis.

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 5.134 The use of the bands 5900–5950 kHz, 7300–7350 kHz, 9400–9500 kHz, 11600–11650 kHz, 12050–12100 kHz, 13570–13600 kHz, 13800–13870 kHz, 15600–15800 kHz, 17480–17550 kHz and 18900–19020 kHz by the broadcasting service as from 1 April 2007 is subject to the application of the procedure of Article 12. Administrations are encouraged to use these bands to facilitate the introduction of digitally modulated emissions in accordance with the provisions of Resolution 517 (Rev.WRC–03).

5.136 The band 5900–5950 kHz is allocated, until 1 April 2007, to the fixed service on a primary basis, as well as to the following services: In Region 1 to the land mobile service on a primary basis, in Region 2 to the mobile except aeronautical mobile (R) service on a primary basis, and in Region 3 to the mobile except aeronautical mobile (R) service on a secondary basis, subject to application of the procedure referred to in Resolution 21 (Rev.WRC–95)³. After 1 April 2007, frequencies in this band may be used by stations in the above-mentioned services, communicating only within the

³ Note by the Secretariat: This Resolution was revised by WRC–03.

³ Note by the Secretariat: This Resolution was revised by WRC–03.

boundary of the country in which they are located, on the condition that harmful interference is not caused to the broadcasting service. When using frequencies for these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

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5.138A Until 29 March 2009, the band 6765–7000 kHz is allocated to the fixed service on a primary basis and to the land mobile service on a secondary basis. After this date, this band is allocated to the fixed and the mobile except aeronautical mobile (R) services on a primary basis.

5.139 *Different category of service:* Until 29 March 2009, in Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Kazakhstan, Latvia, Lithuania, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the allocation of the band 6765–7000 kHz to the land mobile service is on a primary basis (see No. 5.33).

5.140 *Additional allocation:* In Angola, Iraq, Kenya, Rwanda, Somalia and Togo, the band 7000–7050 kHz is also allocated to the fixed service on a primary basis.

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5.141A *Additional allocation:* In Uzbekistan and Kyrgyzstan, the bands 7000–7100 kHz and 7100–7200 kHz are also allocated to the fixed and land mobile services on a secondary basis.

5.141B *Additional allocation:* After 29 March 2009, in Algeria, Saudi Arabia, Australia, Bahrain, Botswana, Brunei Darussalam, China, Comoros, Korea (Rep. of), Diego Garcia, Djibouti, Egypt, United Arab Emirates, Eritrea, Indonesia, Iran (Islamic Republic of), Japan, Jordan, Kuwait, the Libyan Arab Jamahiriya, Morocco, Mauritania, New Zealand, Oman, Papua New Guinea, Qatar, the Syrian Arab Republic, Singapore, Sudan, Tunisia, Viet Nam and Yemen, the band 7100–7200 kHz is also allocated to the fixed and the mobile, except aeronautical mobile (R), services on a primary basis.

5.141C In Regions 1 and 3, the band 7100–7200 kHz is allocated to the broadcasting service until 29 March 2009 on a primary basis.

5.142 Until 29 March 2009, the use of the band 7100–7300 kHz in Region 2 by the amateur service shall not impose constraints on the broadcasting service intended for use within Region 1 and Region 3. After 29 March 2009 the use of the band 7200–7300 kHz in Region 2

by the amateur service shall not impose constraints on the broadcasting service intended for use within Region 1 and Region 3.

5.143 The band 7300–7350 kHz is allocated, until 1 April 2007, to the fixed service on a primary basis and to the land mobile service on a secondary basis, subject to application of the procedure referred to in Resolution 21 (Rev.WRC–95)³. After 1 April 2007, frequencies in this band may be used by stations in the above-mentioned services, communicating only within the boundary of the country in which they are located, on condition that harmful interference is not caused to the broadcasting service. When using frequencies for these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

5.143A In Region 3, the band 7350–7450 kHz is allocated, until 29 March 2009, to the fixed service on a primary basis and to the land mobile service on a secondary basis. After 29 March 2009, frequencies in this band may be used by stations in the above-mentioned services, communicating only within the boundary of the country in which they are located, on condition that harmful interference is not caused to the broadcasting service. When using frequencies for these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

5.143B In Region 1, the band 7350–7450 kHz is allocated, until 29 March 2009, to the fixed service on a primary basis and to the land mobile service on a secondary basis. After 29 March 2009, on condition that harmful interference is not caused to the broadcasting service, frequencies in the band 7350–7450 kHz may be used by stations in the fixed and land mobile services communicating only within the boundary of the country in which they are located, each station using a total radiated power that shall not exceed 24 dBW.

5.143C *Additional allocation:* After 29 March 2009 in Algeria, Saudi Arabia, Bahrain, Comoros, Djibouti, Egypt, United Arab Emirates, Iran (Islamic Republic of), the Libyan Arab Jamahiriya, Jordan, Kuwait, Morocco, Mauritania, Oman, Qatar, the Syrian

Arab Republic, Sudan, Tunisia and Yemen, the bands 7350–7400 kHz and 7400–7450 kHz are also allocated to the fixed service on a primary basis.

5.143D In Region 2, the band 7350–7400 kHz is allocated, until 29 March 2009, to the fixed service on a primary basis and to the land mobile service on a secondary basis. After 29 March 2009, frequencies in this band may be used by stations in the above-mentioned services, communicating only within the boundary of the country in which they are located, on condition that harmful interference is not caused to the broadcasting service. When using frequencies for these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

5.143E Until 29 March 2009, the band 7450–8100 kHz is allocated to the fixed service on a primary basis and to the land mobile service on a secondary basis.

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5.146 The bands 9400–9500 kHz, 11600–11650 kHz, 12050–12100 kHz, 15600–15800 kHz, 17480–17550 kHz and 18900–19020 kHz are allocated to the fixed service on a primary basis until 1 April 2007, subject to application of the procedure referred to in Resolution 21 (Rev.WRC–95). After 1 April 2007, frequencies in these bands may be used by stations in the fixed service, communicating only within the boundary of the country in which they are located, on condition that harmful interference is not caused to the broadcasting service. When using frequencies in the fixed service, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

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5.151 The bands 13570–13600 kHz and 13800–13870 kHz are allocated, until 1 April 2007, to the fixed service on a primary basis and to the mobile except aeronautical mobile (R) service on a secondary basis, subject to application of the procedure referred to in Resolution 21 (Rev.WRC–95)³. After 1 April 2007, frequencies in these bands may be used by stations in the above-mentioned services, communicating only within the boundary of the country in which they are located, on the condition that harmful interference is

³ Note by the Secretariat: This Resolution was revised by WRC–03.

³ Note by the Secretariat: This Resolution was revised by WRC–03.

not caused to the broadcasting service. When using frequencies in these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

5.152 *Additional allocation:* in Armenia, Azerbaijan, China, Côte d'Ivoire, the Russian Federation, Georgia, Iran (Islamic Republic of), Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 14250–14350 kHz is also allocated to the fixed service on a primary basis. Stations of the fixed service shall not use a radiated power exceeding 24 dBW.

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5.154 *Additional allocation:* in Armenia, Azerbaijan, the Russian Federation, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 18068–18168 kHz is also allocated to the fixed service on a primary basis for use within their boundaries, with a peak envelope power not exceeding 1 kW.

5.155 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Bulgaria, the Russian Federation, Georgia, Kazakhstan, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Slovakia, the Czech Rep., Tajikistan, Turkmenistan and Ukraine, the band 21850–21870 kHz is also allocated to the aeronautical mobile (R) services on a primary basis.

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5.163 *Additional allocation:* in Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Hungary, Kazakhstan, Latvia, Lithuania, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Slovakia, the Czech Rep., Tajikistan, Turkmenistan and Ukraine, the bands 47–48.5 MHz and 56.5–58 MHz are also allocated to the fixed and land mobile services on a secondary basis.

5.164 *Additional allocation:* in Albania, Germany, Austria, Belgium, Bosnia and Herzegovina, Botswana, Bulgaria, Cote d'Ivoire, Denmark, Spain, Estonia, Finland, France, Gabon, Greece, Ireland, Israel, Italy, the Libyan Arab Jamahiriya, Jordan, Lebanon, Liechtenstein, Luxembourg, Madagascar, Mali, Malta, Morocco, Mauritania, Monaco, Nigeria, Norway, the Netherlands, Poland, Syrian Arab Republic, the United Kingdom, Serbia and Montenegro, Slovenia, Sweden, Switzerland, Swaziland, Chad, Togo, Tunisia and Turkey, the band 47–68 MHz, in Romania the band 47–58 MHz, in South Africa the band 47–50 MHz, and in the Czech Rep. the band 66–68 MHz, are also allocated to the land

mobile service on a primary basis. However, stations of the land mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, existing or planned broadcasting stations of countries other than those mentioned in connection with the band.

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5.174 *Alternative allocation:* in Bulgaria, Hungary and Romania, the band 68–73 MHz is allocated to the broadcasting service on a primary basis and used in accordance with the decisions in the Final Acts of the Special Regional Conference (Geneva, 1960).

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5.177 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Bulgaria, the Russian Federation, Georgia, Kazakhstan, Latvia, Moldova, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 73–74 MHz is also allocated to the broadcasting service on a primary basis, subject to agreement obtained under No. 9.21.

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5.179 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Bulgaria, China, the Russian Federation, Georgia, Kazakhstan, Lithuania, Moldova, Mongolia, Kyrgyzstan, Slovakia, Tajikistan, Turkmenistan and Ukraine, the bands 74.6–74.8 MHz and 75.2–75.4 MHz are also allocated to the aeronautical radionavigation service, on a primary basis, for ground-based transmitters only.

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5.181 *Additional allocation:* in Egypt, Israel and the Syrian Arab Republic, the band 74.8–75.2 MHz is also allocated to the mobile service on a secondary basis, subject to agreement obtained under No. 9.21. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administration which may be identified in the application of the procedure invoked under No. 9.21.

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5.203B *Additional allocation:* in Saudi Arabia, United Arab Emirates, Oman and Syrian Arab Republic, the band 136–137 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis until 1 January 2005.

5.204 *Different category of service:* in Afghanistan, Saudi Arabia, Bahrain, Bangladesh, Bosnia and Herzegovina,

Brunei Darussalam, China, Cuba, the United Arab Emirates, India, Indonesia, Iran (Islamic Republic of), Iraq, Malaysia, Oman, Pakistan, the Philippines, Qatar, Serbia and Montenegro, Singapore, Thailand and Yemen, the band 137–138 MHz is allocated to the fixed and mobile, except aeronautical mobile (R), services on a primary basis (see No. 5.33).

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5.210 *Additional allocation:* in France, Italy, the Czech Rep. and the United Kingdom, the bands 138–143.6 MHz and 143.65–144 MHz are also allocated to the space research service (space-to-Earth) on a secondary basis.

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5.212 *Alternative allocation:* in Angola, Botswana, Burundi, Cameroon, the Central African Rep., Congo (Rep. of the), Gabon, Gambia, Ghana, Guinea, Iraq, Libyan Arab Jamahiriya, Jordan, Lesotho, Liberia, Malawi, Mozambique, Namibia, Oman, Uganda, the Dem. Rep. of the Congo, Rwanda, Sierra Leone, South Africa, Swaziland, Chad, Togo, Zambia and Zimbabwe, the band 138–144 MHz is allocated to the fixed and mobile services on a primary basis.

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5.221 Stations of the mobile-satellite service in the band 148–149.9 MHz shall not cause harmful interference to, or claim protection from, stations of the fixed or mobile services operating in accordance with the Table of Frequency Allocations in the following countries: Albania, Algeria, Germany, Saudi Arabia, Australia, Austria, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Cameroon, China, Cyprus, Congo (Rep. of the), Korea (Rep. of), Côte d'Ivoire, Croatia, Cuba, Denmark, Egypt, the United Arab Emirates, Eritrea, Spain, Estonia, Ethiopia, the Russian Federation, Finland, France, Gabon, Ghana, Greece, Guinea, Guinea Bissau, Hungary, India, Iran (Islamic Republic of), Ireland, Iceland, Israel, Italy, the Libyan Arab Jamahiriya, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, The Former Yugoslav Republic of Macedonia, Lesotho, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Mali, Malta, Mauritania, Moldova, Mongolia, Mozambique, Namibia, Norway, New Zealand, Oman, Uganda, Uzbekistan, Pakistan, Panama, Papua New Guinea, Paraguay, the Netherlands, the Philippines, Poland, Portugal, Qatar, the Syrian Arab Republic, Kyrgyzstan, Slovakia, Romania, the United Kingdom, Senegal, Serbia and Montenegro, Sierra Leone, Singapore,

Slovenia, Sri Lanka, South Africa, Sweden, Switzerland, Swaziland, Tanzania, Chad, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Ukraine, Viet Nam, Yemen, Zambia, and Zimbabwe.

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5.237 *Additional allocation:* In Congo (Rep. of the), Eritrea, Ethiopia, Gambia, Guinea, the Libyan Arab Jamahiriya, Malawi, Mali, Sierra Leone, Somali, Chad and Zimbabwe, the band 174–223 MHz is also allocated to the fixed and mobile services on a secondary basis.

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5.254 The bands 235–322 MHz and 335.4–399.9 MHz may be used by the mobile-satellite service, subject to agreement obtained under No. 9.21, on condition that stations in this service do not cause harmful interference to those of other services operating or planned to be operated in accordance with the Table of Frequency Allocations except for the additional allocation made in footnote No. 5.256A.

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5.256A *Additional allocation:* In China, the Russian Federation, Kazakhstan and Ukraine, the band 258–261 MHz is also allocated to the space research service (Earth-to-space) and space operation service (Earth-to-space) on a primary basis. Stations in the space research service (Earth-to-space) and space operation service (Earth-to-space) shall not cause harmful interference to, nor claim protection from, nor constrain the use and development of the mobile service systems and mobile-satellite service systems operating in the band. Stations in space research service (Earth-to-space) and space operation service (Earth-to-space) shall not constrain the future development of fixed service systems of other countries.

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5.262 *Additional allocation:* In Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Botswana, Bulgaria, Colombia, Costa Rica, Cuba, Egypt, the United Arab Emirates, Ecuador, the Russian Federation, Georgia, Hungary, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kazakhstan, Kuwait, Liberia, Malaysia, Moldova, Uzbekistan, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, Kyrgyzstan, Romania, Serbia and Montenegro, Singapore, Somalia, Tajikistan, Turkmenistan and Ukraine, the band 400.05–401 MHz is also allocated to the fixed and mobile services on a primary basis.

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5.271 *Additional allocation:* In Azerbaijan, Belarus, China, India, Latvia, Lithuania, Kyrgyzstan and Turkmenistan, the band 420–460 MHz is also allocated to the aeronautical radionavigation service (radio altimeters) on a secondary basis.

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5.273 *Different category of service:* In the Libyan Arab Jamahiriya, the allocation of the bands 430–432 MHz and 438–440 MHz to the radiolocation service is on a secondary basis (see No. 5.32).

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5.277 *Additional allocation:* In Angola, Armenia, Azerbaijan, Belarus, Cameroon, Congo (Rep. of the), Djibouti, the Russian Federation, Georgia, Hungary, Israel, Kazakhstan, Mali, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Rep., Romania, Rwanda, Tajikistan, Chad, Turkmenistan and Ukraine, the band 430–440 MHz is also allocated to the fixed service on a primary basis.

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5.279A The use of this band by sensors in the Earth exploration-satellite service (active) shall be in accordance with Recommendation ITU-R SA.1260–1. Additionally, the Earth exploration-satellite service (active) in the band 432–438 MHz shall not cause harmful interference to the aeronautical radionavigation service in China.

The provisions of this footnote in no way diminish the obligation of the Earth exploration-satellite service (active) to operate as a secondary service in accordance with Nos. 5.29 and 5.30.

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5.287 In the maritime mobile service, the frequencies 457.525 MHz, 457.550 MHz, 457.575 MHz, 467.525 MHz, 467.550 MHz and 467.575 MHz may be used by on-board communication stations. Where needed, equipment designed for 12.5 kHz channel spacing using also the additional frequencies 457.5375 MHz, 457.5625 MHz, 467.5375 MHz and 467.5625 MHz may be introduced for on-board communications. The use of these frequencies in territorial waters may be subject to the national regulations of the administration concerned. The characteristics of the equipment used shall conform to those specified in Recommendation ITU-R M.1174 (see Resolution 341 (WRC–97) ⁷).

5.288 In the territorial waters of the United States and the Philippines, the preferred frequencies for use by on-board communication stations shall be

457.525 MHz, 457.550 MHz, 457.575 MHz and 457.600 MHz paired, respectively, with 467.750 MHz, 467.775 MHz, 467.800 MHz and 467.825 MHz. The characteristics of the equipment used shall conform to those specified in Recommendation ITU-R M.1174–1.

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5.294 *Additional allocation:* In Burundi, Cameroon, Congo (Rep. of the), Côte d'Ivoire, Ethiopia, Israel, the Libyan Arab Jamahiriya, Kenya, Lebanon, Malawi, the Syrian Arab Republic, Sudan, Chad and Yemen, the band 470–582 MHz is also allocated to the fixed service on a secondary basis.

5.296 *Additional allocation:* in Germany, Austria, Belgium, Côte d'Ivoire, Denmark, Spain, Finland, France, Ireland, Israel, Italy, the Libyan Arab Jamahiriya, Lithuania, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, the Syrian Arab Republic, the United Kingdom, Sweden, Switzerland, Swaziland and Tunisia, the band 470–790 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting. Stations of the land mobile service in the countries listed in this footnote shall not cause harmful interference to existing or planned stations operating in accordance with the Table in countries other than those listed in this footnote.

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5.311 Within the frequency band 620–790 MHz, assignments may be made to television stations using frequency modulation in the broadcasting-satellite service subject to agreement between the administrations concerned and those having services, operating in accordance with the Table, which may be affected (see Resolutions 33 (Rev.WRC–03) and 507 (Rev.WRC–03)). Such stations shall not produce a power flux-density in excess of the value –129 dB(W/m²) for angles of arrival less than 20° (see Recommendation 705) within the territories of other countries without the consent of the administrations of those countries. Resolution 545 (WRC–03) applies.

5.312 *Additional allocation:* In Armenia, Azerbaijan, Belarus, Bulgaria, the Russian Federation, Georgia, Hungary, Kazakhstan, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Rep., Romania, Tajikistan, Turkmenistan and Ukraine, the band 645–862 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

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⁷ Note by the Secretariat: This Resolution was abrogated by WRC–03.

5.316 *Additional allocation:* In Germany, Saudi Arabia, Bosnia and Herzegovina, Burkina Faso, Cameroon, Côte d'Ivoire, Croatia, Denmark, Egypt, Finland, Greece, Israel, the Libyan Arab Jamahiriya, Jordan, Kenya, The Former Yugoslav Republic of Macedonia, Liechtenstein, Mali, Monaco, Norway, the Netherlands, Portugal, the United Kingdom, the Syrian Arab Republic, Serbia and Montenegro, Sweden and Switzerland, the band 790–830 MHz, and in these same countries and in Spain, France, Gabon and Malta, the band 830–862 MHz, are also allocated to the mobile, except aeronautical mobile, service on a primary basis. However, stations of the mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, stations of services operating in accordance with the Table in countries other than those mentioned in connection with the band.

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5.323 *Additional allocation:* In Armenia, Azerbaijan, Belarus, Bulgaria, the Russian Federation, Hungary, Kazakhstan, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Rep., Romania, Tajikistan, Turkmenistan and Ukraine, the band 862–960 MHz is also allocated to the aeronautical radionavigation service on a primary basis. Such use is subject to agreement obtained under No. 9.21 with administrations concerned and limited to ground-based radiobeacons in operation on 27 October 1997 until the end of their lifetime.

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5.328A Stations in the radionavigation-satellite service in the band 1164–1215 MHz shall operate in accordance with the provisions of Resolution 609 (WRC–03) and shall not claim protection from stations in the aeronautical radionavigation service in the band 960–1215 MHz. No. 5.43A does not apply. The provisions of No. 21.18 shall apply.

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5.329 Use of the radionavigation-satellite service in the band 1215–1300 MHz shall be subject to the condition that no harmful interference is caused to, and no protection is claimed from, the radionavigation service authorized under No. 5.331. Furthermore, the use of the radionavigation-satellite service in the band 1215–1300 MHz shall be subject to the condition that no harmful interference is caused to the radiolocation service. No. 5.43 shall not apply in respect of the radiolocation

service. Resolution 608 (WRC–03) shall apply.

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5.330 *Additional allocation:* In Angola, Saudi Arabia, Bahrain, Bangladesh, Cameroon, China, the United Arab Emirates, Eritrea, Ethiopia, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, the Libyan Arab Jamahiriya, Japan, Jordan, Kuwait, Lebanon, Mozambique, Nepal, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, Somalia, Sudan, Chad, Togo and Yemen, the band 1215–1300 MHz is also allocated to the fixed and mobile services on a primary basis.

5.331 *Additional allocation:* In Algeria, Germany, Saudi Arabia, Australia, Austria, Bahrain, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Burkina Faso, Burundi, Cameroon, China, Korea (Rep. of), Croatia, Denmark, Egypt, the United Arab Emirates, Estonia, the Russian Federation, Finland, France, Ghana, Greece, Guinea, Equatorial Guinea, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Jordan, Kenya, Kuwait, The Former Yugoslav Republic of Macedonia, Lesotho, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mali, Mauritania, Nigeria, Norway, Oman, the Netherlands, Poland, Portugal, Qatar, the Syrian Arab Republic, Slovakia, the United Kingdom, Serbia and Montenegro, Slovenia, Somalia, Sudan, Sri Lanka, South Africa, Sweden, Switzerland, Thailand, Togo, Turkey, Venezuela and Viet Nam, the band 1215–1300 MHz is also allocated to the radionavigation service on a primary basis. In Canada and the United States, the band 1240–1300 MHz is also allocated to the radionavigation service, and use of the radionavigation service shall be limited to the aeronautical radionavigation service.

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5.334 *Additional allocation:* In Canada and the United States, the band 1350–1370 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

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5.338 In Azerbaijan, Mongolia, Kyrgyzstan, Slovakia, the Czech Rep., Romania and Turkmenistan, existing installations of the radionavigation service may continue to operate in the band 1350–1400 MHz.

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5.339A *Additional allocation:* The band 1390–1392 MHz is also allocated to the fixed-satellite service (Earth-to-space) on a secondary basis and the band 1430–1432 MHz is also allocated to the fixed-satellite service (space-to-

Earth) on a secondary basis. These allocations are limited to use for feeder links for non-geostationary-satellite networks in the mobile-satellite service with service links below 1 GHz, and Resolution 745 (WRC–03) applies.

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5.345 Use of the band 1452–1492 MHz by the broadcasting-satellite service, and by the broadcasting service, is limited to digital audio broadcasting and is subject to the provisions of Resolution 528 (WARC–92)³.

5.347 *Different category of service:* in Bangladesh, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Cuba, Denmark, Egypt, Greece, Ireland, Italy, Mozambique, Portugal, Serbia and Montenegro, Sri Lanka, Swaziland, Yemen and Zimbabwe, the allocation of the band 1452–1492 MHz to the broadcasting-satellite service and the broadcasting service is on a secondary basis until 1 April 2007.

5.347A In the bands:

- 1452–1492 MHz,
- 1525–1559 MHz,
- 1613.8–1626.5 MHz,
- 2655–2670 MHz,
- 2670–2690 MHz,
- 21.4–22 GHz,

Resolution 739 (WRC–03) applies.

5.348 The use of the band 1518–1525 MHz by the mobile-satellite service is subject to coordination under No. 9.11A. In the band 1518–1525 MHz stations in the mobile-satellite service shall not claim protection from the stations in the fixed service. No. 5.43A does not apply.

5.348A In the band 1518–1525 MHz, the coordination threshold in terms of the power flux-density levels at the surface of the Earth in application of No. 9.11A for space stations in the mobile-satellite (space-to-Earth) service, with respect to the land mobile service use for specialized mobile radios or used in conjunction with public switched telecommunication networks (PSTN) operating within the territory of Japan, shall be –150 dB(W/m²) in any 4 kHz band for all angles of arrival, instead of those given in Table 5–2 of Appendix 5. In the band 1518–1525 MHz stations in the mobile-satellite service shall not claim protection from stations in the mobile service in the territory of Japan. No. 5.43A does not apply.

5.348B In the band 1518–1525 MHz, stations in the mobile-satellite service shall not claim protection from aeronautical mobile telemetry stations in the mobile service in the territory of the United States (see Nos. 5.343 and

³ Note by the Secretariat: This Resolution was revised by WRC–03.

5.344) and in the countries listed in No. 5.342. No. 5.43A does not apply.

5.348C For the use of the bands 1518–1525 MHz and 1668–1675 MHz by the mobile-satellite service, see Resolution 225 (Rev.WRC–03).

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5.351A For the use of the bands 1525–1544 MHz, 1545–1559 MHz, 1610–1626.5 MHz, 1626.5–1645.5 MHz, 1646.5–1660.5 MHz, 1980–2010 MHz, 2170–2200 MHz, 2483.5–2500 MHz, 2500–2520 MHz and 2670–2690 MHz by the mobile-satellite service, see Resolutions 212 (Rev.WRC–97) and 225 (WRC–2000)³.

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5.355 *Additional allocation:* In Bahrain, Bangladesh, Congo (Rep. of the), Egypt, Eritrea, Iraq, Israel, Kuwait, Lebanon, Malta, Qatar, Syrian Arab Republic, Somalia, Sudan, Chad, Togo and Yemen, the bands 1540–1559 MHz, 1610–1645.5 MHz and 1646.5–1660 MHz are also allocated to the fixed service on a secondary basis.

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5.359 *Additional allocation:* In Germany, Saudi Arabia, Armenia, Austria, Azerbaijan, Belarus, Benin, Bosnia and Herzegovina, Bulgaria, Cameroon, Spain, the Russian Federation, France, Gabon, Georgia, Greece, Guinea, Guinea-Bissau, Hungary, the Libyan Arab Jamahiriya, Jordan, Kazakhstan, Kuwait, Lebanon, Lithuania, Mauritania, Moldova, Mongolia, Uganda, Uzbekistan, Pakistan, Poland, the Syrian Arab Republic, Kyrgyzstan, the Dem. People’s Rep. of Korea, Romania, Swaziland, Tajikistan, Tanzania, Tunisia, Turkmenistan and Ukraine, the bands 1550–1559 MHz, 1610–1645.5 MHz and 1646.5–1660 MHz are also allocated to the fixed service on a primary basis. Administrations are urged to make all practicable efforts to avoid the implementation of new fixed-service stations in these bands.

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5.362B *Additional allocation:* The band 1559–1610 MHz is also allocated to the fixed service on a primary basis until 1 January 2005 in Germany, Armenia, Azerbaijan, Belarus, Benin, Bosnia and Herzegovina, Bulgaria, Spain, the Russian Federation, France, Gabon, Georgia, Greece, Guinea, Guinea-Bissau, Hungary, Kazakhstan, Lithuania, Moldova, Mongolia, Nigeria, Uganda, Uzbekistan, Pakistan, Poland, Kyrgyzstan, the Dem. People’s Rep. of Korea, Romania, Senegal, Swaziland, Tajikistan, Tanzania, Turkmenistan and

Ukraine, and until 1 January 2010 in Saudi Arabia, Cameroon, the Libyan Arab Jamahiriya, Jordan, Kuwait, Lebanon, Mali, Mauritania, the Syrian Arab Republic and Tunisia. After these dates, the fixed service may continue to operate on a secondary basis until 1 January 2015, at which time this allocation shall no longer be valid. Administrations are urged to take all practicable steps to protect the radionavigation-satellite service and the aeronautical radionavigation service and not authorize new frequency assignments to fixed-service systems in this band.

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5.369 *Different category of service:* in Angola, Australia, Burundi, China, Eritrea, Ethiopia, India, Iran (Islamic Republic of), Israel, the Libyan Arab Jamahiriya, Lebanon, Liberia, Madagascar, Mali, Pakistan, Papua New Guinea, Syrian Arab Republic, the Dem. Rep. of the Congo, Sudan, Swaziland, Togo and Zambia, the allocation of the band 1610–1626.5 MHz to the radiodetermination-satellite service (Earth-to-space) is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21 from countries not listed in this provision.

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5.379B The use of the band 1668–1675 MHz by the mobile-satellite service is subject to coordination under No. 9.11A.

5.379C In order to protect the radio astronomy service in the band 1668–1670 MHz, the aggregate power flux-density values produced by mobile earth stations in a network of the mobile-satellite service operating in this band shall not exceed –181 dB(W/m²) in 10 MHz and –194 dB(W/m²) in any 20 kHz at any radio astronomy station recorded in the Master International Frequency Register, for more than 2% of integration periods of 2000 s.

5.379D For sharing of the band 1668–1675 MHz between the mobile-satellite service and the fixed, mobile and space research (passive) services, Resolution 744 (WRC–03) shall apply.

5.379E In the band 1668.4–1675 MHz, stations in the mobile-satellite service shall not cause harmful interference to stations in the meteorological aids service in China, Iran (Islamic Republic of), Japan and Uzbekistan. In the band 1668.4–1675 MHz, administrations are urged not to implement new systems in the meteorological aids service and are encouraged to migrate existing meteorological aids service operations to other bands as soon as practicable.

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5.380A In the band 1670–1675 MHz, stations in the mobile-satellite service shall not cause harmful interference to, nor constrain the development of, existing earth stations in the meteorological-satellite service notified in accordance with Resolution 670 (WRC–03).

5.381 *Additional allocation:* In Afghanistan, Costa Rica, Cuba, India, Iran (Islamic Republic of) and Pakistan, the band 1690–1700 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

5.382 *Different category of service:* in Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Bulgaria, Congo (Rep. of the), Egypt, the United Arab Emirates, Eritrea, Ethiopia, the Russian Federation, Guinea, Hungary, Iraq, Israel, Jordan, Kazakhstan, Kuwait, the Former Yugoslav Republic of Macedonia, Lebanon, Mauritania, Moldova, Mongolia, Oman, Uzbekistan, Poland, Qatar, the Syrian Arab Republic, Kyrgyzstan, Romania, Serbia and Montenegro, Somalia, Tajikistan, Tanzania, Turkmenistan, Ukraine and Yemen, the allocation of the band 1690–1700 MHz to the fixed and mobile, except aeronautical mobile, services is on a primary basis (see No. 5.33), and in the Dem. People’s Rep. of Korea, the allocation of the band 1690–1700 MHz to the fixed service is on a primary basis (see No. 5.33) and to the mobile, except aeronautical mobile, service on a secondary basis.

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5.386 *Additional allocation:* The band 1750–1850 MHz is also allocated to the space operation (Earth-to-space) and space research (Earth-to-space) services in Region 2, in Australia, Guam, India, Indonesia and Japan on a primary basis, subject to agreement obtained under No. 9.21, having particular regard to troposcatter systems.

5.387 *Additional allocation:* In Azerbaijan, Belarus, Georgia, Kazakhstan, Mongolia, Kyrgyzstan, Slovakia, Romania, Tajikistan and Turkmenistan, the band 1770–1790 MHz is also allocated to the meteorological-satellite service on a primary basis, subject to agreement obtained under No. 9.21.

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5.388A In Regions 1 and 3, the bands 1885–1980 MHz, 2010–2025 MHz and 2110–2170 MHz and, in Region 2, the bands 1885–1980 MHz and 2110–2160 MHz may be used by high altitude platform stations as base stations to provide International Mobile

³ Note by the Secretariat: This Resolution was revised by WRC–03.

Telecommunications—2000 (IMT–2000), in accordance with Resolution 221 (Rev.WRC–03). Their use by IMT–2000 applications using high altitude platform stations as base stations does not preclude the use of these bands by any station in the services to which they are allocated and does not establish priority in the Radio Regulations.

5.388B In Algeria, Saudi Arabia, Bahrain, Benin, Burkina Faso, Cameroon, Comoros, Côte d'Ivoire, China, Cuba, Djibouti, Egypt, United Arab Emirates, Eritrea, Ethiopia, Gabon, Ghana, India, Iran (Islamic Republic of), Israel, the Libyan Arab Jamahiriya, Jordan, Kenya, Kuwait, Mali, Morocco, Mauritania, Nigeria, Oman, Uganda, Qatar, the Syrian Arab Republic, Senegal, Singapore, Sudan, Tanzania, Chad, Togo, Tunisia, Yemen, Zambia and Zimbabwe, for the purpose of protecting fixed and mobile services, including IMT–2000 mobile stations, in their territories from co-channel interference, a high altitude platform station (HAPS) operating as an IMT–2000 base station in neighbouring countries, in the bands referred to in No. 5.388A, shall not exceed a co-channel power flux-density of $-127 \text{ dB(W/(m}^2 \cdot \text{MHz))}$ at the Earth's surface outside a country's borders unless explicit agreement of the affected administration is provided at the time of the notification of HAPS.

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$-130 \text{ dB(W/(m}^2 \cdot \text{MHz))}$	for $0^\circ \leq \theta \leq 5^\circ$
$-130 + 0.4 (\theta - 5) \text{ dB(W/(m}^2 \cdot \text{MHz))}$	for $5^\circ < \theta \leq 25^\circ$
$-122 \text{ dB(W/(m}^2 \cdot \text{MHz))}$	for $25^\circ < \theta \leq 90^\circ$

where θ is the angle of arrival of the incident wave above the horizontal plane, in degrees. These limits may be exceeded on the territory of any country whose administration has so agreed. In the case of the broadcasting-satellite service (sound) networks of Korea (Rep. of), as an exception to the limits above, the power flux-density value of $-122 \text{ dB(W/(m}^2 \cdot \text{MHz))}$ shall be used as a threshold for coordination under No. 9.11 in an area of 1000 km around the territory of the administration notifying the broadcasting-satellite service (sound) system, for angles of arrival greater than 35° .

5.417B In Korea (Rep. of) and Japan, use of the band 2605–2630 MHz by non-geostationary-satellite systems in the broadcasting-satellite service (sound), pursuant to No. 5.417A, for which complete Appendix 4 coordination information, or notification information,

5.395 In France and Turkey, the use of the band 2310–2360 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.

5.396 Space stations of the broadcasting-satellite service in the band 2310–2360 MHz operating in accordance with No. 5.393 that may affect the services to which this band is allocated in other countries shall be coordinated and notified in accordance with Resolution 33 (Rev.WRC–97)³. Complementary terrestrial broadcasting stations shall be subject to bilateral coordination with neighbouring countries prior to their bringing into use.

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5.400 *Different category of service:* In Angola, Australia, Bangladesh, Burundi, China, Eritrea, Ethiopia, India, Iran (Islamic Republic of), the Libyan Arab Jamahiriya, Lebanon, Liberia, Madagascar, Mali, Pakistan, Papua New Guinea, the Dem. Rep. of the Congo, the Syrian Arab Republic, Sudan, Swaziland, Togo and Zambia, the allocation of the band 2483.5–2500 MHz to the radiodetermination-satellite service (space-to-Earth) is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21 from countries not listed in this provision.

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5.416 The use of the band 2520–2670 MHz by the broadcasting-satellite

service is limited to national and regional systems for community reception, subject to agreement obtained under No. 9.21.

5.417A In applying provision No. 5.418, in Korea (Rep. of) and Japan, resolves 3 of Resolution 528 (Rev.WRC–03) is relaxed to allow the broadcasting-satellite service (sound) and the complementary terrestrial broadcasting service to additionally operate on a primary basis in the band 2605–2630 MHz. This use is limited to systems intended for national coverage. An administration listed in this provision shall not have simultaneously two overlapping frequency assignments, one under this provision and the other under No. 5.416. The provisions of No. 5.416 and Table 21–4 of Article 21 do not apply. Use of non-geostationary-satellite systems in the broadcasting-satellite service (sound) in the band 2605–2630 MHz is subject to the provisions of Resolution 539 (Rev.WRC–03). The power flux-density at the Earth's surface produced by emissions from a geostationary broadcasting-satellite service (sound) space station operating in the band 2605–2630 MHz for which complete Appendix 4 coordination information, or notification information, has been received after 4 July 2003, for all conditions and for all methods of modulation, shall not exceed the following limits:

$-130 \text{ dB(W/(m}^2 \cdot \text{MHz))}$	for $0^\circ \leq \theta \leq 5^\circ$
$-130 + 0.4 (\theta - 5) \text{ dB(W/(m}^2 \cdot \text{MHz))}$	for $5^\circ < \theta \leq 25^\circ$
$-122 \text{ dB(W/(m}^2 \cdot \text{MHz))}$	for $25^\circ < \theta \leq 90^\circ$

received after 4 July 2003, is subject to the application of the provisions of No. 9.12.

5.417D Use of the band 2605–2630 MHz by geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, has been received after 4 July 2003 is subject to the application of the provisions of No. 9.13 with respect to non-geostationary-satellite systems in the broadcasting-satellite service (sound), pursuant to No. 5.417A, and No. 22.2 does not apply.

5.418 *Additional allocation:* in Korea (Rep. of), India, Japan, Pakistan and Thailand, the band 2535–2655 MHz is also allocated to the broadcasting-satellite service (sound) and complementary terrestrial broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of

has been received after 4 July 2003, is subject to the application of the provisions of No. 9.12A, in respect of geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, is considered to have been received after 4 July 2003, and No. 22.2 does not apply. No. 22.2 shall continue to apply with respect to geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, is considered to have been received before 5 July 2003.

5.417C Use of the band 2605–2630 MHz by non-geostationary-satellite systems in the broadcasting-satellite service (sound), pursuant to No. 5.417A, for which complete Appendix 4 coordination information, or notification information, has been

³ Note by the Secretariat: This Resolution was revised by WRC–03.

Resolution 528 (Rev.WRC-03). The provisions of No. 5.416 and Table 21-4 of Article 21, do not apply to this additional allocation. Use of non-geostationary-satellite systems in the broadcasting-satellite service (sound) is subject to Resolution 539 (Rev.WRC-03). Geostationary broadcasting-satellite

-130 dB(W/(m ² · MHz))	for 0° ≤ θ ≤ 5°
-130 + 0.4 (θ - 5) dB(W/(m ² · MHz))	for 5° < θ ≤ 25°
-122 dB(W/(m ² · MHz))	for 25° < θ ≤ 90°

where θ is the angle of arrival of the incident wave above the horizontal plane, in degrees. These limits may be exceeded on the territory of any country whose administration has so agreed. As an exception to the limits above, the pfd value of -122 dB(W/(m² · MHz)) shall be used as a threshold for coordination under No. 9.11 in an area of 1500 km around the territory of the administration notifying the broadcasting-satellite service (sound) system. In addition, the power flux-density value shall not exceed -100 dB(W/(m² · MHz)) anywhere on the territory of the Russian Federation.

In addition, an administration listed in this provision shall not have simultaneously two overlapping frequency assignments, one under this provision and the other under No. 5.416 for systems for which complete Appendix 4 coordination information has been received after 1 June 2005.

5.418A In certain Region 3 countries listed in No. 5.418, use of the band 2630-2655 MHz by non-geostationary-satellite systems in the broadcasting-satellite service (sound) for which complete Appendix 4 coordination information, or notification information, has been received after 2 June 2000, is subject to the application of the provisions of No. 9.12A, in respect of geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, is considered to have been received after 2 June 2000, and No. 22.2 does not apply. No. 22.2 shall continue to apply with respect to geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, is considered to have been received before 3 June 2000.

5.418B Use of the band 2630-2655 MHz by non-geostationary-satellite systems in the broadcasting-satellite service (sound), pursuant to No. 5.418, for which complete Appendix 4 coordination information, or notification information, has been received after 2 June 2000, is subject to

service (sound) systems for which complete Appendix 4 coordination information has been received after 1 June 2005 are limited to systems intended for national coverage. The power flux-density at the Earth's surface produced by emissions from a geostationary broadcasting-satellite

the application of the provisions of No. 9.12.

5.418C Use of the band 2630-2655 MHz by geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, has been received after 2 June 2000 is subject to the application of the provisions of No. 9.13 with respect to non-geostationary-satellite systems in the broadcasting-satellite service (sound), pursuant to No. 5.418 and No. 22.2 does not apply.

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 5.422 *Additional allocation:* in Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Brunei Darussalam, Congo (Rep. of the), Côte d'Ivoire, Cuba, Egypt, the United Arab Emirates, Eritrea, Ethiopia, the Russian Federation, Gabon, Georgia, Guinea, Guinea-Bissau, Iran (Islamic Republic of), Iraq, Israel, Jordan, Lebanon, Mauritania, Moldova, Mongolia, Nigeria, Oman, Uzbekistan, Pakistan, the Philippines, Qatar, Syrian Arab Republic, Kyrgyzstan, the Dem. Rep. of the Congo, Romania, Serbia and Montenegro, Somalia, Tajikistan, Tunisia, Turkmenistan, Ukraine and Yemen, the band 2690-2700 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis. Such use is limited to equipment in operation by 1 January 1985.

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 5.424A In the band 2900-3100 MHz, stations in the radiolocation service shall not cause harmful interference to, nor claim protection from, radar systems in the radionavigation service.

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 5.428 *Additional allocation:* in Azerbaijan, Cuba, Mongolia, Kyrgyzstan, Romania and Turkmenistan, the band 3100-3300 MHz is also allocated to the radionavigation service on a primary basis.

5.429 *Additional allocation:* in Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, China, Congo (Rep. of the), Korea (Rep. of), the United Arab Emirates, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, the Libyan

service (sound) space station operating in the band 2630-2655 MHz, and for which complete Appendix 4 coordination information has been received after 1 June 2005, shall not exceed the following limits, for all conditions and for all methods of modulation:

Arab Jamahiriya, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Oman, Pakistan, Qatar, the Syrian Arab Republic, Dem. People's Rep. of Korea and Yemen, the band 3300-3400 MHz is also allocated to the fixed and mobile services on a primary basis. The countries bordering the Mediterranean shall not claim protection for their fixed and mobile services from the radiolocation service.

5.430 *Additional allocation:* in Azerbaijan, Cuba, Mongolia, Kyrgyzstan, Romania and Turkmenistan, the band 3300-3400 MHz is also allocated to the radionavigation service on a primary basis.

5.431 *Additional allocation:* in Germany, Israel and the United Kingdom, the band 3400-3475 MHz is also allocated to the amateur service on a secondary basis.

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 5.443B In order not to cause harmful interference to the microwave landing system operating above 5030 MHz, the aggregate power flux-density produced at the Earth's surface in the band 5030-5150 MHz by all the space stations within any radionavigation-satellite service system (space-to-Earth) operating in the band 5010-5030 MHz shall not exceed -124.5 dB(W/m²) in a 150 kHz band. In order not to cause harmful interference to the radio astronomy service in the band 4990-5000 MHz, radionavigation-satellite service systems operating in the band 5010-5030 MHz shall comply with the limits in the band 4990-5000 MHz defined in Resolution 741 (WRC-03).

5.444 The band 5030-5150 MHz is to be used for the operation of the international standard system (microwave landing system) for precision approach and landing. The requirements of this system shall take precedence over other uses of this band. For the use of this band, No. 5.444A and Resolution 114 (Rev.WRC-03) apply.

5.444A *Additional allocation:* the band 5091-5150 MHz is also allocated to the fixed-satellite service (Earth-to-space) on a primary basis. This allocation is limited to feeder links of

non-geostationary mobile-satellite systems in the mobile-satellite service and is subject to coordination under No. 9.11A.

In the band 5091–5150 MHz, the following conditions also apply:

—Prior to 1 January 2018, the use of the band 5091–5150 MHz by feeder links of non-geostationary-satellite systems in the mobile-satellite service shall be made in accordance with Resolution 114 (Rev.WRC–03);

—Prior to 1 January 2018, the requirements of existing and planned international standard systems for the aeronautical radionavigation service which cannot be met in the 5000–5091 MHz band, shall take precedence over other uses of this band;

—After 1 January 2012, no new assignments shall be made to earth stations providing feeder links of non-geostationary mobile-satellite systems;

—After 1 January 2018, the fixed-satellite service will become secondary to the aeronautical radionavigation service.

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5.447E Additional allocation: The band 5250–5350 MHz is also allocated to the fixed service on a primary basis in the following countries in Region 3: Australia, Korea (Rep. of), India, Indonesia, Iran (Islamic Republic of), Japan, Malaysia, Papua New Guinea, the Philippines, Sri Lanka, Thailand and Viet Nam. The use of this band by the fixed service is intended for the implementation of fixed wireless access systems and shall comply with Recommendation ITU-R F.1613. In addition, the fixed service shall not claim protection from the radiodetermination, Earth exploration-satellite (active) and space research (active) services, but the provisions of No. 5.43A do not apply to the fixed service with respect to the Earth exploration-satellite (active) and space research (active) services. After implementation of fixed wireless access systems in the fixed service with protection for the existing radiodetermination systems, no more stringent constraints should be imposed on the fixed wireless access systems by future radiodetermination implementations.

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5.453 Additional allocation: in Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, China, Congo (Rep. of the), Korea (Rep. of), Cote d'Ivoire, Egypt, the United Arab Emirates, Gabon, Guinea, Equatorial Guinea, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, the Libyan

Arab Jamahiriya, Japan, Jordan, Kenya, Kuwait, Lebanon, Madagascar, Malaysia, Nigeria, Oman, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, the Dem. People's Rep. of Korea, Singapore, Sri Lanka, Swaziland, Tanzania, Chad, Thailand, Togo, Viet Nam and Yemen, the band 5650–5850 MHz is also allocated to the fixed and mobile services on a primary basis. In this case, the provisions of Resolution 229 (WRC–03) do not apply.

5.454 Different category of service: in Azerbaijan, the Russian Federation, Georgia, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan and Turkmenistan, the allocation of the band 5670–5725 MHz to the space research service is on a primary basis (see No. 5.33).

5.455 Additional allocation: in Armenia, Azerbaijan, Belarus, Cuba, the Russian Federation, Georgia, Hungary, Kazakhstan, Latvia, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 5670–5850 MHz is also allocated to the fixed service on a primary basis.

5.456 Additional allocation: in Cameroon, the band 5755–5850 MHz is also allocated to the fixed service on a primary basis.

5.457A In the bands 5925–6425 MHz and 14–14.5 GHz, earth stations located on board vessels may communicate with space stations of the fixed-satellite service. Such use shall be in accordance with Resolution 902 (WRC–03).

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5.460 The use of the band 7145–7190 MHz by the space research service (Earth-to-space) is restricted to deep space; no emissions to deep space shall be effected in the band 7190–7235 MHz. Geostationary satellites in the space research service operating in the band 7190–7235 MHz shall not claim protection from existing and future stations of the fixed and mobile services and No. 5.43A does not apply.

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5.466 Different category of service: in Israel, Singapore and Sri Lanka, the allocation of the band 8400–8500 MHz to the space research service is on a secondary basis (see No. 5.32).

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5.468 Additional allocation: in Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Burundi, Cameroon, China, Congo (Rep. of the), Costa Rica, Egypt, the United Arab Emirates, Gabon, Guyana, Indonesia, Iran (Islamic Republic of), Iraq, the Libyan Arab Jamahiriya, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mali, Morocco, Mauritania, Nepal, Nigeria,

Oman, Pakistan, Qatar, Syrian Arab Republic, the Dem. People's Rep. of Korea, Senegal, Singapore, Somalia, Swaziland, Tanzania, Chad, Togo, Tunisia and Yemen, the band 8500–8750 MHz is also allocated to the fixed and mobile services on a primary basis.

5.469 Additional allocation: in Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Hungary, Lithuania, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, the Czech Rep., Romania, Tajikistan, Turkmenistan and Ukraine, the band 8500–8750 MHz is also allocated to the land mobile and radionavigation services on a primary basis.

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5.473 Additional allocation: in Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Cuba, the Russian Federation, Georgia, Hungary, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Romania, Tajikistan, Turkmenistan and Ukraine, the bands 8850–9000 MHz and 9200–9300 MHz are also allocated to the radionavigation service on a primary basis.

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5.477 Different category of service: in Algeria, Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Liberia, Malaysia, Nigeria, Oman, Pakistan, Qatar, the Dem. People's Rep. of Korea, Singapore, Somalia, Sudan, Trinidad and Tobago, and Yemen, the allocation of the band 9800–10000 MHz to the fixed service is on a primary basis (see No. 5.33).

5.478 Additional allocation: in Azerbaijan, Bulgaria, Mongolia, Kyrgyzstan, Romania, Turkmenistan and Ukraine, the band 9800–10000 MHz is also allocated to the radionavigation service on a primary basis.

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5.481 Additional allocation: in Germany, Angola, Brazil, China, Costa Rica, Côte d'Ivoire, El Salvador, Ecuador, Spain, Guatemala, Hungary, Japan, Kenya, Morocco, Nigeria, Oman, Uzbekistan, Paraguay, Peru, the Dem. People's Rep. of Korea, Tanzania, Thailand and Uruguay, the band 10.45–10.5 GHz is also allocated to the fixed and mobile services on a primary basis.

5.482 In the band 10.6–10.68 GHz, stations of the fixed and mobile, except aeronautical mobile, services shall be limited to a maximum equivalent isotropically radiated power of 40 dBW and the power delivered to the antenna

shall not exceed -3 dBW. These limits may be exceeded subject to agreement obtained under No. 9.21. However, in Saudi Arabia, Armenia, Azerbaijan, Bahrain, Bangladesh, Belarus, China, the United Arab Emirates, Georgia, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Kazakhstan, Kuwait, Latvia, Lebanon, Moldova, Nigeria, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, Tajikistan and Turkmenistan, the restrictions on the fixed and mobile, except aeronautical mobile, services are not applicable.

5.483 *Additional allocation:* In Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, China, Colombia, Korea (Rep. of), Costa Rica, Egypt, the United Arab Emirates, Georgia, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kazakhstan, Kuwait, Lebanon, Mongolia, Uzbekistan, Qatar, Kyrgyzstan, the Dem. People's Rep. of Korea, Romania, Serbia and Montenegro, Tajikistan, Turkmenistan and Yemen, the band 10.68-10.7 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis. Such use is limited to equipment in operation by 1 January 1985.

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5.494 *Additional allocation:* In Algeria, Angola, Saudi Arabia, Bahrain, Cameroon, the Central African Rep., Congo (Rep. of the), Côte d'Ivoire, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Gabon, Ghana, Guinea, Iraq, Israel, the Libyan Arab Jamahiriya, Jordan, Kuwait, Lebanon, Madagascar, Mali, Morocco, Mongolia, Nigeria, Qatar, the Syrian Arab Republic, the Dem. Rep. of the Congo, Somalia, Sudan, Chad, Togo and Yemen, the band 12.5-12.75 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

5.495 *Additional allocation:* In Bosnia and Herzegovina, Croatia, France, Greece, Liechtenstein, Monaco, Uganda, Portugal, Romania, Serbia and Montenegro, Slovenia, Switzerland, Tanzania and Tunisia, the band 12.5-12.75 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis.

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5.500 *Additional allocation:* In Algeria, Angola, Saudi Arabia, Bahrain, Brunei Darussalam, Cameroon, Egypt, the United Arab Emirates, Gabon, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kuwait, Lebanon, Madagascar, Malaysia, Mali, Malta, Morocco, Mauritania, Nigeria, Pakistan, Qatar, the Syrian Arab Republic,

Singapore, Sudan, Chad and Tunisia, the band 13.4-14 GHz is also allocated to the fixed and mobile services on a primary basis.

5.501 *Additional allocation:* In Azerbaijan, Hungary, Japan, Mongolia, Kyrgyzstan, Romania, the United Kingdom and Turkmenistan, the band 13.4-14 GHz is also allocated to the radionavigation service on a primary basis.

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5.502 In the band 13.75-14 GHz, an earth station of a geostationary fixed-satellite service network shall have a minimum antenna diameter of 1.2 m and an earth station of a non-geostationary fixed-satellite service system shall have a minimum antenna diameter of 4.5 m. In addition, the e.i.r.p., averaged over one second, radiated by a station in the radiolocation or radionavigation services shall not exceed 59 dBW for elevation angles above 2° and 65 dBW at lower angles. Before an administration brings into use an earth station in a geostationary-satellite network in the fixed-satellite service in this band with an antenna size smaller than 4.5 m, it shall ensure that the power flux-density produced by this earth station does not exceed:

— -115 dB(W/(m² · 10 MHz)) for more than 1% of the time produced at 36 m above sea level at the low water mark, as officially recognized by the coastal State;

— -115 dB(W/(m² · 10 MHz)) for more than 1% of the time produced 3 m above ground at the border of the territory of an administration deploying or planning to deploy land mobile radars in this band, unless prior agreement has been obtained.

For earth stations within the fixed-satellite service having an antenna diameter greater than or equal to 4.5 m, the e.i.r.p. of any emission should be at least 68 dBW and should not exceed 85 dBW.

5.503 In the band 13.75-14 GHz, geostationary space stations in the space research service for which information for advance publication has been received by the Bureau prior to 31 January 1992 shall operate on an equal basis with stations in the fixed-satellite service; after that date, new geostationary space stations in the space research service will operate on a secondary basis. Until those geostationary space stations in the space research service for which information for advance publication has been received by the Bureau prior to 31 January 1992 cease to operate in this band:

—In the band 13.77-13.78 GHz, the e.i.r.p. density of emissions from any earth station in the fixed-satellite service operating with a space station in geostationary-satellite orbit shall not exceed:

(i) $4.7D + 28$ dB(W/40 kHz), where D is the fixed-satellite service earth station antenna diameter (m) for antenna diameters equal to or greater than 1.2 m and less than 4.5 m;

(ii) $49.2 + 20 \log(D/4.5)$ dB(W/40 kHz), where D is the fixed-satellite service earth station antenna diameter (m) for antenna diameters equal to or greater than 4.5 m and less than 31.9 m;

(iii) 66.2 dB(W/40 kHz) for any fixed-satellite service earth station for antenna diameters (m) equal to or greater than 31.9 m;

(iv) 56.2 dB(W/4 kHz) for narrow-band (less than 40 kHz of necessary bandwidth) fixed-satellite service earth station emissions from any fixed-satellite service earth station having an antenna diameter of 4.5 m or greater;

—The e.i.r.p. density of emissions from any earth station in the fixed-satellite service operating with a space station in non-geostationary-satellite orbit shall not exceed 51 dBW in the 6 MHz band from 13.772 to 13.778 GHz.

Automatic power control may be used to increase the e.i.r.p. density in these frequency ranges to compensate for rain attenuation, to the extent that the power flux-density at the fixed-satellite service space station does not exceed the value resulting from use by an earth station of an e.i.r.p. meeting the above limits in clear-sky conditions.

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5.504C In the band 14-14.25 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Botswana, Côte d'Ivoire, Egypt, Guinea, India, Iran (Islamic Republic of), Kuwait, Lesotho, Nigeria, Oman, the Syrian Arab Republic and Tunisia by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU-R M.1643, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29.

5.505 *Additional allocation:* In Algeria, Angola, Saudi Arabia, Bahrain, Bangladesh, Botswana, Brunei Darussalam, Cameroon, China, Congo (Rep. of the), Korea (Rep. of), Egypt, the United Arab Emirates, Gabon, Guatemala, Guinea, India, Indonesia,

Iran (Islamic Republic of), Iraq, Israel, Japan, Jordan, Kuwait, Lesotho, Lebanon, Malaysia, Mali, Morocco, Mauritania, Oman, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, the Dem. People's Rep. of Korea, Singapore, Somalia, Sudan, Swaziland, Tanzania, Chad and Yemen, the band 14–14.3 GHz is also allocated to the fixed service on a primary basis.

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5.506A In the band 14–14.5 GHz, ship earth stations with an e.i.r.p. greater than 21 dBW shall operate under the same conditions as earth stations located on board vessels, as provided in Resolution 902 (WRC–03). This footnote shall not apply to ship earth stations for which the complete Appendix 4 information has been received by the Bureau prior to 5 July 2003.

5.506B Earth stations located on board vessels communicating with space stations in the fixed-satellite service may operate in the frequency band 14–14.5 GHz without the need for prior agreement from Cyprus, Greece and Malta, within the minimum distance given in Resolution 902 (WRC–03) from these countries.

5.508 *Additional allocation:* In Germany, Bosnia and Herzegovina, France, Italy, Libyan Arab Jamahiriya, The Former Yugoslav Rep. of Macedonia, the United Kingdom, Serbia and Montenegro and Slovenia, the band 14.25–14.3 GHz is also allocated to the fixed service on a primary basis.

5.508A In the band 14.25–14.3 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Botswana, China, Côte d'Ivoire, Egypt, France, Guinea, India, Iran (Islamic Republic of), Italy, Kuwait,

Lesotho, Nigeria, Oman, the Syrian Arab Republic, the United Kingdom and Tunisia by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU–R M.1643, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29.

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5.509A In the band 14.3–14.5 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Botswana, Cameroon, China, Côte d'Ivoire, Egypt, France, Gabon, Guinea, India, Iran (Islamic Republic of), Italy, Kuwait, Lesotho, Morocco, Nigeria, Oman, the Syrian Arab Republic, the United Kingdom, Sri Lanka, Tunisia and Viet Nam by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU–R M.1643, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29.

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5.512 *Additional allocation:* In Algeria, Angola, Saudi Arabia, Austria, Bahrain, Bangladesh, Bosnia and Herzegovina, Brunei Darussalam, Cameroon, Congo (Rep. of the), Costa Rica, Egypt, El Salvador, the United Arab Emirates, Eritrea, Finland,

Guatemala, India, Indonesia, Iran (Islamic Republic of), the Libyan Arab Jamahiriya, Jordan, Kenya, Kuwait, Malaysia, Mali, Morocco, Mauritania, Mozambique, Nepal, Nicaragua, Oman, Pakistan, Qatar, Serbia and Montenegro, Singapore, Slovenia, Somalia, Sudan, Swaziland, Tanzania, Chad, Togo and Yemen, the band 15.7–17.3 GHz is also allocated to the fixed and mobile services on a primary basis.

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5.514 *Additional allocation:* In Algeria, Angola, Saudi Arabia, Austria, Bahrain, Bangladesh, Bosnia and Herzegovina, Cameroon, Costa Rica, El Salvador, the United Arab Emirates, Finland, Guatemala, India, Iran (Islamic Republic of), Iraq, Israel, Italy, the Libyan Arab Jamahiriya, Japan, Jordan, Kuwait, Lithuania, Nepal, Nicaragua, Nigeria, Oman, Uzbekistan, Pakistan, Qatar, Kyrgyzstan, Serbia and Montenegro, Slovenia and Sudan, the band 17.3–17.7 GHz is also allocated to the fixed and mobile services on a secondary basis. The power limits given in Nos. 21.3 and 21.5 shall apply.

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5.516A In the band 17.3–17.7 GHz, earth stations of the fixed-satellite service (space-to-Earth) in Region 1 shall not claim protection from the broadcasting-satellite service feeder-link earth stations operating under Appendix 30A, nor put any limitations or restrictions on the locations of the broadcasting-satellite service feeder-link earth stations anywhere within the service area of the feeder link.

5.516B The following bands are identified for use by high-density applications in the fixed-satellite service:

17.3–17.7 GHz	(space-to-Earth) in Region 1,
18.3–19.3 GHz	(space-to-Earth) in Region 2,
19.7–20.2 GHz	(space-to-Earth) in all Regions,
39.5–40 GHz	(space-to-Earth) in Region 1,
40–40.5 GHz	(space-to-Earth) in all Regions,
40.5–42 GHz	(space-to-Earth) in Region 2,
47.5–47.9 GHz	(space-to-Earth) in Region 1,
48.2–48.54 GHz	(space-to-Earth) in Region 1,
49.44–50.2 GHz	(space-to-Earth) in Region 1, and
27.5–27.82 GHz	(Earth-to-space) in Region 1,
28.35–28.45 GHz	(Earth-to-space) in Region 2,
28.45–28.94 GHz	(Earth-to-space) in all Regions,
28.94–29.1 GHz	(Earth-to-space) in Region 2 and 3,
29.25–29.46 GHz	(Earth-to-space) in Region 2,
29.46–30 GHz	(Earth-to-space) in all Regions,
48.2–50.2 GHz	(Earth-to-space) in Region 2.

This identification does not preclude the use of these bands by other fixed-satellite service applications or by other services to which these bands are allocated on a co-primary basis and does not establish priority in these Radio Regulations among users of the bands.

Administrations should take this into account when considering regulatory provisions in relation to these bands. See Resolution 143 (WRC–03).

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5.521 *Alternative allocation:* In Germany, Denmark, the United Arab Emirates and Greece, the band 18.1–18.4 GHz is allocated to the fixed, fixed-satellite (space-to-Earth) and mobile services on a primary basis (see No.

5.33). The provisions of No. 5.519 also apply.

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5.530 In Regions 1 and 3, the allocation to the broadcasting-satellite service in the band 21.4–22 GHz shall come into effect on 1 April 2007. The use of this band by the broadcasting-satellite service after that date and on an interim basis prior to that date is subject to the provisions of Resolution 525 (WARC-92)³

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5.536A Administrations operating earth stations in the Earth exploration-satellite service or the space research service shall not claim protection from stations in the fixed and mobile services operated by other administrations. In addition, earth stations in the Earth exploration-satellite service or in the space research service should be operated taking into account Recommendations ITU-R SA.1278 and ITU-R SA.1625, respectively.

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5.536C In Algeria, Saudi Arabia, Bahrain, Botswana, Brazil, Cameroon, Comoros, Cuba, Djibouti, Egypt, United Arab Emirates, Estonia, Finland, Iran (Islamic Republic of), Israel, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Morocco, Nigeria, Oman, Qatar, Syrian Arab Republic, Somalia, Sudan, Tanzania, Tunisia, Uruguay, Zambia and Zimbabwe, earth stations operating in the space research service in the band 25.5–27 GHz shall not claim protection from, or constrain the use and deployment of, stations of the fixed and mobile services.

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5.537A In Bhutan, Korea (Rep. of), the Russian Federation, Indonesia, Iran (Islamic Republic of), Japan, Kazakhstan, Lesotho, Malaysia, Maldives, Mongolia, Myanmar, Uzbekistan, Pakistan, Philippines, Kyrgyzstan, the Dem. People's Rep. of Korea, Sri Lanka, Thailand and Viet Nam, the allocation to the fixed service in the band 27.5–28.35 GHz may also be used by high altitude platform stations (HAPS). The use of HAPS within the band 27.5–28.35 GHz is limited, within the territory of the countries listed above, to a single 300 MHz sub-band. Such use of 300 MHz of the fixed-service allocation by HAPS in the above countries is further limited to operation in the HAPS-to-ground direction and shall not cause harmful interference to, nor claim protection from, other types of fixed-service systems or other co-primary services. Furthermore, the

development of these other services shall not be constrained by HAPS. See Resolution 145 (WRC-03).

5.538 *Additional allocation:* The bands 27.500–27.501 GHz and 29.999–30.000 GHz are also allocated to the fixed-satellite service (space-to-Earth) on a primary basis for the beacon transmissions intended for up-link power control. Such space-to-Earth transmissions shall not exceed an equivalent isotropically radiated power (e.i.r.p.) of +10 dBW in the direction of adjacent satellites on the geostationary-satellite orbit. In the band 27.500–27.501 GHz, such space-to-Earth transmissions shall not produce a power flux-density in excess of the values specified in Article 21, Table 21-4 on the Earth's surface.

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5.543A In Bhutan, Korea (Rep. of), the Russian Federation, Indonesia, Iran (Islamic Republic of), Japan, Kazakhstan, Lesotho, Malaysia, Maldives, Mongolia, Myanmar, Uzbekistan, Pakistan, the Philippines, Kyrgyzstan, the Dem. People's Rep. of Korea, Sri Lanka, Thailand and Viet Nam, the allocation to the fixed service in the band 31–31.3 GHz may also be used by systems using high altitude platform stations (HAPS) in the ground-to-HAPS direction. The use of the band 31–31.3 GHz by systems using HAPS is limited to the territory of the countries listed above and shall not cause harmful interference to, nor claim protection from, other types of fixed-service systems, systems in the mobile service and systems operated under No. 5.545. Furthermore, the development of these services shall not be constrained by HAPS. Systems using HAPS in the band 31–31.3 GHz shall not cause harmful interference to the radio astronomy service having a primary allocation in the band 31.3–31.8 GHz, taking into account the protection criterion as given in Recommendation ITU-R RA.769. In order to ensure the protection of satellite passive services, the level of unwanted power density into a HAPS ground station antenna in the band 31.3–31.8 GHz shall be limited to –106 dB(W/MHz) under clear-sky conditions, and may be increased up to –100 dB(W/MHz) under rainy conditions to take account of rain attenuation, provided the effective impact on the passive satellite does not exceed the impact under clear-sky conditions as given above. See Resolution 145 (WRC-03).

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5.545 *Different category of service:* In Armenia, Azerbaijan, Georgia, Mongolia, Kyrgyzstan, Tajikistan and

Turkmenistan, the allocation of the band 31–31.3 GHz to the space research service is on a primary basis (see No. 5.33).

5.546 *Different category of service:* In Saudi Arabia, Armenia, Azerbaijan, Belarus, Egypt, the United Arab Emirates, Spain, Estonia, the Russian Federation, Finland, Georgia, Hungary, Iran (Islamic Republic of), Israel, Jordan, Latvia, Lebanon, Moldova, Mongolia, Uzbekistan, Poland, the Syrian Arab Republic, Kyrgyzstan, Romania, the United Kingdom, South Africa, Tajikistan, Turkmenistan and Turkey, the allocation of the band 31.5–31.8 GHz to the fixed and mobile, except aeronautical mobile, services is on a primary basis (see No. 5.33).

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5.547C *Alternative allocation:* In the United States, the band 32–32.3 GHz is allocated to the radionavigation and space research (deep space) (space-to-Earth) services on a primary basis.

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5.548 In designing systems for the inter-satellite service in the band 32.3–33 GHz, for the radionavigation service in the band 32–33 GHz, and for the space research service (deep space) in the band 31.8–32.3 GHz, administrations shall take all necessary measures to prevent harmful interference between these services, bearing in mind the safety aspects of the radionavigation service (see Recommendation 707).

5.549 *Additional allocation:* In Saudi Arabia, Bahrain, Bangladesh, Egypt, the United Arab Emirates, Gabon, Indonesia, Iran (Islamic Republic of), Iraq, Israel, the Libyan Arab Jamahiriya, Jordan, Kuwait, Lebanon, Malaysia, Mali, Malta, Morocco, Mauritania, Nepal, Nigeria, Oman, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, the Dem. Rep. of the Congo, Singapore, Somalia, Sudan, Sri Lanka, Togo, Tunisia and Yemen, the band 33.4–36 GHz is also allocated to the fixed and mobile services on a primary basis.

5.549A In the band 35.5–36.0 GHz, the mean power flux-density at the Earth's surface, generated by any spaceborne sensor in the Earth exploration-satellite service (active) or space research service (active), for any angle greater than 0.8° from the beam centre shall not exceed –73.3 dB(W/m²) in this band.

5.550 *Different category of service:* In Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan and Turkmenistan, the allocation of the band 34.7–35.2 GHz to the space

³ Note by the Secretariat: This Resolution was revised by WRC-03.

research service is on a primary basis (see No. 5.33).

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5.551I The power flux-density in the band 42.5–43.5 GHz produced by any geostationary space station in the fixed-satellite service (space-to-Earth), or the broadcasting-satellite service (space-to-Earth) operating in the 42–42.5 GHz band, shall not exceed the following values at the site of any radio astronomy station:

- 137 dB(W/m²) in 1 GHz and –153 dB(W/m²) in any 500 kHz of the 42.5–43.5 GHz band at the site of any radio astronomy station registered as a single-dish telescope; and
- 116 dB(W/m²) in any 500 kHz of the 42.5–43.5 GHz band at the site of any radio astronomy station registered as a very long baseline interferometry station.

These values shall apply at the site of any radio astronomy station that either:

- was in operation prior to 5 July 2003 and has been notified to the Bureau before 4 January 2004; or
- was notified before the date of receipt of the complete Appendix 4 information for coordination or notification, as appropriate, for the space station to which the limits apply.

Other radio astronomy stations notified after these dates may seek an agreement with administrations that have authorized the space stations. In Region 2, Resolution 743 (WRC–03) shall apply. The limits in this footnote may be exceeded at the site of a radio astronomy station of any country whose administration so agreed.

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5.552A The allocation to the fixed service in the bands 47.2–47.5 GHz and 47.9–48.2 GHz is designated for use by high altitude platform stations. The use of the bands 47.2–47.5 GHz and 47.9–48.2 GHz is subject to the provisions of Resolution 122 (WRC–97)³.

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5.555B The power flux-density in the band 48.94–49.04 GHz produced by any geostationary space station in the fixed-satellite service (space-to-Earth) operating in the bands 48.2–48.54 GHz and 49.44–50.2 GHz shall not exceed –151.8 dB (W/m²) in any 500 kHz band at the site of any radio astronomy station.

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United States (US) Footnotes

(These footnotes, each consisting of the letters “US” followed by one or more

digits, denote stipulations applicable to both Federal and non-Federal operations and thus appear in both the Federal Table and the non-Federal Table.)

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US18 In the bands 9–14 kHz, 90–110 kHz, 190–415 kHz, 510–535 kHz, and 2700–2900 MHz, navigation aids in the U.S. and its insular areas are normally operated by the Federal Government. However, authorizations may be made by the FCC for non-Federal operations in these bands subject to the conclusion of appropriate arrangements between the FCC and the Federal agencies concerned and upon special showing of need for service which the Federal Government is not yet prepared to render.

US25 The use of frequencies in the band 25.85–26.175 MHz may be authorized in any area to non-Federal remote pickup broadcast base and mobile stations on the condition that harmful interference is not caused to stations of the broadcasting service in the band 25.85–26.1 MHz and to stations of the maritime mobile service in the band 26.1–26.175 MHz. Frequencies within the band 26.1–26.175 MHz may also be assigned for use by low power auxiliary stations.

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US32 Except for the frequencies 123.3 and 123.5 MHz, which are not authorized for Federal use, the band 123.1125–123.5875 MHz is available for FAA communications incident to flight test and inspection activities pertinent to aircraft and facility certification on a secondary basis.

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US41 In the band 2450–2500 MHz, the Federal radiolocation service is permitted on condition that harmful interference is not caused to non-Federal services.

US44 In the band 2900–3100 MHz, the non-Federal radiolocation service may be authorized on the condition that no harmful interference is caused to Federal services.

US48 In the band 9000–9200 MHz, the use of the radiolocation service by non-Federal licensees may be authorized on the condition that harmful interference is not caused to the aeronautical radionavigation service or to the Federal radiolocation service.

US49 In the band 5460–5470 MHz, the non-Federal radiolocation service may be authorized on the condition that it does not cause harmful interference to the aeronautical or maritime radionavigation services or to the Federal radiolocation service.

US50 In the band 5470–5650 MHz, the radiolocation service may be authorized for non-Federal use on the condition that harmful interference is not caused to the maritime radionavigation service or to the Federal radiolocation service.

US51 In the band 9300–9500 MHz, the radiolocation service may be authorized for non-Federal use on the condition that harmful interference is not caused to the Federal radiolocation service.

US53 In view of the fact that the band 13.25–13.4 GHz is allocated to doppler navigation aids, Federal and non-Federal airborne doppler radars in the aeronautical radionavigation service are permitted in the band 8750–8850 MHz only on the condition that they must accept any interference that may be experienced from stations in the radiolocation service in the band 8500–10000 MHz.

US58 In the band 10–10.5 GHz, pulsed emissions are prohibited, except for weather radars on board meteorological satellites in the band 10–10.025 GHz. The amateur service and the non-Federal radiolocation service, which shall not cause harmful interference to the Federal radiolocation service, are the only non-Federal services permitted in this band. The non-Federal radiolocation service is limited to survey operations as specified in footnote US108.

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US74 In the bands 25.55–25.67, 73.0–74.6, 406.1–410.0, 608–614, 1400–1427 (see US368), 1660.5–1670.0, 2690–2700, and 4990–5000 MHz, and in the bands 10.68–10.7, 15.35–15.4, 23.6–24.0, 31.3–31.5, 86–92, 100–102, 109.5–111.8, 114.25–116, 148.5–151.5, 164–167, 200–209, and 250–252 GHz, the radio astronomy service shall be protected from unwanted emissions only to the extent that such radiation exceeds the level which would be present if the offending station were operating in compliance with the technical standards or criteria applicable to the service in which it operates. Radio astronomy observations in these bands are performed at the locations listed in US311.

US77 Federal stations may also be authorized: (a) Port operations use on a simplex basis by coast and ship stations of the frequencies 156.6 and 156.7 MHz; (b) Duplex port operations use of the frequency 157.0 MHz for ship stations and 161.6 MHz for coast stations; (c) Inter-ship use of 156.3 MHz on a simplex basis; and (d) Vessel traffic services under the control of the U.S. Coast Guard on a simplex basis by coast

³ Note by the Secretariat: This Resolution was revised by WRC–03.

and ship stations on the frequencies 156.25, 156.55, 156.6 and 156.7 MHz. (e) Navigational bridge-to-bridge and navigational communications on a simplex basis by coast and ship stations on the frequencies 156.375 and 156.65 MHz

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US80 Federal stations may use the frequency 122.9 MHz subject to the following conditions: (a) All operations by Federal stations shall be restricted to the purpose for which the frequency is authorized to non-Federal stations, and shall be in accordance with the appropriate provisions of the Commission's Rules and Regulations, Part 87, Aviation Services; (b) Use of the frequency is required for coordination of activities with Commission licensees operating on this frequency; and (c) Federal stations will not be authorized for operation at fixed locations.

US81 The band 38.0–38.25 MHz is used by both Federal and non-Federal radio astronomy observatories. No new fixed or mobile assignments are to be made and Federal stations in the band 38.0–38.25 MHz will be moved to other bands on a case-by-case basis, as required, to protect radio astronomy observations from harmful interference. As an exception, however, low powered military transportable and mobile stations used for tactical and training purposes will continue to use the band. To the extent practicable, the latter operations will be adjusted to relieve such interference as may be caused to radio astronomy observations. In the event of harmful interference from such local operations, radio astronomy observatories may contact local military commands directly, with a view to effecting relief. A list of military commands, areas of coordination, and points of contact for purposes of relieving interference may be obtained upon request from the Office of Engineering and Technology, Federal Communications Commission, Washington, D.C. 20554.

US82 In the bands 4146–4152 kHz, 6224–6233 kHz, 8294–8300 kHz, 12353–12368 kHz, 16528–16549 kHz, 18825–18846 kHz, 22159–22180 kHz, and 25100–25121 kHz, the assignable frequencies may be authorized on a shared non-priority basis to Federal and non-Federal ship and coast stations (SSB telephony, with peak envelope power not to exceed 1 kW).

US87 The band 449.75–450.25 MHz may be used by Federal and non-Federal stations for space telecommand (Earth-to-space) at specific locations, subject to such conditions as may be applied on a case-by-case basis. Operators shall take

all practical steps to keep the carrier frequency close to 450 MHz.

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US104 In the band 90–110 kHz, the LORAN radionavigation system has priority in the United States and its insular areas. Radiolocation land stations making use of LORAN type equipment may be authorized to both Federal and non-Federal licensees on a secondary basis for offshore radiolocation activities only at specific locations and subject to such technical and operational conditions (*e.g.*, power, emission, pulse rate and phase code, hours of operation), including on-the-air testing, as may be required on a case-by-case basis to ensure protection of the LORAN radionavigation system from harmful interference and to ensure mutual compatibility among radiolocation operators. Such authorizations to stations in the radiolocation service are further subject to showing of need for service which is not currently provided and which the Federal Government is not yet prepared to render by way of the radionavigation service.

US106 The frequency 156.75 MHz is available for assignment to Federal and non-Federal stations for environmental communications in accordance with an agreed plan.

US107 The frequency 156.8 MHz is the national distress, safety and calling frequency for the maritime mobile VHF radiotelephone service for use by Federal and non-Federal ship and coast stations. Guard bands of 156.7625–156.7875 and 156.8125–156.8375 MHz are maintained.

US108 In the bands 3300–3500 MHz and 10–10.5 GHz, survey operations, using transmitters with a peak power not to exceed five watts into the antenna, may be authorized for Federal and non-Federal use on a secondary basis to other Federal radiolocation operations.

US110 In the band 9200–9300 MHz, the use of the radiolocation service by non-Federal licensees may be authorized on the condition that harmful interference is not caused to the maritime radionavigation service or to the Federal radiolocation service.

US112 The frequency 123.1 MHz is for search and rescue communications. This frequency may be assigned for air traffic control communications at special aeronautical events on the condition that no harmful interference is caused to search and rescue communications during any period of search and rescue operations in the locale involved.

US116 In the bands 890–902 MHz and 935–941 MHz, no new assignments

are to be made to Federal radio stations after July 10, 1970 except on case-by-case basis, to experimental stations and to additional stations of existing networks in Alaska. Federal assignments existing prior to July 10 1970 to stations in Alaska may be continued. All other existing Federal assignments shall be on a secondary basis to stations in the non-Federal land mobile service and shall be subject to adjustment or removal from the bands 890–902 MHz, 928–932 MHz and 935–941 MHz at the request of the FCC.

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US209 The use of frequencies 460.6625, 460.6875, 460.7125, 460.7375, 460.7625, 460.7875, 460.8125, 460.8375, 460.8625, 465.6625, 465.6875, 465.7125, 465.7375, 465.7625, 465.7875, 465.8125, 465.8375, and 465.8625 MHz may be authorized, with 100 mW or less output power, to Federal and non-Federal radio stations for one-way, non-voice biomedical telemetry operations in hospitals, or medical or convalescent centers.

US210 In the bands 40.66–40.7 MHz and 216–220 MHz, frequencies may be authorized to Federal and non-Federal stations on a secondary basis for the tracking of, and telemetering of scientific data from, ocean buoys and wildlife. Operation in these bands is subject to the technical standards specified in Section 8.2.42 of the NTIA Manual for Federal use, or 47 CFR 90.248 for non-Federal use. After January 1, 2002, no new assignments shall be authorized in the band 216–217 MHz.

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US217 In the band 420–450 MHz, pulse-ranging radiolocation systems may be authorized for Federal and non-Federal use along the shorelines of the contiguous 48 States and Alaska. In the sub-band 420–435 MHz, spread spectrum radiolocation systems may be authorized for Federal and non-Federal use within the contiguous 48 States and Alaska. All stations operating in accordance with this provision shall be secondary to stations operating in accordance with the Table of Frequency Allocations. Authorizations shall be granted on a case-by-case basis; however, operations proposed to be located within the following geographic areas should not expect to be accommodated:

(a) In Arizona, Florida (including the Key West area), and New Mexico.

(b) In those portions of California and Nevada that is south of latitude 37°10' North.

(c) In that portion of Texas that is west of longitude 104°00' West.

(d) Within 322 kilometers (200 miles) of: (1) Eglin AFB, FL (30°30' N, 86°30' W); (2) Patrick AFB, FL (28°21' N, 80°43' W); and (3) Pacific Missile Test Center, Point Mugu, CA (34°09' N, 119°11' W).

(e) Within 240 kilometers (150 miles) of Beale AFB, CA (39°08' N, 121°26' W).

(f) Within 200 kilometers (124 miles) of: (1) Goodfellow AFB, TX (31°25' N, 100°24' W); and (2) Warner Robins AFB, GA (32°38' N, 83°35' W).

(g) Within 160 kilometers (100 miles) of: (1) Clear, AK (64°17' N, 149°10' W); (2) Concrete, ND (48°43' N, 97°54' W); and (3) Otis AFB, MA (41°45' N, 70°32' W).

US218 The band 902–928 MHz is available for Location and Monitoring Service (LMS) systems subject to not causing harmful interference to the operation of all Federal stations authorized in this band. These systems must tolerate interference from the operation of industrial, scientific, and medical (ISM) equipment and the operation of Federal stations authorized in this band.

US220 The frequencies 36.25 and 41.71 MHz may be authorized to Federal stations and non-Federal stations in the petroleum radio service, for oil spill containment and cleanup operations. The use of these frequencies for oil spill containment or cleanup operations is limited to the inland and coastal waterway regions.

US224 Federal systems utilizing spread spectrum techniques for terrestrial communication, navigation and identification may be authorized to operate in the band 960–1215 MHz on the condition that harmful interference will not be caused to the aeronautical radionavigation service. These systems will be handled on a case-by-case basis. Such systems shall be subject to a review at the national level for operational requirements and electromagnetic compatibility prior to development, procurement or modification.

US225 In addition to its present Federal use, the band 510–525 kHz is available to Federal and non-Federal

aeronautical radionavigation stations inland of the Territorial Base Line as coordinated with the military services. In addition, the frequency 510 kHz is available for non-Federal ship-helicopter operations when beyond 100 nautical miles from shore and required for aeronautical radionavigation.

US229 Federal use of the fixed and land mobile services in the band 216–220 MHz and of the aeronautical mobile service in the band 217–220 MHz shall be limited to telemetering and associated telecommand operations. After January 1, 2002, no new Federal assignments shall be authorized in the band 216–217 MHz. The sub-band 216.88–217.08 MHz is allocated to the radiodetermination service on a primary basis for Federal use, limited to the Navy's Space Surveillance (SPASUR) radar system at the following nine sites (Coordinate datum: NAD83).

(a) Three stations transmit at a very high power and other operations may be affected within the following areas:

Transmitter sites	Coordinates	Frequency	Interference radius
Gila River (Phoenix), AZ	33°06'32" N, 112°01'45" W	216.97 MHz	150 km (93.2 miles).
Lake Kickapoo (Archer City), TX	33°32'47" N, 98°45'46" W	216.983 MHz	250 km (155.3 miles).
Jordan Lake (Wetumpka), AL	32°39'33" N, 86°15'52" W	216.99 MHz	150 km.

(b) Reception of the sub-band 216.965–216.995 MHz shall be protected from harmful interference

within 50 kilometers (31.1 miles) of the following sites:

Receive sites	Coordinates
Elephant Butte, NM	33°26'35" N, 106°59'50" W.
Fort Stewart, GA	31°58'36" N, 081°30'34" W.
Hawkinsville, GA	32°17'20" N, 083°32'10" W.
Red River, AR	33°19'48" N, 093°33'01" W.
San Diego, CA	32°34'42" N, 116°58'11" W.
Silver Lake, MS	33°08'42" N, 091°01'16" W.

US230 The bands 422.1875–425.4875 MHz and 427.1875–429.9875 MHz are allocated to the land mobile service on a primary basis for non-Federal use within 80.5 kilometers (50 miles) of Cleveland, OH (41°29'51.2" N, 81°41'49.5" W) and Detroit, MI (42°19'48.1" N, 83°02'56.7" W). The bands 423.8125–425.4875 MHz and 428.8125–429.9875 MHz are allocated to the land mobile service on a primary basis for non-Federal use within 80.5 kilometers of Buffalo, NY (42°52'52.2" N, 78°52'20.1" W). Coordinate datum: NAD83.

US231 When an assignment cannot be obtained in the bands between 200 kHz and 525 kHz, which are allocated to aeronautical radionavigation,

assignments may be made to aeronautical radiobeacons in the maritime mobile band 435–490 kHz, on a secondary basis, subject to the coordination and agreement of those agencies having assignments within the maritime mobile band which may be affected. Assignments to Federal aeronautical radionavigation radiobeacons in the band 435–490 kHz shall not be a bar to any required changes to the maritime mobile radio service and shall be limited to non-voice emissions.

US240 The bands 1715–1725 and 1740–1750 kHz are allocated on a primary basis and the bands 1705–1715 kHz and 1725–1740 kHz on a secondary

basis to the aeronautical radionavigation service (radiobeacons).

US244 The band 136–137 MHz is allocated to the non-Federal aeronautical mobile (R) service on a primary basis, and is subject to pertinent international treaties and agreements. The frequencies 136, 136.025, 136.05, 136.075, 136.1, 136.125, 136.15, 136.175, 136.2, 136.225, 136.25, 136.275, 136.3, 136.325, 136.35, 136.375, 136.4, 136.425, 136.45, and 136.475 MHz are available on a shared basis to the Federal Aviation Administration for air traffic control purposes, such as automatic weather observation stations (AWOS), automatic terminal information services (ATIS), flight

information services-broadcast (FIS-B), and airport control tower communications.

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US252 The band 2110–2120 MHz is also allocated to the space research service (deep space) (Earth-to-space) on a primary basis at Goldstone, California.

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US258 In the bands 8025–8400 MHz and 25.5–27 GHz, the Earth exploration-satellite service (space-to-Earth) is allocated on a primary basis for non-Federal use. Authorizations are subject to a case-by-case electromagnetic compatibility analysis.

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US262 The band 7145–7190 MHz is also allocated to the space research service (deep space) (Earth-to-space) on a secondary basis for non-Federal use. The use of the bands 7145–7190 MHz and 34.2–34.7 GHz by the space research service (deep space) (Earth-to-space) and of the band 31.8–32.3 GHz by the space research service (deep space) (space-to-Earth) is limited to Goldstone, California.

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US266 Non-Federal licensees in the Public Safety Radio Pool holding a valid authorization on June 30, 1958, to operate in the frequency band 156.27–157.45 MHz or on the frequencies 161.85 MHz or 161.91 MHz may, upon proper application, continue to be authorized for such operation, including expansion of existing systems, until such time as harmful interference is caused to the operation of any authorized station other than those licensed in the Public Safety Radio Pool.

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US268 The bands 890–902 MHz and 928–942 MHz are also allocated to the radiolocation service for Federal ship stations (off-shore ocean areas) on the condition that harmful interference is not caused to non-Federal land mobile stations. The provisions of footnote US116 apply.

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US275 The band 902–928 MHz is allocated on a secondary basis to the amateur service subject to not causing harmful interference to the operations of Federal stations authorized in this band

or to Location and Monitoring Service (LMS) systems. Stations in the amateur service must tolerate any interference from the operations of industrial, scientific, and medical (ISM) devices, LMS systems, and the operations of Federal stations authorized in this band. Further, the amateur service is prohibited in those portions of Texas and New Mexico bounded on the south by latitude 31°41' North, on the east by longitude 104°11' West, and on the north by latitude 34°30' North, and on the west by longitude 107°30' West; in addition, outside this area but within 150 miles of these boundaries of White Sands Missile Range the service is restricted to a maximum transmitter peak envelope power output of 50 watts.

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US281 In the band 25070–25210 kHz, non-Federal stations in the Industrial/Business Pool shall not cause harmful interference to, and must accept interference from, stations in the maritime mobile service operating in accordance with the Table of Frequency Allocations.

US282 In the band 4650–4700 kHz, frequencies may be authorized for non-Federal communication with helicopters in support of off-shore drilling operations on the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations.

US283 In the bands 2850–3025 kHz, 3400–3500 kHz, 4650–4700 kHz, 5450–5680 kHz, 6525–6685 kHz, 10005–10100 kHz, 11275–11400 kHz, 13260–13360 kHz, and 17900–17970 kHz, frequencies may be authorized for non-Federal flight test purposes on the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations.

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US296 In the bands designated for ship wide-band telegraphy, facsimile and special transmission systems, the following assignable frequencies are available to non-Federal stations on a shared basis with Federal stations: 2070.5 kHz, 2072.5 kHz, 2074.5 kHz, 2076.5 kHz, 4154 kHz, 4170 kHz, 6235 kHz, 6259 kHz, 8302 kHz, 8338 kHz, 12370 kHz, 12418 kHz, 16551 kHz,

16615 kHz, 18848 kHz, 18868 kHz, 22182 kHz, 22238 kHz, 25123 kHz, and 25159 kHz.

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US298 Channels 27555 kHz, 27615 kHz, 27635 kHz, 27655 kHz, 27765 kHz, and 27860 kHz are available for use by forest product licensees on a secondary basis to Federal operations including experimental stations. Non-Federal operations on these channels will not exceed 150 watts output power and are limited to the states of Washington, Oregon, Maine, North Carolina, South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas (eastern portion).

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US300 The frequencies 169.445, 169.505, 170.245, 170.305, 171.045, 171.105, 171.845 and 171.905 MHz are available for wireless microphone operations on a secondary basis to Federal and non-Federal operations.

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US303 In the band 2285–2290 MHz, non-Federal space stations in the space research, space operations and Earth exploration-satellite services may be authorized to transmit to the Tracking and Data Relay Satellite System subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Federal stations. The power flux-density at the Earth's surface from such non-Federal stations shall not exceed –144 to –154 dBW/m²/4 kHz, depending on angle of arrival, in accordance with ITU Radio Regulation 21.16.

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US310 In the band 14.896–15.121 GHz, non-Federal space stations in the space research service may be authorized on a secondary basis to transmit to Tracking and Data Relay Satellites subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Federal stations. The power flux-density produced by such non-Federal stations at the Earth's surface in any 1 MHz band for all conditions and methods of modulation shall not exceed:

– 124 dB(W/m ²)	for 0° <θ ≤ 5°.
– 124 + (θ – 5)/2dB(W/m ²)	for 5° <θ ≤ 25°.
– 114 dB(W/m ²)	for 25° <θ ≤ 90°.

where θ is the angle of arrival of the radio-frequency wave (degrees above the horizontal). These limits relate to the power flux-density and angles of arrival

which would be obtained under free-space propagation conditions.

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US316 The band 2900–3000 MHz is also allocated on a primary basis to the

meteorological aids service. Operations in this service are limited to Federal Next Generation Weather Radar (NEXRAD) systems where accommodation in the 2700–2900 MHz

band is not technically practical and are subject to coordination with existing authorized stations.

US319 In the bands 137–138 MHz, 148–149.9 MHz, 149.9–150.05 MHz, 399.9–400.05 MHz, 400.15–401 MHz, 1610–1626.5 MHz, and 2483.5–2500 MHz, Federal stations in the mobile-satellite service shall be limited to earth stations operating with non-Federal space stations.

US320 The use of the bands 137–138 MHz, 148–150.05 MHz, 399.9–400.05 MHz, and 400.15–401 MHz by the mobile-satellite service is limited to non-voice, non-geostationary satellite systems and may include satellite links between land earth stations at fixed locations.

US321 The band 535–1705 kHz is also allocated to the non-Federal mobile service on a secondary basis for the distribution of public service information from Travelers' Information Stations operating in accordance with the provisions of 47 CFR 90.242 on 10 kilohertz spaced channels from 540 kHz to 1700 kHz.

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US324 Federal and non-Federal satellite systems in the 400.15–401 MHz band shall be subject to electromagnetic compatibility analysis and coordination.

US325 In the band 148–149.9 MHz fixed and mobile stations shall not claim protection from land earth stations in the mobile-satellite service that have been previously coordinated; Federal fixed and mobile stations exceeding 27 dBW EIRP, or an emission bandwidth greater than 38 kHz, will be coordinated with existing mobile-satellite service space stations.

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US334 In the band 17.8–20.2 GHz, Federal space stations in both geostationary (GSO) and non-geostationary satellite orbits (NGSO) and associated earth stations in the fixed-satellite service (space-to-Earth) may be authorized on a primary basis. For a Federal geostationary satellite network to operate on a primary basis, the space station shall be located

outside the arc, measured from east to west, 70 West Longitude to 120 West Longitude. Coordination between Federal fixed-satellite systems and non-Federal space and terrestrial systems operating in accordance with the United States Table of Frequency Allocations is required.

(a) In the sub-band 17.8–19.7 GHz, the power flux-density at the surface of the Earth produced by emissions from a Federal GSO space station or from a Federal space station in a NGSO constellation of 50 or fewer satellites, for all conditions and for all methods of modulation, shall not exceed the following values in any 1 MHz band:

(1) –115 dB(W/m²) for angles of arrival above the horizontal plane (δ) between 0° and 5°,

(2) –115 + 0.5(–5) dB(W/m²) for δ between 5° and 25°, and

(3) –105 dB(W/m²) for δ between 25° and 90°.

(b) In the sub-band 17.8–19.3 GHz, the power flux-density at the surface of the Earth produced by emissions from a Federal space station in an NGSO constellation of 51 or more satellites, for all conditions and for all methods of modulation, shall not exceed the following values in any 1 MHz band:

(1) –115–X dB(W/m²) for δ between 0° and 5°,

(2) –115–X + ((10 + X)/20)(δ –5) dB(W/m²) for δ between 5° and 25°, and

(3) –105 dB(W/m²) for δ between 25° and 90°; where X is defined as a function of the number of satellites, n, in an NGSO constellation as follows:

For n ≤ 288, X = (5/119) (n–50) dB; and

For n > 288, X = (1/69) (n + 402) dB.

US335 The primary Federal and non-Federal allocations for the various segments of the 220–222 MHz band are divided as follows:

(1) The 220.0–220.55/221.0–221.55, 220.6–220.8/221.6–221.8, 220.85–220.90/221.85–221.90 and 220.925–221.0/221.925–222.0 MHz bands (Channels 1–110, 121–160, 171–180 and 186–200, respectively) are available for exclusive non-Federal use;

(2) The 220.55–220.60/221.55–221.60 MHz bands (Channels 111–120) are available for exclusive Federal use; and

(3) The 220.80–220.85/221.80–221.85 and 220.900–220.925/221.900–221.925 MHz bands (Channels 161–170 and 181–185, respectively) are available for shared Federal and non-Federal use.

The exclusive non-Federal band segments are also available for temporary fixed geophysical telemetry operations on a secondary basis to the fixed and mobile services.

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US339 The bands 2310–2320 and 2345–2360 MHz are also available for aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles or major components thereof on a secondary basis to the Wireless Communications Service. The following two frequencies are shared on a co-equal basis by Federal and non-Federal stations for telemetering and associated telecommand operations of expendable and re-usable launch vehicles whether or not such operations involve flight testing: 2312.5 and 2352.5 MHz. Other mobile telemetering uses may be provided on a non-interference basis to the above uses. The broadcasting-satellite service (sound) during implementation should also take cognizance of the expendable and reusable launch vehicle frequencies 2312.5 and 2352.5 MHz, to minimize the impact on this mobile service use to the extent possible.

US340 The band 2–30 MHz is available on a non-interference basis to Federal and non-Federal maritime and aeronautical stations for the purposes of measuring the quality of reception on radio channels. See 47 CFR 87.149 for the list of protected frequencies and bands within this frequency range. Actual communications shall be limited to those frequencies specifically allocated to the maritime mobile and aeronautical mobile services.

US342 In making assignments to stations of other services to which the bands:

13360–13410 kHz
 25550–25670 kHz
 37.5–38.25 MHz
 322–328.6 MHz*
 1330–1400 MHz*
 1610.6–1613.8 MHz*
 1660–1660.5 MHz*
 1668.4–1670 MHz*
 3260–3267 MHz*
 3332–3339 MHz*
 3345.8–3352.5 MHz*
 4825–4835 MHz*
 4950–4990 MHz
 6650–6675.2 MHz*

22.01–22.21 GHz*
 22.21–22.5 GHz
 22.81–22.86 GHz*
 23.07–23.12 GHz*
 31.2–31.3 GHz
 36.43–36.5 GHz*
 42.5–43.5 GHz
 42.77–43.17 GHz*
 43.07–43.17 GHz*
 43.37–43.47 GHz*
 48.94–49.04 GHz*
 76–86 GHz
 92–94 GHz
 94.1–100 GHz

111.8–114.25 GHz
 128.33–128.59 GHz*
 129.23–129.49 GHz*
 130–134 GHz
 136–148.5 GHz
 151.5–158.5 GHz
 168.59–168.93 GHz*
 171.11–171.45 GHz*
 172.31–172.65 GHz*
 173.52–173.85 GHz*
 195.75–196.15 GHz*
 209–226 GHz
 241–250 GHz
 252–275 GHz

14.47–14.5 GHz*

102–109.5 GHz

are allocated (* indicates radio astronomy use for spectral line observations), all practicable steps shall be taken to protect the radio astronomy service from harmful interference. Emissions from spaceborne or airborne stations can be particularly serious sources of interference to the radio astronomy service (see Nos. 4.5 and 4.6 and Article 29 of the ITU *Radio Regulations*).

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US344 In the band 5091–5250 MHz, non-Federal earth stations in the fixed-satellite service (Earth-to-space) shall be coordinated through the Frequency Assignment Subcommittee (see Recommendation ITU-R S.1342). In order to better protect the operation of the international standard system (microwave landing system) in the band 5000–5091 MHz, non-Federal tracking and telecommand operations should be conducted in the band 5150–5250 MHz.

* * * * *

US347 In the band 2025–2110 MHz, non-Federal Earth-to-space and space-to-space transmissions may be authorized in the space research and Earth exploration-satellite services subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to Federal and non-Federal stations operating in accordance with the Table of Frequency Allocations.

US348 The band 3650–3700 MHz is also allocated to the Federal radiolocation service on a primary basis at the following sites: St. Inigoes, MD

(38° 10' N, 76° 23' W); Pascagoula, MS (30° 22' N, 88° 29' W); and Pensacola, FL (30° 21' 28" N, 87° 16' 26" W). All fixed and fixed satellite operations within 80 kilometers of these sites shall be coordinated through the Frequency Assignment Subcommittee of the Interdepartmental Radio Advisory Committee on a case-by-case basis.

US349 The band 3650–3700 MHz is also allocated to the Federal radiolocation service on a non-interference basis for use by ship stations located at least 44 nautical miles in off-shore ocean areas on the condition that harmful interference is not caused to non-Federal operations.

US350 In the band 1427–1432 MHz, Federal use of the land mobile service and non-Federal use of the fixed and land mobile services is limited to telemetry and telecommand operations as described further:

(a) *Medical operations.* The use of the band 1427–1432 MHz for medical telemetry and telecommand operations (medical operations) shall be authorized for both Federal and non-Federal stations.

(1) Medical operations shall be authorized on a primary basis in the band 1427–1429.5 MHz and on a secondary basis in the band 1429.5–1432 MHz in the United States and its insular areas, except in the following locations: Austin/Georgetown, TX; Detroit and Battle Creek, MI; Pittsburgh, PA; Richmond/Norfolk, VA; Spokane, WA; and Washington, DC metropolitan area (collectively, the “carved-out”

locations). See 47 CFR 90.259(b)(4) and 95.630(b) for a detailed description of these locations.

(2) In the carved-out locations, medical operations shall be authorized on a primary basis in the band 1429–1431.5 MHz and on a secondary basis in the bands 1427–1429 MHz and 1431.5–1432 MHz.

(b) *Non-medical operations.* The use of the band 1427–1432 MHz for non-medical telemetry and telecommand operations (non-medical operations) shall be limited to non-Federal stations.

(1) Non-medical operations shall be authorized on a secondary basis to the Wireless Medical Telemetry Service (WMTS) in the band 1427–1429.5 MHz and on a primary basis in the band 1429.5–1432 MHz in the United States and its insular areas, except in the carved-out locations.

(2) In the carved-out locations, non-medical operations shall be authorized on a secondary basis in the band 1429–1431.5 MHz and on a primary basis in the bands 1427–1429 MHz and 1431.5–1432 MHz.

US351 In the band 1390–1400 MHz, Federal operations, except for medical telemetry operations in the sub-band 1395–1400 MHz, are on a non-interference basis to authorized non-Federal operations and shall not hinder implementation of any non-Federal operations. However, Federal operations authorized as of March 22, 1995 at 17 sites identified below will be continued on a fully protected basis until January 1, 2009.

Sites	Lat/long	Radius (Km)	Sites	Lat/long	Radius (Km)
Eglin AFB, FL	30°28' N/086°31' W	80	Ft. Greely, AK	63°47' N/145°52' W	80
Dugway PG, UT	40°11' N/112°53' W	80	Ft. Rucker, AL	31°13' N/085°49' W	80
China Lake, CA	35°41' N/117°41' W	80	Redstone, AL	34°35' N/086°35' W	80
Ft. Huachuca, AZ	31°33' N/110°18' W	80	Utah Test Range, UT	40°57' N/113°05' W	80
Cherry Point, NC	34°57' N/076°56' W	80	WSM Range, NM	32°10' N/106°21' W	80
Patuxent River, MD	38°17' N/076°25' W	80	Holloman AFB, NM	33°29' N/106°50' W	80
Aberdeen PG, MD	39°29' N/076°08' W	80	Yuma, AZ	32°29' N/114°20' W	80
Wright-Patterson AFB, OH	39°50' N/084°03' W	80	Pacific Missile Range, CA	34°07' N/119°30' W	80
Edwards AFB, CA	34°54' N/117°53' W	80			

US352 In the band 1427–1432 MHz, Federal operations, except for medical telemetry and medical telecommand operations, are on a non-interference basis to authorized non-Federal operations and shall not hinder the implementation of any non-Federal operations.

* * * * *

US359 In the band 15.43–15.63 GHz, use of the fixed-satellite service (Earth-to-space) is limited to non-Federal feeder links of non-geostationary systems in the mobile-satellite service. These non-Federal earth stations shall be coordinated through the Frequency Assignment Subcommittee (see Annex 3 of Recommendation ITU-R S.1340).

US360 In the band 33–36 GHz, the Federal fixed-satellite service (space-to-

Earth) is also allocated on a primary basis. Coordination between Federal fixed-satellite service systems and non-Federal systems operating in accordance with the United States Table of Frequency Allocations is required.

US361 In the band 1432–1435 MHz, Federal stations in the fixed and mobile services may operate indefinitely on a primary basis at the 23 sites listed below. All other Federal stations in the

fixed and mobile services shall operate in the band 1432–1435 MHz on a primary basis until reaccommodated in

accordance with the National Defense Authorization Act of 1999.

Location	North latitude/ west longitude	Operating radius (Km)	Location	North latitude/ west longitude	Operating radius (Km)
China Lake/Edwards AFB, CA	35°29'/117°16' ..	100	AUTEC	24°30'/078°00' ..	80
White Sands Missile Range/Holloman AFB, NM ..	32°11'/106°20' ..	160	Beaufort MCAS, SC	32°26'/080°40' ..	160
Utah Test and Training Range/Dugway Proving Ground, Hill AFB, UT.	40°57'/113°05' ..	160	MCAS Cherry Point, NC	34°54'/076°53' ..	100
Patuxent River, MD	38°17'/076°24' ..	70	NAS Cecil Field, FL	30°13'/081°52' ..	160
Nellis AFB, NV	37°29'/114°14' ..	130	CNAS Fallon, NV	39°30'/118°46' ..	100
Fort Huachuca, AZ	31°33'/110°18' ..	80	NAS Oceana, VA	36°49'/076°01' ..	100
Eglin AFB/Gulfport ANG	30°28'/086°31' ..	140	NAS Whidbey	48°21'/122°39' ..	70
Range, MS/Fort Rucker, AL .....	.....	.....	Island, WA.	.....	.....
Yuma Proving Ground, AZ	32°29'/114°20' ..	160	NCTAMS, GUM	13°35'/ 144°51'(East).	80
Fort Greeley, AK	63°47'/145°52' ..	80	Lemoore, CA	36°20'/119°57' ..	120
Redstone Arsenal, AL	34°35'/086°35' ..	80	Savannah River, SC	33°15'/081°39' ..	3
Alpena Range, MI	44°23'/083°20' ..	80	Naval Space Operations Center, ME.	44°24'/068°01' ..	80
Camp Shelby, MS	31°20'/089°18' ..	80			

US362 The band 1670–1675 MHz is allocated to the meteorological-satellite service (space-to-Earth) on a primary basis for Federal use. Earth station use of this allocation is limited to Wallops Island, VA (37°56'47" N, 75°27'37" W), Fairbanks, AK (64°58'36" N, 147°31'03" W), and Greenbelt, MD (39°00'02" N, 76°50'31" W). Applicants for non-Federal stations within 100 kilometers of the Wallops Island or Fairbanks coordinates and within 65 kilometers of the Greenbelt coordinates shall notify NOAA in accordance with the procedures specified in 47 CFR 1.924.

* * * * *

US366 On March 25, 2007, the bands 5900–5950 kHz, 9400–9500 kHz, 11600–11650 kHz, 12050–12100 kHz, 13570–13600 kHz, 13800–13870 kHz, 15600–15800 kHz, 17480–17550 kHz, and 18900–19020 are allocated exclusively to the broadcasting service.

(a) As of March 25, 2007, authority to operate new Federal stations in the fixed service may be extended in all of the previously listed frequency bands and authority to operate new Federal stations in the mobile except aeronautical mobile service may be extended in the bands 5900–5950 kHz, 13570–13600 kHz, and 13800–13870 kHz. As of March 25, 2007, all Federal stations shall:

- (1) Be limited to communications only within the United States and its insular areas;
- (2) Not cause harmful interference to the broadcasting service;
- (3) Be limited to the minimum power needed to achieve communications; and
- (4) Take account of the seasonal use of frequencies by the broadcasting

service published in accordance with Article 12 of the ITU *Radio Regulations*.

(b) As of March 25, 2007, authority to operate new non-Federal stations in the fixed and mobile except aeronautical mobile services shall not be extended in any of the above listed frequency bands. As of March 25, 2007, non-Federal stations in the:

- (1) Fixed service may continue to use the bands 5900–5950 kHz, 9400–9500 kHz, 11600–11650 kHz, 12050–12100 kHz, 13800–13870 kHz, and 15600–15800 kHz; and
- (2) Mobile except aeronautical mobile service may continue to use the band 5900–5950 kHz. As of March 25, 2007, non-Federal stations shall:
 - (i) Be limited to communications only within the United States and its insular areas;
 - (ii) Not cause harmful interference to the broadcasting service;
 - (iii) Be limited to the minimum power needed to achieve communications; and
 - (iv) Take account of the seasonal use of frequencies by the broadcasting service published in accordance with Article 12 of the ITU *Radio Regulations*.

US367 On the condition that harmful interference is not caused to the broadcasting service, frequencies in the bands 9775–9900 kHz, 11650–11700 kHz, and 11975–12050 kHz may be used by Federal stations in the fixed service communicating within the United States and its insular areas that are authorized as of June 12, 2003. Each such station shall be limited to a total radiated power of 24 dBW.

US368 The use of the bands 1390–1392 MHz and 1430–1432 MHz by the fixed-satellite service is limited to feeder links for the Non-Voice Non-

Geostationary Mobile-Satellite Service and is contingent on:

- (1) The completion of ITU–R studies on all identified compatibility issues as shown in Annex 1 of Resolution 745 (WRC–2003);
- (2) Measurement of emissions from equipment that would be employed in operational systems and demonstrations to validate the studies as called for in Resolution 745 (WRC–2003); and
- (3) Compliance with any technical and operational requirements that may be imposed at WRC–07 to protect other services in these bands and passive services in the band 1400–1427 MHz from unwanted emissions.

The FCC shall coordinate individual assignments with NTIA (see, for example, Recommendations ITU–R RA.769–2 and ITU–R SA.1029–2) to ensure the protection of passive services in the band 1400–1427 MHz. As part of the coordination requirements, the feeder uplink and downlink systems shall be tested and certified to be in conformance with the technical and operational out-of-band requirements for the protection of passive services in the band 1400–1427 MHz. Certification and all supporting documentation shall be submitted to the FCC at least three months prior to launch.

* * * * *

US378 In the band 1710–1755 MHz, Federal stations in the fixed and mobile services shall operate on a primary basis until reaccommodated in accordance with the Commercial Spectrum Enhancement Act. Further, Federal stations may continue to operate in the band 1710–1755 MHz as provided herein:

(a) Federal fixed microwave and tactical radio relay stations may operate indefinitely on a primary basis at the sites listed herein:

Location	Coordinates	Radius of operation (km)
Cherry Point, NC	34°58' N 076°56' W	80
Yuma, AZ	32°32' N 113°58' W	80

(b) Federal fixed microwave and tactical radio relay stations may operate on a secondary basis, and shall not cause harmful interference to, and must accept harmful interference from, primary non-Federal operations at the sites listed below:

Location	Coordinates	Radius of operation (km)
China Lake, CA	35°41' N 117°41' W	80
Eglin AFB, FL	30°29' N 086°31' W	80
Pacific Missile Test Range/Point Mugu, CA	34°07' N 119°30' W	80
Nellis AFB, NV	36°14' N 115°02' W	80
Hill AFB, UT	41°07' N 111°58' W	80
Patuxent River, MD	38°17' N 076°25' W	80
White Sands Missile Range, NM	33°00' N 106°30' W	80
Fort Irwin, CA	35°16' N 116°41' W	50
Fort Rucker, AL	31°13' N 085°49' W	50
Fort Bragg, NC	35°09' N 079°01' W	50
Fort Campbell, KY	36°41' N 087°28' W	50
Fort Lewis, WA	47°05' N 122°36' W	50
Fort Benning, GA	32°22' N 084°56' W	50
Fort Stewart, GA	31°52' N 081°37' W	50

(c) In the sub-band 1710–1720 MHz, precision guided munitions shall operate on a primary basis until inventory is exhausted or until December 31, 2008, whichever is earlier.

* * * * *
 US380 In the bands 1525–1544 MHz, 1545–1559 MHz, 1610–1645.5 MHz, 1646.5–1660.5 MHz, 2000–2020 MHz, 2180–2200 MHz, and 2483.5–2500 MHz, a non-Federal licensee in the mobile-satellite service (MSS) may also operate an ancillary terrestrial component in conjunction with its MSS

network, subject to the Commission's rules for ancillary terrestrial components and subject to all applicable conditions and provisions of its MSS authorization.

* * * * *
 US382 In the band 39.5–40 GHz, Federal earth stations in the mobile-satellite service (space-to-Earth) shall not claim protection from non-Federal stations in the fixed and mobile services. ITU Radio Regulation No. 5.43A does not apply.

US384 In the band 401–403 MHz, the non-Federal Earth exploration-satellite (Earth-to-space) and meteorological-satellite (Earth-to-space) services are limited to earth stations transmitting to Federal space stations.

* * * * *
 US389 In the bands 71–76 GHz and 81–86 GHz, stations in the fixed, mobile, and broadcasting services shall not cause harmful interference to, nor claim protection from, Federal stations in the fixed-satellite service at any of the following 28 military installations:

Military installation	State	Nearby city
Redstone Arsenal	AL	Huntsville
Fort Huachuca	AZ	Sierra Vista
Yuma Proving Ground	AZ	Yuma
Beale AFB	CA	Marysville
Camp Parks Reserve Forces Training Area	CA	Dublin
China Lake Naval Air Weapons Station	CA	Ridgecrest
Edwards AFB	CA	Rosamond
Fort Irwin	CA	Barstow
Marine Corps Air Ground Combat Center	CO	Twentynine Palms
Buckley AFB	GA	Aurora (Denver)
Schriever AFB	CO	Colorado Springs
Fort Gordon	GA	Augusta
Naval Satellite Operations Center	GU	Finegayan (Guam)
Naval Computer and Telecommunications Area Master Station, Pacific	HI	Wahiawa (Oahu Is.)
Fort Detrick	MD	Frederick
Nellis AFB	NV	Las Vegas
Nevada Test Site	NV	Amargosa Valley
Tonapah Test Range Airfield	NV	Tonapah
Cannon AFB	NM	Clovis
White Sands Missile Range	NM	White Sands
Dyess AFB	TX	Abilene

Military installation	State	Nearby city
Fort Bliss	TX	El Paso
Fort Sam Houston	TX	San Antonio
Goodfellow AFB	TX	San Angelo
Kelly AFB	TX	San Antonio
Utah Test and Training Range	UT	
Fort Belvoir	VA	Alexandria
Naval Satellite Operations Center	VA	Chesapeake

US390 Federal stations in the space research service (active) operating in the band 5350–5460 MHz shall not cause harmful interference to, nor claim protection from, Federal and non-Federal stations in the aeronautical radionavigation service nor Federal stations in the radiolocation service.

US391 In the band 2495–2500 MHz, the mobile-satellite service (space-to-Earth) shall not receive protection from non-Federal stations in the fixed and mobile except aeronautical mobile services operating in that band.

* * * * *

US394 Until March 29, 2009, the band 6765–7000 kHz is allocated to the fixed service on a primary basis and to the mobile service on a secondary basis. After this date, this band is allocated to the fixed and the mobile except aeronautical mobile (R) services on a primary basis.

US395 Until March 29, 2009, the use of the band 7100–7200 kHz in Region 1 and Region 3 by the amateur service shall not impose constraints on the broadcasting service intended for use within Region 1 and Region 3.

US396 The band 7300–7400 kHz is allocated exclusively to the broadcasting service in accordance with the schedule specified below, except that the sub-band 7368.5–7371.3 kHz is allocated to the fixed service on an exclusive basis for non-Federal use within the State of Alaska in accordance with 47 CFR 80.387.

(a) Until March 25, 2007, the band 7300–7350 kHz is allocated to the fixed service on a primary basis and to the mobile except aeronautical mobile service on a secondary basis for Federal and non-Federal use. After March 25, 2007, authority to operate in the band 7300–7350 kHz shall not be extended to new non-Federal stations in the fixed and mobile except aeronautical mobile services. After March 25, 2007, (kHz), Federal and non-Federal stations in the fixed and mobile except aeronautical mobile services shall:

(1) Be limited to communications wholly within the United States and its insular areas;

(2) Not cause harmful interference to the broadcasting service;

(3) Be limited to the minimum power needed to achieve communications; and

(4) Take account of the seasonal use of frequencies by the broadcasting service published in accordance with Article 12 of the ITU Radio Regulations.

(b) Until March 29, 2009, the band 7350–7400 kHz is allocated to the fixed service on a primary basis and to the mobile except aeronautical mobile service on a secondary basis for Federal and non-Federal use. After March 29, 2009, authority to operate in the band 7350–7400 kHz shall not be extended to new non-Federal stations in the fixed and mobile except aeronautical mobile services. After March 29, 2009, Federal and non-Federal stations in the fixed and mobile except aeronautical mobile services shall:

(1) Be limited to communications wholly within the United States and its insular areas;

(2) Not cause harmful interference to the broadcasting service;

(3) Be limited to the minimum power needed to achieve communications; and

(4) Take account of the seasonal use of frequencies by the broadcasting service published in accordance with Article 12 of the ITU Radio Regulations.

US397 In the band 432–438 MHz, the Earth exploration-satellite service (active) is allocated on a secondary basis for Federal use. Stations in the Earth exploration-satellite service (active) shall not be operated within line-of-sight of United States except for the purpose of short duration pre-operational testing. Operations under this allocation shall not cause harmful interference to, nor claim protection from, any other services allocated in the band 432–438 MHz in the United States, including secondary services and the amateur-satellite service.

US398 In the bands 1390–1400 MHz and 1427–1432 MHz, airborne and space-to-Earth operations, except for feeder downlinks for the Non-Voice Non-Geostationary Mobile-Satellite Service in the band 1430–1432 MHz (see US368), are prohibited.

Non-Federal Government (NG) Footnotes

(These footnotes, each consisting of the letters “NG” followed by one or more

digits, denote stipulations applicable only to non-Federal operations and thus appear solely in the non-Federal Table.)

* * * * *

NG42 In the band 10–10.5 GHz, non-Federal stations in the radiolocation service shall not cause harmful interference to the amateur service.

* * * * *

NG134 In the band 10.45–10.5 GHz, non-Federal stations in the radiolocation service shall not cause harmful interference to the amateur and amateur-satellite services.

* * * * *

NG142 T V broadcast stations authorized to operate in the bands 54–72 MHz, 76–88 MHz, 174–216 MHz, 470–608 MHz, and 614–806 MHz may use a portion of the television vertical blanking interval for the transmission of telecommunications signals, on the condition that harmful interference will not be caused to the reception of primary services, and that such telecommunications services must accept any interference caused by primary services operating in these bands.

* * * * *

NG152 The use of the band 219–220 MHz by the amateur service is limited to stations participating, as forwarding stations, in point-to-point fixed digital message forwarding systems, including intercity packet backbone networks.

* * * * *

NG160 In the 5850–5925 MHz band, the use of the non-Federal mobile service is limited to Dedicated Short Range Communications operating in the Intelligent Transportation System radio service.

* * * * *

NG169 After December 1, 2000, operations on a primary basis by the fixed-satellite service (space-to-Earth) in the band 3650–3700 MHz shall be limited to grandfathered earth stations. All other fixed-satellite service earth station operations in the band 3650–3700 MHz shall be on a secondary basis. Grandfathered earth stations are those authorized prior to December 1, 2000, or granted as a result of an application filed prior to December 1, 2000, and constructed within 12 months of initial

authorization. License applications for primary operations for new earth stations, major amendments to pending earth station applications, or applications for major modifications to earth station facilities filed on or after December 18, 1998, and prior to December 1, 2000, shall not be accepted unless the proposed facilities are within 16.1 kilometers (10 miles) of an authorized primary earth station operating in the band 3650–3700 MHz. License applications for primary operations by new earth stations, major amendments to pending earth station applications, and applications for major modifications to earth station facilities, filed after December 1, 2000, shall not be accepted, except for changes in polarization, antenna orientation or ownership of a grandfathered earth station.

* * * * *

Federal Government (G) Footnotes

(These footnotes, each consisting of the letter “G” followed by one or more digits, denote stipulations applicable only to Federal operations and thus appear solely in the Federal Table.)

G2 In the bands 216–217 MHz, 220–225 MHz, 420–450 MHz (except as provided by US217 and G129), 890–902 MHz, 928–942 MHz, 1300–1390 MHz, 2310–2390 MHz, 2417–2450 MHz, 2700–2900 MHz, 5650–5925 MHz, and 9000–9200 MHz, the Federal radiolocation service is limited to the military services.

* * * * *

G8 Low power Federal radio control operations are permitted in the band 420–450 MHz.

G11 Federal fixed and mobile radio services, including low power radio control operations, are permitted in the band 902–928 MHz on a secondary basis.

* * * * *

G31 In the band 3300–3500 MHz, the use of the Federal radiolocation service is limited to the military services, except as provided by footnote US108.

G32 Except for weather radars on meteorological satellites in the band 9975–10025 MHz and for Federal survey operations (see footnote US108), Federal radiolocation in the band 10–10.5 GHz is limited to the military services.

* * * * *

G42 The space operation service (Earth-to-space) is limited to the band 1761–1842 MHz, and is limited to space command, control, range and range rate systems.

G56 Federal radiolocation in the bands 1215–1300, 2900–3100, 5350–

5650 and 9300–9500 MHz is primarily for the military services; however, limited secondary use is permitted by other Federal agencies in support of experimentation and research programs. In addition, limited secondary use is permitted for survey operations in the band 2900–3100 MHz.

G59 In the bands 902–928 MHz, 3100–3300 MHz, 3500–3650 MHz, 5250–5350 MHz, 8500–9000 MHz, 9200–9300 MHz, 13.4–14.0 GHz, 15.7–17.7 GHz and 24.05–24.25 GHz, all Federal non-military radiolocation shall be secondary to military radiolocation, except in the sub-band 15.7–16.2 GHz airport surface detection equipment (ASDE) is permitted on a co-equal basis subject to coordination with the military departments.

* * * * *

G110 Federal ground-based stations in the aeronautical radionavigation service may be authorized between 3500–3650 MHz when accommodation in the band 2700–2900 MHz is not technically and/or economically feasible.

* * * * *

G117 In the bands 7.25–7.75 GHz, 7.9–8.4 GHz, 17.8–21.2 GHz, 30–31 GHz, 33–36 GHz, 39.5–41 GHz, 43.5–45.5 GHz and 50.4–51.4 GHz, the Federal fixed-satellite and mobile-satellite services are limited to military systems.

G118 Federal fixed stations may be authorized in the band 1700–1710 MHz only if spectrum is not available in the band 1755–1850 MHz.

* * * * *

G123 The bands 2300–2310 and 2400–2402 MHz were identified for reallocation, effective August 10, 1995, for exclusive non-Federal use under Title VI of the Omnibus Budget Reconciliation Act of 1993. Effective August 10, 1995, any Federal operations in these bands are on a non-interference basis to authorized non-Federal operations and shall not hinder the implementation of any non-Federal operations.

G124 The band 2417–2450 MHz was identified for reallocation, effective August 10, 1995, for mixed Federal and non-Federal use under Title VI of the Omnibus Budget Reconciliation Act of 1993.

* * * * *

G129 Federal wind profilers are authorized to operate on a primary basis in the radiolocation service in the frequency band 448–450 MHz with an authorized bandwidth of no more than 2 MHz centered on 449 MHz, subject to the following conditions: (1) wind profiler locations must be pre-

coordinated with the military services to protect fixed military radars; and (2) wind profiler operations shall not cause harmful interference to, nor claim protection from, military mobile radiolocation stations that are engaged in critical national defense operations.

G130 Federal stations in the radiolocation service operating in the band 5350–5470 MHz, shall not cause harmful interference to, nor claim protection from, Federal stations in the aeronautical radionavigation service operating in accordance with ITU Radio Regulation No. 5.449.

G131 Federal stations in the radiolocation service operating in the band 5470–5650 MHz, with the exception of ground-based radars used for meteorological purposes operating in the band 5600–5650 MHz, shall not cause harmful interference to, nor claim protection from, Federal stations in the maritime radionavigation service.

G132 Use of the radionavigation-satellite service in the band 1215–1240 MHz shall be subject to the condition that no harmful interference is caused to, and no protection is claimed from, the radionavigation service authorized under ITU Radio Regulation No. 5.331. Furthermore, the use of the radionavigation-satellite service in the band 1215–1240 MHz shall be subject to the condition that no harmful interference is caused to the radiolocation service. ITU Radio Regulation No. 5.43 shall not apply in respect of the radiolocation service. ITU Resolution 608 (WRC-03) shall apply.

G133 No emissions to deep space shall be effected in the band 7190–7235 MHz. Geostationary satellites in the space research service operating in the band 7190–7235 MHz shall not claim protection from existing and future stations of the fixed and mobile services and No. 5.43A does not apply.

PART 25—SATELLITE COMMUNICATIONS

■ 10. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 11. Section 25.208 is amended by redesignating paragraphs (p) through (t) as paragraphs (q) through (u) and by adding new paragraph (p) to read as follows:

§ 25.208 Power flux-density limits.

* * * * *

(p) The power flux-density at the Earth's surface produced by emissions from a space station in either the Earth exploration-satellite service in the band 25.5–27 GHz or the inter-satellite service in the band 25.25–27.5 GHz for all conditions and for all methods of modulation shall not exceed the following values:

– 115 dB(W/m²) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

– 115 + 0.5(–5) dB(W/m²) in any 1 MHz band for angles of arrival between 5 and 25 degrees above the horizontal plane;

– 105 dB(W/m²) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

These limits relate to the power flux-density which would be obtained under assumed free-space propagation conditions.

* * * * *

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.220 [Amended]

■ 13. Section 73.220 is amended by removing and reserving paragraph (b).

§ 73.603 [Amended]

■ 14. Section 73.603 is amended by removing and reserving paragraph (b).

■ 15. Section 73.701 is amended by revising paragraph (e) to read as follows:

§ 73.701 Definitions.

* * * * *

(e) *Coordinated Universal Time (UTC)*. Time scale, based on the second (SI), as defined in Recommendation ITU-R TF.460–6. For most practical purposes associated with the ITU *Radio Regulations*, UTC is equivalent to mean solar time at the prime meridian (0° longitude), formerly expressed in GMT. (RR)

* * * * *

■ 16. Section 73.702 is amended by revising paragraph (f), and by redesignating paragraphs (g) through (k) as (i) through (m) and by adding new paragraphs (g) and (h) to read as follows:

§ 73.702 Assignment and use of frequencies.

* * * * *

(f) *Exclusive allocations*. Where practical, assigned frequencies shall be within the following bands, which are allocated to the broadcasting service on a primary and exclusive basis:

(1) *Worldwide allocations*. The following bands are allocated to the broadcasting service on a primary and exclusive basis throughout the world: 5950–6200 kHz, 9500–9900 kHz, 11650–12050 kHz, 13600–13800 kHz, 15100–15600 kHz, 17550–17900 kHz, 21450–21850 kHz, and 25670–26100 kHz.

(2) *Regional allocation*. The band 7200–7300 kHz is allocated to the broadcasting service on a primary and exclusive basis in Region 1 and Region 3.

Note to (f)(2): For the allocation of frequencies, the ITU has divided the world into three Regions, which are defined in 47 CFR 2.104(b). The bands 7100–7300 kHz and 7400–7450 kHz are not allocated to the broadcasting service in Region 2.

(g) *Co-primary allocations*. Frequencies may also be assigned from within the following bands, which are allocated on a primary, but not exclusive, basis to the broadcasting service:

(1) *Worldwide allocations*. (i) Until April 1, 2007, the following frequency bands are allocated to the broadcasting and fixed services on a co-primary basis throughout the world: 5900–5950 kHz, 7300–7350 kHz, 9400–9500 kHz, 11600–11650 kHz, 12050–12100 kHz, 13570–13600 kHz, 13800–13870 kHz, 15600–15800 kHz, 17480–17550 kHz, and 18900–19020 kHz (WARC–92 HFBC bands). In addition, the band 5900–5950 kHz is allocated to the land mobile service on a primary basis in Region 1 and to the mobile except aeronautical mobile (R) service on a primary basis in Region 2 until April 1, 2007. After April 1, 2007, the WARC–92 HFBC bands are allocated to the broadcasting service on an exclusive basis throughout the world.

(ii) Until March 29, 2009, the band 7350–7400 kHz is allocated to the broadcasting and fixed services on a co-primary basis throughout the world. After March 29, 2009, the band 7350–7400 kHz is allocated to the broadcasting service on an exclusive basis throughout the world, except in the countries listed in 47 CFR 2.106, footnote 5.143C where the band 7350–7400 kHz continues to be allocated to the broadcasting and fixed services on a co-primary basis.

(2) *Regional allocations*. (i) Until March 29, 2009, the band 7100–7200 kHz is allocated to the amateur and broadcasting services on a co-primary basis in Region 1 and Region 3; however, during this transition period, the use of the band 7100–7200 kHz by the amateur service shall not impose constraints on the broadcasting service intended for use within Region 1 and Region 3. After March 27, 2005, where

practical, requests for frequency assignments in the band 7100–7200 kHz shall be satisfied within the band 7200–7350 kHz. After March 29, 2009, the band 7100–7200 kHz is no longer allocated to the broadcasting service.

(ii) Until March 29, 2009, the band 7400–7450 kHz is allocated to the broadcasting service on a co-primary basis with the fixed service in Region 1 and Region 3. After March 29, 2009, the band 7400–7450 kHz is allocated on an exclusive basis to the broadcasting service in Region 1 and Region 3, except in the countries listed in 47 CFR 2.106, footnote 5.143C where the band 7400–7450 kHz continues to be allocated to the broadcasting and fixed services on a co-primary basis.

(h) *Requirements for Regional operation*. (1) Frequency assignments in the bands 7100–7300 kHz (7200–7300 kHz after March 29, 2009) and 7400–7450 kHz shall be limited to international broadcast stations that are located in the Pacific insular areas located in Region 3 (as defined in 47 CFR 2.105(a), note 4) that transmit to geographical zones and areas of reception in Region 1 or Region 3.

(2) During the hours of 0800–1600 UTC (Coordinated Universal Time) antenna gain with reference to an isotropic radiator in any easterly direction that would intersect any area in Region 2 shall not exceed 2.15 dBi, except in the case where a transmitter power of less than 100 kW is used. In this case, antenna gain on restricted azimuths shall not exceed that which is determined in accordance with equation below. Stations desiring to operate in this band must submit sufficient antenna performance information to ensure compliance with these restrictions. Permitted gain for transmitter powers less than 100 kW:

$$G_i = 2.15 + 10 \log \left(\frac{100}{P_a} \right) \text{ dBi}$$

Where:

G_i = maximum gain permitted with reference to an isotropic radiator.
P_a = Transmitter power employed in kW.

* * * * *

■ 17. Section 73.751 is revised to read as follows:

§ 73.751 Operating power.

No international broadcast station shall be authorized to install, or be licensed for operation of, transmitter equipment with:

(a) A rated carrier power of less than 50 kilowatts (kW) if double-sideband (DSB) modulation is used,

(b) A peak envelope power of less than 50 kW if single-sideband (SSB) modulation is used, or

(c) A mean power of less than 10 kW if digital modulation is used.

■ 18. Section 73.756 is revised to read as follows:

§ 73.756 System specifications for double-sideband (DSB) modulated emissions in the HF broadcasting service.

(a) *Channel Spacing.* The nominal spacing for DSB shall be 10 kHz. However, the interleaved channels with a separation of 5 kHz may be used in accordance with the relative protection criteria, provided that the interleaved emission is not to the same geographical area as either of the emissions between which it is interleaved.

(b) *Emission Characteristics.* (1) *Nominal carrier frequencies.* Nominal carrier frequencies shall be integral multiples of 5 kHz.

(2) *Audio-frequency band.* The upper limit of the audio-frequency band (at—3 dB) of the transmitter shall not exceed 4.5 kHz and the lower limit shall be 150 Hz, with lower frequencies attenuated at a slope of 6 dB per octave.

(3) *Modulation processing.* If audio-frequency signal processing is used, the dynamic range of the modulating signal shall be not less than 20 dB.

(4) *Necessary bandwidth.* The necessary bandwidth shall not exceed 9 kHz.

§§ 73.757 through 73.761 [Redesignated as §§ 73.759 through 73.761].

■ 19. Sections 73.757, 73.758, 73.759, and 73.761 are redesignated as §§ 73.759, 73.760, 73.761, and 73.762.

■ 20. New § 73.757 is added to read as follows:

§ 73.757 System specifications for single-sideband (SSB) modulated emissions in the HF broadcasting service.

(a) *System parameters.* (1) *Channel spacing.* In a mixed DSB, SSB and digital environment (see Resolution 517 (Rev.WRC-03)), the channel spacing shall be 10 kHz. In the interest of spectrum conservation, it is also permissible to interleave SSB emissions midway between two adjacent DSB channels, *i.e.*, with 5 kHz separation between carrier frequencies, provided that the interleaved emission is not to the same geographical area as either of the emissions between which it is interleaved. In an all inclusive SSB environment, the channel spacing and carrier frequency separation shall be 5 kHz.

(2) *Equivalent sideband power.* When the carrier reduction relative to peak envelope power is 6 dB, an equivalent

SSB emission is one giving the same audio-frequency signal-to-noise ratio at the receiver output as the corresponding DSB emission, when it is received by a DSB receiver with envelope detection. This is achieved when the sideband power of the SSB emission is 3 dB larger than the total sideband power of the DSB emission. (The peak envelope power of the equivalent SSB emission and the carrier power are the same as that of the DSB emission.)

(b) *Emission Characteristics.* (1) *Nominal carrier frequencies.* Nominal carrier frequencies shall be integral multiples of 5 kHz.

(2) *Frequency tolerance.* The frequency tolerance shall be 10 Hz.

Note 1 to Paragraph (b)(2): The ITU suggests that administrations avoid carrier frequency differences of a few hertz, which cause degradations similar to periodic fading. This could be avoided if the frequency tolerance were 0.1 Hz, a tolerance which would be suitable for SSB emissions.

Note 2 to Paragraph (b)(2): The SSB system adopted for the bands allocated exclusively to HF broadcasting does not require a frequency tolerance less than 10 Hz. The degradation mentioned in Note 1 occurs when the ratio of wanted-to-interfering signal is well below the required protection ratio. This remark is equally valid for both DSB and SSB emissions.

(3) *Audio-frequency band.* The upper limit of the audio-frequency band (at—3 dB) of the transmitter shall not exceed 4.5 kHz with a further slope of attenuation of 35 dB/kHz and the lower limit shall be 150 Hz with lower frequencies attenuated at a slope of 6 dB per octave.

(4) *Modulation processing.* If audio-frequency signal processing is used, the dynamic range of the modulating signal shall be not less than 20 dB.

(5) *Necessary bandwidth.* The necessary bandwidth shall not exceed 4.5 kHz.

(6) *Carrier reduction (relative to peak envelope power).* In a mixed DSB, SSB and digital environment, the carrier reduction shall be 6 dB to allow SSB emissions to be received by conventional DSB receivers with envelope detection without significant deterioration of the reception quality.

(7) *Sideband to be emitted.* Only the upper sideband shall be used.

(8) *Attenuation of the unwanted sideband.* The attenuation of the unwanted sideband (lower sideband) and of intermodulation products in that part of the emission spectrum shall be at least 35 dB relative to the wanted sideband signal level. However, since there is in practice a large difference between signal amplitudes in adjacent

channels, a greater attenuation is recommended.

■ 21. New § 73.758 is added to read as follows:

§ 73.758 System specifications for digitally modulated emissions in the HF broadcasting service.

(a) For digitally modulated emissions, the Digital Radio Mondiale (DRM) standard shall be employed. Both digital audio broadcasting and datacasting are authorized. The RF requirements for the DRM system are specified in paragraphs (b) and (c), of this section.

(b) *System parameters.* (1) *Channel spacing.* The initial spacing for digitally modulated emissions shall be 10 kHz. However, interleaved channels with a separation of 5 kHz may be used in accordance with the appropriate protection criteria appearing in Resolution 543 (WRC-03), provided that the interleaved emission is not to the same geographical area as either of the emissions between which it is interleaved.

(2) *Channel utilization.* Channels using digitally modulated emissions may share the same spectrum or be interleaved with analog emissions in the same high frequency broadcasting (HFBC) band, provided the protection afforded to the analog emissions is at least as great as that which is currently in force for analog-to-analog protection. Accomplishing this may require that the digital spectral power density (and total power) be lower by several dB than is currently used for either DSB or SSB emissions.

(c) *Emission characteristics.* (1) *Bandwidth and center frequency.* A full digitally modulated emission will have a 10 kHz bandwidth with its center frequency at any of the 5 kHz center frequency locations in the channel raster currently in use within the HFBC bands. Among several possible “simulcast” modes are those having a combination of analog and digital emissions of the same program in the same channel, that may use a digital emission of 5 kHz or 10 kHz bandwidth, next to either a 5 kHz or 10 kHz analog emission. In all cases of this type, the 5 kHz interleaved raster used in HFBC shall be adhered to in placing the emission within these bands.

(2) *Frequency tolerance.* The frequency tolerance shall be 10 Hz. See Section 73.757(b)(2), notes 1 and 2.

(3) *Audio-frequency band.* The quality of service, using digital source coding within a 10 kHz bandwidth, taking into account the need to adapt the emission coding for various levels of error avoidance, detection and correction, can range from the equivalent of

monophonic FM (approximately 15 kHz) to the low-level performance of a speech codec (of the order of 3 kHz). The choice of audio quality is connected to the needs of the broadcaster and listener, and includes the consideration of such characteristics as the propagation conditions expected. There is no single specification, only the upper and lower bounds noted in this paragraph.

(4) *Modulation.* Quadrature amplitude modulation (QAM) with orthogonal frequency division multiplexing (OFDM) shall be used. 64-QAM is feasible under many propagation conditions; others such as 32-, 16- and 8-QAM are specified for use when needed.

(5) *RF protection ratio values.* The protection ratio values for analogue and digital emissions for co-channel and adjacent channel conditions shall be in accordance with Resolution 543 (WRC-03) as provisional RF protection ratio values subject to revision or confirmation by a future competent conference.

§ 73.766 [Removed and Reserved]

■ 22. Section 73.766 is removed and reserved.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 23. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(I), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(I), 161, 303(g), 303(r), 332(c)(7).

■ 24. Section 90.20, paragraph (c)(3) is amended by revising the entry in the “Public Safety Pool Table” for “2000–10,000” in the kilohertz table, removing the entry for “158.4725” and add in its place “159.4725” in the megahertz table, and by adding paragraph (d)(89) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *
(c) * * *
(3) *Frequencies.*

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
Kilohertz			
* * * * *			
2000 to 10,000	Fixed, base, or mobile	6, 89	PX.
Megahertz			
* * * * *			
159.4725	do	80	PO.
* * * * *			

(d) * * *
(89) As of March 25, 2007, the FCC will cease to issue licenses for new stations in the fixed and mobile services in the following bands: 5900–5950 kHz, 7300–7350 kHz and 9400–9500 kHz. As of March 29, 2009, the FCC will cease to issue licenses for new stations in the fixed and mobile services in the band 7350–7400 kHz and, in the U.S. Pacific insular areas in Region 3, the band 7400–7450 kHz. Stations licensed as of March 25, 2007 in the bands 5900–5950 kHz, 7300–7350 kHz and 9400–9500

kHz and as of March 29, 2009 for the band 7350–7400 kHz in Region 2 and the band 7350–7450 kHz in Region 3 shall:

- (1) Be limited to communications only within the United States and its insular areas;
- (2) Not cause harmful interference to the broadcasting service;
- (3) Be limited to the minimum power needed to achieve communications; and
- (4) Take account of the seasonal use of frequencies by the broadcasting

service published in accordance with Article 12 of the ITU *Radio Regulations*.
* * * * *

■ 25. Section 90.35, paragraph (b)(3) is amended by revising the entry for “2000 to 25,000” under Kilohertz in the “Industrial/Business Pool Frequency Table” and paragraph (c)(90) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *
(b) * * *
(3) *Frequencies.*

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
Kilohertz			
* * * * *			
2000 to 25,000	Fixed, base or mobile	1, 90	
* * * * *			

* * * * *
(c) * * *

(90) As of March 25, 2007, the FCC will cease to issue licenses for new stations in the fixed and mobile services

in the following bands: 5900–5950 kHz, 7300–7350 kHz, 9400–9500 kHz, 11600–11650 kHz, 12050–12100 kHz, 13800–

13870 kHz, and 15600–15800 kHz. As of March 29, 2009, the FCC will cease to issue licenses for new stations in the fixed and mobile services in the band 7350–7400 kHz and, in the U.S. Pacific insular areas in Region 3, the band 7400–7450 kHz. Stations licensed as of March 25, 2007 in the bands 5900–5950 kHz, 7300–7350 kHz, 9400–9500 kHz, 11600–11650 kHz, 12050–12100 kHz, 13800–13870 kHz, and 15600–15800 kHz and as of March 29, 2009 for the band 7350–7400 kHz in Region 2 and the band 7350–7450 kHz in Region 3 shall:

(1) Be limited to communications only within the United States and its insular areas;

(2) Not cause harmful interference to the broadcasting service;

(3) Be limited to the minimum power needed to achieve communications; and

(4) Take account of the seasonal use of frequencies by the broadcasting service published in accordance with Article 12 of the ITU Radio Regulations.

* * * * *

PART 97—AMATEUR RADIO SERVICE

■ 26. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 27. Section 97.301 is amended by revising the tables in paragraphs (a), (b), (c), (d), and (e) to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *
(a) * * *

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303 (Paragraph)
VHF	MHz	MHz	MHz	
6 m .....	.....	50–54	50–54	(a).
2 m	144–146	144–148	144–148	(a).
1.25 m .....	.....	219–220 .....	.....	(a), (e).
Do .....	.....	222–225 .....	.....	(a).
UHF	MHz	MHz	MHz	
70 cm	430–440	420–450	420–450	(a), (b), (f).
33 cm .....	.....	902–928 .....	.....	(a), (b), (g).
23 cm	1240–1300	1240–1300	1240–1300	(b), (h), (i).
13 cm	2300–2310	2300–2310	2300–2310	(a), (b), (j).
Do	2390–2450	2390–2450	2390–2450	(a), (b), (j).
SHF	GHz	GHz	GHz	
9 cm	3.4–3.475	3.3–3.5	3.3–3.5	(a), (b), (k), (l).
5 cm	5.650–5.850	5.650–5.925	5.650–5.850	(a), (b), (m).
3 cm	10.00–10.50	10.00–10.50	10.00–10.50	(a), (c), (i), (n).
1.2 cm	24.00–24.25	24.00–24.25	24.00–24.25	(a), (b), (i), (o).
EHF	GHz	GHz	GHz	
6 mm	47.0–47.2	47.0–47.2	47.0–47.2	(b), (c), (h), (k), (r).
4 mm	75.5–81.0	75.5–81.0	75.5–81.0	(p).
2.5 mm	122.25–123	122.25–123	122.25–123	(b), (c), (h), (k).
2 mm	134–141	134–141	134–141	(b), (c), (h), (k), (q).
1 mm	241–250	241–250	241–250	(k).
.....	above 275	above 275	above 275	

(b) * * *

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303 (Paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (b), (c).
HF	MHz	MHz	MHz	
80 m	3.50–3.75	3.50–3.75	3.50–3.75	(a).
75 m	3.75–3.80	3.75–4.00	3.75–3.90	(a).
40 m	7.0–7.2	7.0–7.3	7.0–7.2	(a), (t).
30 m	10.10–10.15	10.10–10.15	10.10–10.15	(d).
20 m	14.00–14.35	14.00–14.35	14.00–14.35	
17 m	18.068–18.168	18.068–18.168	18.068–18.168	
15 m	21.00–21.45	21.00–21.45	21.00–21.45	
12 m	24.89–24.99	24.89–24.99	24.89–24.99	
10 m	28.0–29.7	28.0–29.7	28.0–29.7	

(c) * * *

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303 (Paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (b), (c).
HF	MHz	MHz	MHz	
80 m	3.525–3.750	3.525–3.750	3.525–3.750	(a).
75 m	3.775–3.800	3.775–4.000	3.775–3.900	(a).
40 m	7.025–7.200	7.025–7.300	7.025–7.200	(a), (t).
30 m	10.10–10.15	10.10–10.15	10.10–10.15	(d).
20 m	14.025–14.150	14.025–14.150	14.025–14.150.	
Do	14.175–14.350	14.175–14.350	14.175–14.350.	
17 m	18.068–18.168	18.068–18.168	18.068–18.168.	
15 m	21.025–21.200	21.025–21.200	21.025–21.200.	
Do	21.225–21.450	21.225–21.450	21.225–21.450.	
12 m	24.89–24.99	24.89–24.99	24.89–24.99	
10 m	28.0–29.7	28.0–29.7	28.0–29.7	

(d) * * *

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303 (Paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (b), (c).
HF	MHz	MHz	MHz	
80 m	3.525–3.750	3.525–3.750	3.525–3.750	(a).
75 m	3.85–4.00	3.85–4.00	3.85–3.750	(a).
40 m	7.025–7.150	7.025–7.150	7.025–7.150	(a).
Do	7.225–7.300	7.225–7.300 ....	.....	(a), (t).
30 m	10.10–10.15	10.10–10.15	10.10–10.15	(d).
20 m	14.025–14.150	14.025–14.150	14.025–14.150.	
Do	14.225–14.350	14.225–14.350	14.225–14.350.	
17 m	18.068–18.168	18.068–18.168	18.068–18.168.	
15 m	21.025–21.200	21.025–21.200	21.025–21.200..	
Do	21.30–21.45	21.30–21.45	21.30–21.45	
12 m	24.89–24.99	24.89–24.99	24.89–24.99	
10 m	28.0–29.7	28.0–29.7	28.0–29.7	

(e)* * *

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303 (Paragraph)
HF	MHz	MHz	MHz	
80 m	3.675–3.725	3.675–3.725	3.675–3.725.	
40 m	7.050–7.075 ....	.....	7.050–7.075	(a).
Do	7.100–7.150	7.100–7.150	7.100–7.150	(a), (t).
15 m	21.10–21.20	21.10–21.20	21.10–21.20.	
10 m	28.10–28.50	28.10–28.50	28.10–28.50.	
VHF	MHz	MHz	MHz	
1.25 m .....	.....	222–225 .....	.....	(a).
UHF	MHz	MHz	MHz	
23 cm	1270–1295	1270–1295	1270–1295	(h), (i).

■ 28. Section 97.303 is amended by revising paragraphs (a), (b), (c), (f)(4), (h), (i), (k), (l)(1), (l)(2), (l)(3) and (r)(2) and by adding paragraph (t) to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(a) Where, in adjacent ITU Regions or sub-Regions, a band of frequencies is allocated to different services of the same category (*i.e.*, primary or secondary allocations), the basic principle is the equality of right to operate. Accordingly, stations of each service in one Region or sub-Region must operate so as not to cause harmful interference to any service of the same or higher category in the other Regions or sub-Regions. (*See ITU Radio Regulations*, edition of 2004, No. 4.8.)

(b) No amateur station transmitting in the 1900–2000 kHz segment, the 70 cm band, the 33 cm band, the 23 cm band, the 13 cm band, the 9 cm band, the 5 cm band, the 3 cm band, the 24.05–24.25 GHz segment, the 76–77.5 GHz segment, the 78–81 GHz segment, the 136–141 GHz segment, and the 241–248 GHz segment shall not cause harmful interference to, nor is protected from interference due to the operation of, the Federal radiolocation service.

(c) No amateur station transmitting in the 1900–2000 kHz segment, the 3 cm band, the 76–77.5 GHz segment, the 78–81 GHz segment, the 136–141 GHz segment, and the 241–248 GHz segment shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the non-Federal radiolocation service.

* * * * *

(f) * * *

(4) No amateur station transmitting in the 449.75–450.00 MHz segment shall cause interference to, nor is protected from interference due to the operation of stations in, the space operation and space research services.

* * * * *

(h) No amateur station transmitting in the 23 cm band, the 3.3–3.4 GHz segment, the 3 cm band, the 24.05–24.25 GHz segment, the 76–77.5 GHz segment, the 78–81 GHz segment, the 136–141 GHz segment, and the 241–248 GHz segment shall cause harmful

interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the radiolocation service.

(i) In the 23 cm band, no amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the radionavigation-satellite service, the aeronautical radionavigation service, the Earth exploration-satellite service (active), or the space research service (active).

* * * * *

(k) No amateur station transmitting in the following segments shall cause harmful interference to stations in the radio astronomy service: 3.332–3.339 GHz, 3.3458–3.3525 GHz, 76–77.5 GHz, 78–81 GHz, 136–141 GHz, 241–248 GHz, 275–323 GHz, 327–371 GHz, 388–424 GHz, 426–442 GHz, 453–510 GHz, 623–711 GHz, 795–909 GHz, and 926–945 GHz. No amateur station transmitting in following segments shall cause harmful interference to stations in the Earth exploration-satellite service (passive) and space research service (passive): 275–277 GHz, 294–306 GHz, 316–334 GHz, 342–349 GHz, 363–365 GHz, 371–389 GHz, 416–434 GHz, 442–444 GHz, 496–506 GHz, 546–568 GHz, 624–629 GHz, 634–654 GHz, 659–661 GHz, 684–692 GHz, 730–732 GHz, 851–853 GHz, and 951–956 GHz.

(l) * * *

(1) In ITU Regions 2 and 3, the 9 cm band is allocated to the amateur service on a secondary basis. In ITU Region 1, the segment 3.4–3.475 GHz is allocated to the amateur service on a secondary basis for use only in Germany, Israel, and the United Kingdom.

(2) In the United States, the 9 cm band is allocated to the amateur and non-Federal radiolocation services on a secondary basis.

(3) In the 3.4–3.5 GHz segment, no amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the fixed and fixed-satellite services.

* * * * *

(r) * * *

(2) No amateur or amateur-satellite station transmitting in the 75.5–76 GHz segment shall cause interference to, nor

is protected from, interference due to the operation of stations in the fixed service. After January 1, 2006, the 75.5–76 GHz segment is no longer allocated to the amateur service or to the amateur-satellite service.

* * * * *

(t) (1) The 7–7.1 MHz segment is allocated to the amateur and amateur-satellite services on a primary and exclusive basis throughout the world, except that the 7–7.05 MHz segment is:

(i) Additionally allocated to the fixed service on a primary basis in the countries listed in 47 CFR 2.106, footnote 5.140; and

(ii) Alternatively allocated to the fixed service on a primary and exclusive basis (*i.e.*, the segment 7–7.05 MHz is not allocated to the amateur service) in the countries listed in 47 CFR 2.106, footnote 5.141.

(2) The 7.1–7.2 MHz segment is allocated to the amateur service on an exclusive basis in Region 2. Until March 29, 2009, the 7.1–7.2 MHz segment is allocated to the amateur and broadcasting services on a co-primary basis in Region 1 and Region 3 and the use of the 7.1–7.2 MHz segment by the amateur service shall not impose constraints on the broadcasting service intended for use within Region 1 and Region 3. After March 29, 2009, the 7.1–7.2 MHz segment is allocated to the amateur service on a primary and exclusive basis throughout the world, except that the 7.1–7.2 MHz segment is additionally allocated to the fixed and mobile except aeronautical mobile (R) services on a primary basis in the countries listed in 47 CFR 2.106, footnote 5.141B.

(3) The 7.2–7.3 MHz segment is allocated to the amateur service on an exclusive basis in Region 2 and to the broadcasting service on an exclusive basis in Region 1 and Region 3. The use of the 7.2–7.3 MHz segment in Region 2 by the amateur service shall not impose constraints on the broadcasting service intended for use within Region 1 and Region 3.

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Part III

Environmental Protection Agency

**40 CFR Part 63
National Emission Standards for
Hazardous Air Pollutants: Cellulose
Products Manufacturing; Final Rule and
Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0193; FRL–7948–5]

RIN 2060–AL91

National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for cellulose products manufacturing, which were issued on June 11, 2002, under section 112 of the Clean Air Act (CAA). The amendments revise the work practice standards, general and initial compliance requirements, definitions, and General Provisions applicability, as well as correct typographical, formatting, and cross-referencing errors in the final rule. We are issuing the amendments as a direct final rule, without prior proposal, because we view the amendments as noncontroversial and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the NESHAP for cellulose products manufacturing if adverse comments are filed.

DATES: The direct final rule is effective on October 11, 2005, unless EPA receives adverse comments by September 9, 2005, or by September 26, 2005, if a hearing is requested by August 22, 2005. If adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** indicating which sections will become effective, and which provisions are being withdrawn due to adverse comment. If anyone contacts the EPA requesting to speak at a public hearing, a public hearing will be held on August 24, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0193, by one of the following methods:

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

- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA’s electronic public docket and comment system, is EPA’s preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: air-and-r-docket@epa.gov.
- Fax: (202) 566–1741.
- Mail: EPA Docket Center, EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.

- Hand Delivery: Air and Radiation Docket, EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions. Direct your comments to Docket ID No. OAR–2003–0193. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the Federal [regulations.gov](http://www.regulations.gov) Web sites are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](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 docket and made available on the internet. If you submit an electronic comment, EPA recommends that you

include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hardcopy at the Air and Radiation 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 Air Docket is (202) 566–1742.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA’s Environmental Research Center Auditorium, Research Triangle Park, North Carolina or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Schrock, Organic Chemicals Group, Emission Standards Division (C504–04), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5032, facsimile number (919) 541–3470, electronic mail (e-mail) address schrock.bill@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include those listed in the following table:

Category	NAICS code*	Examples of regulated entities
Industry	326121	cellulose food casing operations.
	325221	rayon operations.
	326199, 325211 ...	cellulosic sponge operations.
	326199	cellophane operations.
	325199	cellulose ether operations.
Federal Government		Not affected.

Category	NAICS code*	Examples of regulated entities
State/local/tribal government	Not affected.

* North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.5485 of the national emission standards. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mr. Bill Schrock, Organic Chemicals Group, Emission Standards Division (Mail Code C504-05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5605, electronic mail address schrock.bill@epa.gov, at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Mr. Bill Schrock to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's document will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

Comments. We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the national emission standards for cellulose products manufacturing operations if adverse comments are filed. If we receive any adverse comments on one or more distinct amendments, we will publish a timely

withdrawal in the **Federal Register** informing the public which provisions will become effective, and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule, should the Agency determine to issue one. Any of the distinct amendments in today's direct final rule for which we do not receive adverse comment will become effective on the previously mentioned date. We will not institute a second comment period on the direct final rule amendments. Any parties interested in commenting must do so at this time.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by October 11, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The following outline is provided to aid in reading the preamble to the direct final rule.

- I. Background
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I. Background

The EPA, under section 112 of the CAA, promulgated the NESHAP for cellulose products manufacturing on June 11, 2002 (67 FR 40044). The final rule, codified at 40 CFR part 63, subpart UUUU, includes emission limits, operating limits, and work practice standards, as well as general, initial, and continuous compliance requirements and notification, reporting, and recordkeeping requirements. Following promulgation of the rule, UCB Films, Inc. and Teepak, LLC petitioned the Agency for specific changes to the final rule, and Dow Chemical Co. informally requested that we issue specific amendments to the final rule.

In response to industry's requests, today's action issues amendments to subpart UUUU of 40 CFR part 63 to revise the work practice standards, general and initial compliance requirements, definitions, and General Provisions applicability. The amendments also include corrections of typographical, formatting, and cross-referencing errors identified after the final rule was published. The amendments are described below.

A. Work-Practice Standards

The cellophane operation at the UCB Films facility in Tecumseh, Kansas includes a number of casting machines, each of which includes concentrated sulfuric acid baths referred to as "A-tanks." Above the A-tanks are retractable hoods that can be moved up or down. To capture emissions, the hoods over the A-tanks are moved into the down position, and the vent streams from the A-tanks are routed to a thermal oxidizer. For operational purposes, the hoods over the A-tanks are at times kept in the up position, and during those times the vent streams from the A-tanks are diverted to the stack. UCB Films has asked whether the provision in the final rule requiring vent streams at cellophane operations to be routed through closed-vent systems to control devices possibly could be construed to apply to these A-tank hoods and, therefore, could require UCB Films to operate its casting machines with the A-tank hoods in the down position at all times.

The cellophane operation at the UCB Films facility is the only one currently

operating in the U.S. Consequently, the maximum achievable control technology (MACT) floor for cellophane operations was established based on the current emission limitation at the UCB Films facility. This MACT floor accounted for the A-tank hoods at the UCB Films facility at times being kept in the up position. Consequently, the closed-vent system requirement, as currently stated, would be inconsistent with MACT for cellophane operations. Therefore, through the amendments to the final rule, we are now making clear that we did not intend for the closed-vent system provision to apply to retractable hoods over sulfuric acid baths at a cellophane operation, such as the A-tank hoods at the UCB Films facility. The final rule does not prohibit UCB Films from operating its casting machines with the A-tank hoods in the up position.

B. General Compliance Requirements

In response to comments on the proposed rule, we changed the deadline for completing a performance test or other initial compliance demonstration from 180 days before to 180 days after the compliance date. To ensure that a record of compliance would be kept between the compliance date and the date when operating limits for the continuous monitoring systems (CMS) are established (*i.e.*, the date of the performance test or other initial compliance demonstration), we included a provision in § 63.5515(b)(1) of the final rule that requires affected sources to maintain an operation and maintenance (O&M) log of the process and emissions control equipment during that period.

Dow has requested that we limit the O&M log to emission control equipment because the amount and type of data associated with operation and maintenance of the process are unclear and onerous. For example, with the current text in the final rule, companies would be required to document when a pump used to inject water treatment chemicals into boiler feedwater for steam generation was replaced or repaired. Plant operators would be required to record literally thousands of data points related to the operation of “any” aspect of the production unit, even though it would have no bearing on emissions or the compliance parameters required by the final rule. According to Dow, this broad scope was certain to be inconsistently applied, and it would be difficult, if not impossible, to demonstrate compliance.

Dow has also requested that we clarify that the O&M log requirement is needed only for those control devices used to

comply with the standard, not every control device unassociated with the scope of the final rule. Some control devices may be installed for odor or State requirements and do not need to be included in the O&M log. For example, one of Dow’s cellulose ether facilities has a scrubber that, under a State permit, is used to control non-hazardous air pollutants emissions, and the facility does not need to monitor or conduct a performance test on this scrubber in order to comply with the final rule. According to Dow, with the current text in the final rule, the facility would have to maintain data on the scrubber for no other purpose than that stated in § 63.5515(b)(1).

Consequently, Dow has recommended that EPA revise § 63.5515(b)(1) to replace the term “process and emissions control equipment” with the term “control technique used to comply with the rule.” Dow has recommended using the term “control technique” rather than “emissions control equipment” because “control technique” is defined in § 63.5610 of the final rule. Dow believes that this revision would clarify the requirement and strike a more appropriate balance without being unnecessarily burdensome. The Agency agrees with the rationale provided by Dow that a more narrow definition for items to be contained in the O&M log is appropriate. Therefore, through the amendments to the final rule, we are making the suggested revision to § 63.5515(b)(1).

C. Initial Compliance Requirements

1. Material Balance Compliance Option

One of Dow’s cellulose ether facilities uses a material balance to calculate the amount of HAP reacted, *i.e.*, destroyed in the process. According to Dow, this facility’s demonstration of overall control efficiency is similar to the viscose process material balance. Dow has requested that EPA provide cellulose ether affected sources with a material balance compliance option similar to that for the viscose process affected sources. This option would allow the cellulose ether affected sources to demonstrate initial compliance using a month-long initial compliance demonstration and demonstrate continuous compliance by maintaining a material balance and using it to document the percent reduction of total organic hazardous air pollutants (HAP) emissions. The Agency was unaware that any cellulose ether facilities were using the material balance technique to calculate their control efficiency and, therefore, did not provide this as a compliance option for

cellulose ether facilities in the final rule. We consider this a valid approach for calculating control efficiency and extending this option to the cellulose ether affected sources makes the final rule consistent with the viscose process affected sources. Therefore, through the amendments to the final rule, we are providing the requested material balance compliance option for cellulose ether operations, with the clarification that the start point from which the percent reduction is determined must be the onset of extended cookout. Extended cookout is a means of reducing HAP emissions by allowing the reaction to occur for a longer period of time than economically desired, thus allowing for more of the HAP to be consumed in the reaction. This clarification that the start point for the material balance compliance option is necessary because cellulose ether affected sources actually consume much of the HAP in their reaction (*e.g.*, ethylene oxide), while viscose process affected sources eventually regenerate all of the HAP in their reaction (as either carbon disulfide or hydrogen sulfide).

2. Additional Testing

Tables 3 and 5 to the final rule require viscose process affected sources to prepare and maintain a material balance that includes the “pertinent data” used to determine the percent reduction of total sulfide emissions. To prepare and maintain such a material balance, emissions information to determine control efficiency would be needed in addition to that gathered through the initial performance test. According to Teepak, the “pertinent data” language in the final rule possibly could be construed to require additional testing to complete the material balance, although such additional testing is not explicitly required in the final rule and would be inconsistent with language in the preamble. Teepak has recommended that EPA revise § 63.5535(g)(1) to clarify that no additional emission tests are required. The Agency did not intend to require additional emissions tests be conducted by use of the term “pertinent data” and agrees with Teepak’s request. Therefore, through the amendments to the final rule, we are making the suggested revision to § 63.5535(g)(1) for viscose process affected sources. For consistency, we are providing the same clarification for those cellulose ether affected sources that choose the material balance compliance option.

3. Batch Emission Episodes

For those sources that choose to conduct an initial performance test, Dow has noted that the final rule does

not address the testing of batch emission episodes lasting less than 1 hour. According to Dow, the final rule is unclear and has conflicting requirements between the regulatory text and tables regarding whether (1) the batch emission episode provisions in § 63.490(c) apply to calculating the emission rate, as stated in table 4 to the final rule, (2) three 1-hour tests are required, as stated in § 63.5535(d), or (3) a 3-hour test is required, as stated in table 3 to the final rule. Dow has recommended that EPA clarify in § 63.5535(d) and (e) that batch process vent tests follow the provisions listed in table 4 and § 63.490(c), which Dow has interpreted as allowing testing on a batch emission episode. Upon review of the subject testing requirements the Agency agrees with Dow's assessment that the language in the text and tables conflict and need clarification. Therefore, through the amendments to the final rule, we are making the suggested revision to § 63.5535(d) and (e). To account for the testing of batch emission episodes, which may last less than 1 hour per test run, we are also removing the "3-hour" term used in table 3 to the final rule to describe the performance test. This revision also eliminates any confusion with the requirement in § 63.5535(d) for three 1-hour test runs.

4. Uncontrolled Emissions

Both Teepak and Dow have noted that table 3 to the final rule requires operations to demonstrate initial compliance with the emission limit by "measuring" the average uncontrolled emissions during the compliance demonstration or performance test. However, the final rule does not require month-long initial performance tests, nor does it require any additional testing after the initial performance tests of control device efficiency. Teepak has recommended that EPA change the term "measured" in table 3 to the final rule to "determined" to clarify that no additional testing or measurement was intended for cellulose food casing operations or any other viscose process affected source. Dow has recommended that EPA revise tables 3 and 4 to the final rule to allow engineering assessments to be used as an alternative for determining the uncontrolled emissions from process vents. According to Dow, engineering assessments are allowed in other NESHAP, including the Hazardous Organic NESHAP (HON), the Pharmaceutical NESHAP, and the Pesticide Active Ingredient NESHAP.

The Agency agrees with Dow and Teepak that using the term

"determined" instead of "measured" is consistent with the approach of using an engineering assessment as an alternative for determining uncontrolled emissions. Through the amendments to the final rule, we are making the clarification to table 3 to the final rule suggested by Teepak for viscose process affected sources. For consistency, we are providing the same clarification for those cellulose ether affected sources that choose to demonstrate initial compliance using a month-long compliance demonstration. We are also making the revision to table 3 to the final rule suggested by Dow for cellulose ether affected sources. This revision should provide cellulose ether affected sources with some flexibility in determining uncontrolled emissions, whether they are conducting an initial performance test or a month-long compliance demonstration. For consistency, we are also providing the viscose process affected sources with the same option to use engineering assessments. We are not making the revision to table 4 to the final rule suggested by Dow because this issue will already be addressed in the revision to table 3 of the final rule. Table 4 of the final rule is designed to describe the performance testing requirements, and if a source is using other means (e.g., engineering assessments) to determine uncontrolled emissions, then those means should be described in table 3 of the final rule.

5. Equations

Dow has noted that § 63.5535(e)(2) requires sources to calculate the "total sulfide emission rate." According to Dow, it is not necessary for a source to calculate the total sulfide emission rate if it does not use sulfur compounds, specifically carbon disulfide, in its process. Dow has recommended that EPA clarify the final rule so that § 63.5535(e)(2) is used only for viscose processes that actually use carbon disulfide. Through the amendments to the final rule, we are revising § 63.5535(e) to require sources to use the equations "as applicable." This revision should account for those sources (e.g., cellulose ether affected sources) for which an equation (e.g., total sulfide emission equation) may not apply.

6. Establishing Operating Limits

Section 63.5535(h)(1) of the final rule references § 63.505(b)(2) regarding the establishment of operating limits for continuous processes. Section 63.505(b)(2) requires sources to use the average of the maximum values to establish a maximum level and the average of the minimum values to

establish a minimum level. Teepak has argued that this procedure inappropriately restricts the range in which their scrubbers can be operated to ensure compliance with the emission reduction requirements. According to Teepak, the capabilities of the scrubber under a range of conditions, not simply the average capabilities, should be used to determine maximum and minimum operating limits. Teepak has recommended that we replace the procedures of § 63.505(b)(2) with those of § 63.505(c), which require sources to establish parameter operating levels based on performance tests, supplemented by engineering assessments and/or manufacturer's recommendations. According to Teepak, this change would allow the development of true operating limits of the control or recovery device. Teepak has also recommended that we revise table 3 to the final rule to clarify that a range of scrubber operating values is acceptable.

The Agency agrees with Teepak that the use of average values to establish the minimum and maximum operating limits for the scrubbers will not result in an effective measure for assessing the operational performance of the scrubbers. By using the averages for establishing both the minimum and maximum values for the scrubber operating range, an overly restrictive range is set, while the scrubbers can be demonstrated to operate effectively operate over a much broader range. Therefore, through the amendments to the final rule, we are making the suggested revisions to § 63.5535(h)(1), (5), and (6). We are also revising tables 2, 3, and 6 to final rule. For consistency, we are applying the requirement to use § 63.505(c) to both continuous and batch processes.

D. Definitions

1. Process Unit/Source Category

In response to a comment on the proposed rule, we added a definition for "cellulose ether process unit" to the final rule to help define the boundaries around equipment for equipment leak monitoring. We also revised the definition for "cellulose ether operation" to provide greater clarification of what it includes, and we revised the definition for "cellulose ether process" to specifically exclude solids handling. However, the requirements in the final rule refer only to the definitions for "cellulose ether operation" and "cellulose ether process unit," which do not exclude solids handling equipment. Dow has argued that, without clear definitions, the

regulated industry cannot delineate the equipment included in the process unit and subject to the final rule. As “cellulose ether process unit” is currently defined, equipment in the solids handling process would be a part of the cellulose ether process unit and would be subject to the equipment leak provisions. According to Dow, it is doubtful that the HAP concentration in the solids handling equipment would exceed 5 percent, and unnecessary records would be needed to document that the equipment is not monitored. Dow has recommended that EPA revise the definition for “cellulose ether process unit” to specifically include the term “cellulose ether process.” According to Dow, revising this definition would be a clear and simple approach to exclude equipment not a part of the cellulose ether process unit and, therefore, not subject to equipment leaks monitoring. Dow has also recommended that EPA revise the definition for “Cellulose Ethers Production source category” to refer to “the collection of *cellulose ether* operations” to provide a similar clarification.

The Agency agrees with Dow that revising the definitions will provide clarity and consistency to what equipment is subject to the equipment leak monitoring. Additionally, based on a review of the information presented to EPA during the initial development of these provisions the solids handling equipment is unlikely to exceed the 5 percent HAP threshold and, as the rule is currently written, unnecessary records would need to be kept. Through the amendments to the final rule, we are making the suggested revisions to the definitions for “cellulose ether process unit” and “Cellulose Ethers Production source category.” For consistency, we are also revising several other definitions. We are revising the definitions for “cellulose food casing process unit,” “cellulosic sponge process unit,” and “rayon process unit” to specifically include the term “viscose process.” We are revising the definition for “cellophane process unit” to specifically include the terms “viscose process” and “solvent coating process.” Finally, we are revising the definition for “Miscellaneous Viscose Processes source category” to specifically include the collection of “cellulose food casing, rayon, cellulosic sponge, and cellophane operations.”

Dow has also recommended that EPA revise the tables in the final rule to refer

to the definition for “cellulose ether process unit” instead of “cellulose ether operation.” According to Dow, this change would allow EPA to clearly define the equipment subject to control. Specifically, Dow believes that EPA needs to define the boundaries of the process unit to determine where a wastewater process stream is discarded and, thus, becomes a wastewater. According to Dow, with the broadly defined term “cellulose ether operation,” no stream ever exits the process and becomes discarded.

We do not believe that replacing the term “cellulose ether operation” with “cellulose ether process unit” in the tables is necessary or even desirable. Such a revision would effectively exclude from regulation those equipment, such as heat exchanger systems, wastewater and waste management units, and cooling towers, that are not associated with the cellulose ether process unit but are located at a cellulose ether operation. Additionally, these sources were considered in establishing the MACT floor. Consequently, we are not making this suggested revision to the final rule.

2. Process Vent

In response to a comment on the proposed rule, we revised the definition of “process vent” in the final rule to refer to “a point of discharge to the atmosphere * * * of a HAP-containing gas stream from the process operation.” Noting that the term “process operation” is not defined in the final rule, Dow has recommended that EPA replace it with the term “unit operation.” According to Dow, the term “unit operation” is already defined in the final rule because § 63.5610 references the definitions from § 63.101 of the HON. Dow has also expressed concern that the definition for “process vent” in the final rule does not define the basis for the concentration of a process vent, *e.g.*, HAP or total organic compound (TOC). Consequently, Dow has recommended that EPA revise the definition for “process vent” to state that it does not include “* * * vents with * * * a concentration less than 50 parts per million by volume (ppmv) of HAP or TOC * * *” EPA agrees with Dow’s comment concerning the definition of process vent. Specifically, we agree that through the reference to § 63.101 of the HON and our definition of “process vent” we have created an inconsistency in the rule. To correct this inconsistency we are incorporating the characteristics of the vent stream from

the HON into our process vent definition. Through the amendments to the final rule, we are making the suggested clarifications to the definition for “process vent.”

E. Applicability of General Provisions

Facilities subject to the final rule are required to submit periodic compliance reports containing, among other things, information on episodes of startup, shutdown, or malfunction that occurred during each reporting period. UCB Films has asked whether the routine breaks of film (commonly called “wet breaks”) that occur in its casting machines possibly could be construed as falling within the definition for “malfunction.” The wet breaks would not affect UCB’s ability to meet the standards. We do not consider this type of routine event to fall within the definition for “malfunction” and believe it should not be included within the reporting requirement. See 67 FR 72875, 72881 (December 9, 2002); 68 FR 32586, 32592–32593 (May 30, 2003). For consistency, this interpretation also applies to routine breaks of cellulose food casing and rayon.

UCB Films also requested clarification of the reporting obligations for its casting machines when they are temporarily turned off to fix wet breaks. Clarification may also be needed, according to UCB Films, regarding the subsequent restart of the casting machines after the wet breaks are fixed. The recent revisions to the 40 CFR part 63 General Provisions state that there is no duty to report the number or duration of these events or to describe each one individually in the startup, shutdown, and malfunction report as long as the provisions of the startup, shutdown, and malfunction plan are followed and the report contains a statement to that effect; see § 63.10(d)(5)(i) and 68 FR 32592. No changes to subpart UUUU of 40 CFR part 63 are needed to address this issue.

F. Miscellaneous Corrections

Through the amendments to the final rule, we are also correcting various typographical, formatting, and cross-referencing errors found in the final rule and updating the cross-references, where necessary, to include the amended sections.

II. Summary of Amendments

Today’s amendments to subpart UUUU are described in Table 1 of this preamble.

TABLE 1.—SUMMARY OF AMENDMENTS TO SUBPART UUUU OF 40 CFR PART 63

Citation	Change
§ 63.5490(d) § 63.5515(b)(1) and (f) introductory paragraph	Change “meet” to “met” for verb tense consistency. Remove the requirement in paragraph (b)(1) to maintain a log for O&M of process equipment and state that the O&M log is only required for control devices used to comply with the rule. Replace the phrase “to of this subpart” in (f) introductory paragraph with “to this subpart.”
§ 63.5535 (d), (e) introductory paragraph, (g)(1), and (h)	Revise paragraph (d) to reference § 63.490(c) for batch process vents. Revise (e) introductory paragraph to reference § 63.490(c) for batch process vents. Also note that sources must use the equations as applicable. Revise paragraph (g)(1) to specify that no additional testing is required for viscose process affected sources required to conduct an initial performance test to determine the control efficiency of their non-recovery control devices. Replace references to § 63.505(b) (2) and (3) in paragraphs (h) (1) and (2) with references to § 63.505(c) for procedures used to establish operating limits. Combine paragraphs (h) (1) and (2) to apply to both continuous and batch processes. Renummer paragraphs (h) (3) through (10) as paragraphs (h) (2) through (9). Revise paragraphs (h) (5) and (6) to require affected sources to record the range of scrubber parameter values, rather than the average. Renummer paragraph (h) as paragraph (i) and add a new paragraph (h) that includes an initial compliance option for cellulose ether operations similar to the material balance option for the viscose process affected sources. For cellulose ether operations using extended cookout under this option, specify that the start point from which the percent reduction is determined must be the onset of extended cookout. Also specify that no additional testing is required for cellulose ether affected sources required to conduct an initial performance test to determine the control efficiency of their non-recovery control devices.
§ 63.5545(e)(4)	Change the citation, which describes the data to be excluded from continuous emissions monitoring system (CEMS) data averages, from paragraph (a)(5) to paragraph (e)(5) of this section.
§ 63.5610 (a) and (g)	Revise paragraph (a) by changing the citation for operating limit provisions from § 63.505(b) to § 63.505(c). Revise the definitions of “Cellulose Ethers Production source category” and “Miscellaneous Viscose Processes source category” in paragraph (g) to include a reference to the types of operations that are included in the source categories (cellulose ether, cellophane, cellulose food casing, cellulosic sponge, and rayon). Revise the definition of “cellulose ether process unit” in paragraph (g) to include the term “cellulose ether process.” Revise the definitions of “cellulose food casing process unit,” “cellulosic sponge process unit,” and “rayon process unit” to include the term “viscose process.” Revise the definition of “cellophane process unit” to include the terms “viscose process” and “solvent coating process.” Revise the definition of “process vent” in paragraph (g) to replace the undefined term “process operation” with the defined term “unit operation” and to define the concentration basis for process vents as HAP or TOC.
Table 1, items 1.c. i and ii, 1.f. ii and iii, 9, 10, and 11	Remove the numbering for individual requirements under items 1.c. i and ii. Revise items 1.f. ii and iii, item 10, and item 11 to clarify that the standards for closed-vent systems at cellophane operations do not apply to retractable hoods over sulfuric acid baths at a cellophane operation. Revise item 9 to replace the phrase “liquid streams in open system 2” with “liquid streams in open systems.”
Table 2, items 3 and 4	Designate the affected source text under item 11 as “a.” Revise items 3 and 4 to require affected sources to maintain the scrubber parameters within a range of values established during the compliance demonstration, rather than above or below an average value.
Table 3, introductory statement and items 1.a.i. (1) and (2); 1.b.i. (1) and (2); 1.c.i.(1); 1.c.ii.(1); 1.d.i.(1); 1.e.i.(1); 1.f.i.(1); 1.f.ii and 2.a.i.(1); 3.a; 6.a.i.(1); and 12.a.i.(2).	Revise the introductory statement for Table 3 to include § 63.5535(h) in the list of referenced provisions. Regarding the requirement in items 1.a.i.(1), 1.b.i.(1), 1.c.i.(1), 1.c.ii.(1), 1.d.i.(1), 1.e.i.(1), 1.f.i.(1), 2.a.i.(1), 3.a, and 6.a.i.(1) to “measure” average uncontrolled emissions during the month-long compliance demonstration, change “measured” to “determined.” Provide sources with the option to use engineering assessments to determine uncontrolled emissions.

TABLE 1.—SUMMARY OF AMENDMENTS TO SUBPART UUUU OF 40 CFR PART 63—Continued

Citation	Change
	Revise items 1.a.i.(2) and 1.b.i.(2) to replace the term “average operating parameter values” with “range of operating parameter values.” Revise items 1.f. ii and iii to clarify that the standards and initial compliance requirements for closed-vent systems at cellophane operations do not apply to retractable hoods over sulfuric acid baths at a cellophane operation. Revise item 2.a.i to change “folling” to “rolling.” Split item 3.a. into two parts—items 3.a and 3.b. Item 3.a applies to cellulose ether operations using a performance test to demonstrate initial compliance. Item 3.b applies to cellulose ether operations using a material balance compliance demonstration to demonstrate initial compliance. Include under item 3.b the requirements associated with the material balance compliance demonstration. Include under items 3.a and 3.b the option to use engineering assessments to determine uncontrolled emissions. Revise items 3.a.i. (1) and (2) to remove the term “3-hour.” Remove the numbering for individual requirements under item 12.a.i.(2).
Table 4, introductory statement and items 3 and 4.a.i.(2).(b)	Revise the introductory statement for Table 4 to include § 63.5535(h)(1) in the list of referenced provisions. Reposition the requirements for item 3 into their proper columns. Correct the misspelling for “potentially” in item 4.a.i.(2).(b).
Table 5, items 1.a. ii and iii; 3.a; 5.a. i, ii, and iv; and 8	Revise items 1.a. ii and iii to clarify that the standards and continuous compliance requirements for closed-vent systems do not apply to retractable hoods over sulfuric acid baths at a cellophane operation. Under item 1.a.ii, designate the work practice standard for closed-vent systems as “iii,” instead of “c.” Split item 3.a. into two parts—items 3.a and 3.b. Item 3.a applies to cellulose ether operations using a performance test to demonstrate initial compliance. Item 3.b applies to cellulose ether operations using a material balance compliance demonstration to demonstrate initial compliance. Include under item 3.b the requirements associated with the material balance continuous compliance option. Under items 5.a. i, ii, and iv, remove the numbering for individual emission limits and standards (e.g., remove “(1),” “(2),” and “(3)”). Also, change the numbering for individual continuous compliance requirements (e.g., change “(a),” “(b),” and “(c)” to “(1),” “(2),” and “(3)”). Correct the misspelling for “wastewater” in item 8.
Table 6, items 3 and 4	Revise items 3 and 4 to require affected sources to maintain the scrubber parameters within a range of values established during the compliance demonstration, rather than above or below an average value.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), EPA must determine whether the regulatory action is “significant” and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines “significant regulatory action” as one that is likely to result in standards 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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that the direct final rule amendments are not a “significant regulatory action” because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This action makes clarifying changes to the final rule and imposes no new information collection requirements on the industry. This action revises a work

practice standard, general and initial compliance requirements, definitions, and General Provisions applicability, as well as correct typographical, formatting, and cross-referencing errors in the final rule. The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paper Work Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0488 (EPA ICR No. 1974.02).

Copies of the Information Collection Request (ICR) document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at <http://>

www.epa.gov/icr. Include the ICR number in any correspondence.

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 purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) a small business that has fewer than 1,000 employees for NAICS codes 325221, 325188, and 325199; fewer than 750 employees for NAICS code 325211; or fewer than 500 employees for NAICS codes 326121 and 326199; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule amendments on small entities, the EPA has concluded that this action will not have a significant impact on a substantial number of small entities. The direct final rule amendments will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written

statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the direct final rule amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor do the direct final rule amendments significantly or uniquely impact small governments, because the amendments contain no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to the direct final rule amendments.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" 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."

The direct final rule amendments do not have federalism implications. The amendments 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. None of the affected facilities are owned or operated by State governments. Thus, the requirements of section 6 of the Executive Order do not apply to the direct final rule amendments.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA, State and local governments, the EPA specifically solicits comment on the direct final rule amendments from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The direct final rule amendments do not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the amendments in the direct final rule. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, then 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 that EPA considered.

The EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required

under section 5–501 of the Executive Order has the potential to influence the rule. The direct final rule amendments are not subject to Executive Order 13045, because the action is based on technology performance and not on health or safety risks. Furthermore, the direct final rule amendments have been determined not to be “economically significant” as defined under Executive Order 12866.

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

The direct final rule amendments are not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because the amendments are not considered a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement 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 action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement 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. The EPA will submit a report containing the direct final rule amendments 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 direct final rule amendments in the **Federal**

Register. The direct final rule amendments are not a “major rule” as defined by 5 U.S.C. 804(2). The direct final rule will become effective on October 11, 2005, unless adverse comments are received by September 26, 2005.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Cellulose products manufacturing, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 1, 2005.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart UUUU—[Amended]

■ 2. Section 63.5490 is amended by revising paragraph (d) to read as follows:

§ 63.5490 What parts of my plant does this subpart cover?

* * * * *

(d) An affected source is a new affected source if you began construction of the affected source after August 28, 2000 and you met the applicability criteria in § 63.5485 at the time you began construction.

* * * * *

■ 3. Section 63.5515 is amended by revising paragraphs (b)(1) and (f) introductory text to read as follows:

§ 63.5515 What are my general requirements for complying with this subpart?

(b) * * *

(1) During the period, if any, between the compliance date specified for your affected source in § 63.5495 and the date upon which continuous monitoring systems (CMS) have been installed and validated and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of any control technique used to comply with this subpart.

* * * * *

(f) You are not required to conduct a performance test when you use any of the units specified in paragraphs (f)(1) through (5) of this section to comply with the applicable emission limit or work practice standard in table 1 to this subpart. You are also exempt from the

continuous compliance, reporting, and recordkeeping requirements specified in tables 5 through 9 to this subpart for any of these units. This exemption applies to units used as control devices or wastewater treatment units.

* * * * *

■ 4. Section 63.5535 is amended by:

- a. Revising paragraphs (d), (e) introductory text, (g)(1), and (h);
- b. Redesignating paragraph (h) as paragraph (i); and
- c. Adding a new paragraph (h).

The revisions and additions read as follows:

§ 63.5535 What performance tests and other procedures must I use?

* * * * *

(d) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour, except as specified in § 63.490(c) for batch process vents.

(e) Except as specified in § 63.490(c) for batch process vents, you may use the equations in paragraphs (e)(1) through (3) of this section as applicable to determine the control efficiency for each performance test.

* * * * *

(g) * * *

(1) Viscose process affected sources that must use non-recovery control devices to meet the applicable emission limit in table 1 to this subpart must conduct an initial performance test of their non-recovery control devices according to the requirements in table 4 to this subpart to determine the control efficiency of their non-recovery control devices and incorporate this information in their material balance. No additional performance tests are required.

* * * * *

(h) Cellulose ether affected sources using the material balance compliance demonstration must conduct a month-long initial compliance demonstration according to the requirements in paragraphs (h)(1) through (4) of this section and table 3 to this subpart.

(1) Cellulose ether affected sources that must use non-recovery control devices to meet the applicable emission limit in table 1 to this subpart must conduct an initial performance test of their non-recovery control devices according to the requirements in table 4 to this subpart to determine the control efficiency of their non-recovery control devices and incorporate this information in their material balance. No additional performance tests are required.

(2) Cellulose ether affected sources that use recovery devices to meet the

applicable emission limit in table 1 to this subpart must determine the quantity of organic HAP fed to the process and the quantity of organic HAP recovered using the recovery device and incorporate this information in their material balance.

(3) Cellulose ether affected sources that use cellulose ether process changes to meet the applicable emission limit in table 1 to this subpart must determine the quantity of organic HAP used before and after the process change and incorporate this information in their material balance. For cellulose ether affected sources that use extended cookout, the start point from which the percent reduction is determined must be the onset of extended cookout.

(4) Using the pertinent material balance information obtained according to paragraphs (h)(1) through (3) of this section, cellulose ether affected sources must calculate the monthly average percent reduction for their affected source over the month-long period of the compliance demonstration.

* * * * *

(i) During the period of each compliance demonstration, you must establish each site-specific operating limit in table 2 to this subpart that applies to you according to the requirements in paragraphs (i)(1) through (9) of this section.

(1) For continuous, batch, and combinations of continuous and batch process vents, establish your site-specific operating limit using the procedures in § 63.505(c), except that, if you demonstrate initial compliance using a month-long compliance demonstration, references to “performance test” mean “compliance demonstration” for purposes of this subpart.

(2) For condensers, record the outlet (product side) gas or condensed liquid temperature averaged over the same period as the compliance demonstration while the vent stream is routed and constituted normally. Locate the temperature sensor in a position that provides a representative temperature.

(3) For thermal oxidizers, record the firebox temperature averaged over the same period as the compliance demonstration. Locate the temperature sensor in a position that provides a representative temperature.

(4) For water scrubbers, record the range of the pressure drop and flow rate of the scrubber liquid over the same time period as the compliance demonstration while the vent stream is routed and constituted normally. Locate the pressure and flow sensors in a position that provides a representative measurement of the parameter.

(5) For caustic scrubbers, record the range of the pressure drop, flow rate of the scrubber liquid, and pH, conductivity, or alkalinity of the scrubber liquid over the same time period as the compliance demonstration while the vent stream is routed and constituted normally. Locate the pressure sensors, flow sensors, and pH, conductivity, or alkalinity sensors in positions that provide representative measurements of these parameters. Ensure the sample is properly mixed and representative of the fluid to be measured.

(6) For flares, record the presence of a pilot flame. Locate the pilot flame sensor in a position that provides an accurate and continuous determination of the presence of the pilot flame.

(7) For biofilters, record the pressure drop across the biofilter beds, inlet gas temperature, and effluent pH averaged over the same time period as the compliance demonstration while the vent stream is routed and constituted normally. Locate the pressure, temperature, and pH sensors in positions that provide representative measurement of these parameters. Ensure the sample is properly mixed and representative of the fluid to be measured.

(8) For carbon adsorbers, record the total regeneration stream mass or volumetric flow during each carbon bed regeneration cycle during the period of the compliance demonstration. Record the temperature of the carbon bed after each carbon bed regeneration cycle during the period of the compliance demonstration (and within 15 minutes of completion of any cooling cycle(s)). Record the operating time since the end of the last carbon bed regeneration cycle and the beginning of the next carbon bed regeneration cycle during the period of the compliance demonstration. Locate the temperature and flow sensors in positions that provide representative measurement of these parameters.

(9) For oil absorbers, record the flow of absorption liquid through the absorber, the temperatures of the absorption liquid before and after the steam stripper, and the steam flow through the steam stripper averaged during the same period of the compliance demonstration. Locate the temperature and flow sensors in positions that provide representative measurement of these parameters.

■ 5. Section 63.5545 is amended by revising paragraph (e)(4) to read as follows:

§ 63.5545 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(e) * * *

(4) The CEMS data must be reduced to operating data averages computed using valid data from at least 75 percent of the hours during the averaging period. To have a valid hour of data, you must have four or more data points equally spaced over the 1-hour period (or at least two data points during an hour when calibration, quality assurance, or maintenance activities are being performed), except as specified in paragraph (e)(5) of this section.

* * * * *

■ 6. Section 63.5610 is amended by revising paragraph (a) and the paragraph (g) definitions for cellophane process unit, cellulose ether process unit, Cellulose Ether Production source category, cellulose food casing process unit, cellulosic sponge process unit, Miscellaneous Viscose Processes source category, process vent, and rayon process unit to read as follows:

§ 63.5610 What definitions apply to this subpart?

(a) For all affected sources complying with the batch process vent testing provisions in § 63.490(c) and the operating limit provisions in § 63.505(c), the terms used in this subpart and in subpart U of this part are defined in § 63.482 and paragraph (g) of this section.

* * * * *

(g) * * *

Cellophane process unit means all equipment associated with the viscose process or solvent coating process which collectively function to manufacture cellophane and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment (as defined in § 63.161) that are used in the manufacturing of cellophane.

* * * * *

Cellulose ether process unit means all equipment associated with a cellulose ether process which collectively function to manufacture a particular cellulose ether and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment (as defined in § 63.161 or 63.1020) that are used in the manufacturing of a particular cellulose ether.

Cellulose Ethers Production source category means the collection of cellulose ether operations that use the cellulose ether process to manufacture a particular cellulose ether.

* * * * *

Cellulose food casing process unit means all equipment associated with the viscose process which collectively function to manufacture cellulose food casings and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment (as defined in § 63.161) that are used in the manufacturing of cellulose food casings.

* * * * *

Cellulosic sponge process unit means all equipment associated with the viscose process which collectively function to manufacture cellulosic sponges and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment

(as defined in § 63.161) that are used in the manufacturing of cellulosic sponges.

* * * * *

Miscellaneous Viscose Processes source category means the collection of cellulose food casing, rayon, cellulosic sponge, and cellophane operations that use the viscose process to manufacture a particular cellulose product. These cellulose products include cellulose food casings, rayon, cellulosic sponges, and cellophane.

* * * * *

Process vent means a point of discharge to the atmosphere (or the point of entry into a control device, if any) of a HAP-containing gas stream from the unit operation. Process vents do not include vents with a flow rate less than 0.005 standard cubic meter per

minute or with a concentration less than 50 parts per million by volume (ppmv) of HAP or TOC, vents on storage tanks, vents on wastewater emission sources, or pieces of equipment regulated under equipment leak standards.

* * * * *

Rayon process unit means all equipment associated with the viscose process which collectively function to manufacture rayon and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment (as defined in § 63.161) that are used in the manufacturing of rayon.

* * * * *

■ 7. Table 1 is amended by revising entries 1.c.i and ii, 1.f.ii and iii, and 9 through 11 to read as follows:

TABLE 1 TO SUBPART UUUU OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS

*	*	*	*	*	*	*
For . . .	at . . .	You must . . .				
1. the sum of all viscose process vents.	c. each existing rayon operation . . .	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 35% within 3 years after the effective date based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems; and ii. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 40% within 8 years after the effective date based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems.				
	f. each existing or new cellophane operation.	i. * * * ii. for each vent stream that you control using a control device (except for retractable hoods over sulfuric acid baths at a cellophane operation), route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems (except for retractable hoods over sulfuric acid baths at a cellophane operation).				
9. liquid streams in open systems	each existing or new cellulose ether operation.	comply with the applicable provisions or § 63.149, except that references to “chemical manufacturing process unit” ether means “cellulose ether process unit” for the purposes of this subpart.				
10. closed-vent system used to route emissions to a control device.	each existing or new affected source (except for retractable hoods over sulfuric acid baths at a cellophane operation).	conduct annual inspections, repair leaks, and maintain records as specified in § 63.148.				
11. closed-vent system containing a bypass line that could divert a vent stream away from a control device, except for equipment needed for safety purposes (described in § 63.148(f)(3)).	a. each existing or new affected source (except for retractable hoods over sulfuric acid baths at a cellophane operation).	(i) install, calibrate, maintain, and operate a flow indicator as specified in § 63.148(f)(1); or (ii) secure the bypass line valve in the closed position with a car-seal or lock-and-key type configuration and inspect the seal or closure mechanism at least once per month as specified in § 63.148(f)(2).				

■ 8. Table 2 is amended by revising entries 3 and 4 to read as follows:

TABLE 2 TO SUBPART UUUU OF PART 63—OPERATING LIMITS

*	*	*	*	*	*	*
For the following control technique . . .			You must . . .			
*	*	*	*	*	*	*
3. water scrubber						maintain the daily average scrubber pressure drop and scrubber liquid flow rate within the range of values established during the compliance demonstration.
4. caustic scrubber						maintain the daily average scrubber pressure drop, scrubber liquid flow rate, and scrubber liquid pH, conductivity, or alkalinity within the range of values established during the compliance demonstration.
*	*	*	*	*	*	*

- 9. Table 3 is amended by:
- a. Revising the introductory statement;
- b. Revising entries 1.a.i.(1) and (2), 1.b.i.(1) and (2), 1.c.i.(1), 1.c.ii.(1), 1.d.i.(1), 1.e.i.(1), 1.f.i.(1), and 1.f.ii and iii;
- c. Revising entries 2.a.i and 2.a.i.(1);
- d. Revising entry 3.a and adding item 3.b;
- e. Revising entry 6.a.i.(1); and
- f. Revising entry 12.a.i.(2) to read as follows:

TABLE 3 TO SUBPART UUUU OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS

[As required in §§ 63.5530(a) and 63.5535(g) and (h), you must demonstrate initial compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	At . . .	For the following emission limit or work practice standard . . .	You have demonstrated initial compliance if . . .
*	*	*	*
1. the sum of all viscose process vents.	a. each existing cellulose food casing operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 25% based on a 6-month rolling average;	(1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 25%; (2) you have a record of the range of operating parameter values over the month-long compliance demonstration during which the average uncontrolled total sulfide emissions were reduced by at least 25%;
*	*	*	*
	b. each new cellulose food casing operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75% based on a 6-month rolling average;	(1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 75%; (2) you have a record of the range of operating parameter values over the month-long compliance demonstration during which the average uncontrolled total sulfide emissions were reduced by at least 75%;
*	*	*	*
	c. each existing rayon operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 35% within 3 years after the effective date based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems; and	(1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 35% within 3 years after the effective date;
*	*	*	*
		ii. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 40% within 8 years after the effective date based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems.	(1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 40% within 8 years after the effective date;

TABLE 3 TO SUBPART UUUU OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As required in §§ 63.5530(a) and 63.5535(g) and (h), you must demonstrate initial compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	At . . .	For the following emission limit or work practice standard . . .	You have demonstrated initial compliance if . . .
*	* d. each new rayon operation.	* i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75%; based on a 6-month rolling average;	* (1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 75%;
*	* e. each existing or new cellulosic sponge operation.	* i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75% based on a 6-month rolling average;	* (1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 75%;
*	* f. each existing or new cellophane operation.	* i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75% based on a 6-month rolling average; ii. for each vent stream that you control using a control device (except for retractable hoods over sulfuric acid baths at a cellophane operation), route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems (except for retractable hoods over sulfuric acid baths at a cellophane operation)	* (1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 75%;
* 2. the sum of all solvent coating process vents.	* a. each existing or new cellophane operation.	* i. reduce uncontrolled toluene emissions by at least 95% based on a 6-month rolling average;	* (1) the average uncontrolled toluene emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 95%;
* 3. the sum of all cellulose ether process vents.	* a. each existing or new cellulose ether operation using a performance test to demonstrate initial compliance; or	* i. reduce total uncontrolled organic HAP emissions by at least 99%; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems; or	* (1) average uncontrolled total organic HAP emissions, measured during the performance test or determined using engineering estimates are reduced by at least 99%; (2) you have a record of the average operating parameter values over the performance test during which the average uncontrolled total organic HAP emissions were reduced by at least 99%; and (3) you comply with the initial compliance requirements for closed-vent systems; or
	* b. each existing or new cellulose ether operation using a material balance compliance demonstration to demonstrate initial compliance.	* i. reduce total uncontrolled organic HAP emissions by at least 99% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system the control device; and iii. comply with the work practice standard for closed-vent systems.	* (1) average uncontrolled total organic HAP emissions, determined during the month-long compliance demonstration or using engineering estimates are reduced by at least 99%; (2) you have a record of the average operation parameter values over the month-long compliance demonstration during which the average uncontrolled total organic HAP emissions were reduced by at least 99%; (3) you prepare a material balance that includes the pertinent data used to determine the percent reduction of total organic HAP emissions; (4) if you use extended cookout to comply, you measure the HAP charged to the reactor, record the grade of product produced, and then calculate reactor emissions prior to extended cookout by taking a percentage of the total HAP charged.

TABLE 3 TO SUBPART UUUU OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As required in §§ 63.5530(a) and 63.5535(g) and (h), you must demonstrate initial compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	At . . .	For the following emission limit or work practice standard . . .	You have demonstrated initial compliance if . . .
* 6. each toluene storage vessel.	* a. each existing or new cellophane operation.	* i. reduce uncontrolled toluene emissions by at least 95% based on a 6-month rolling average;	* (1) the average uncontrolled toluene emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 95%;
* 12. heat exchanger system that cools process equipment or materials in the process unit.	* a. each existing or new affected source.	* i. monitor and repair the heat exchanger system according to § 63.104(a) through (e), except that reference to “chemical manufacturing process unit” mean “cellulose food casing, rayon, cellulosic sponge, cellophane, or cellulose either process unit” for the purposes of this subpart.	* * * * (2) if your heat exchanger system is not exempt, you identify in your Notification of Compliance Status Report the HAP or other representative substance that you will monitor, or you prepare and maintain a site-specific plan containing the information required by § 63.104(c) (1) (i) through (iv) that documents the procedures you will use to detect leaks by monitoring surrogate indicators of the leak.

■ 10. Table 4 is amended by revising the introductory statement and entries 3 and 4.a.i.(2)(b) to read as follows:

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

[As required in §§ 63.5530(b) and 63.5535(a), (b), (g)(1), and (h)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	At . . .	You must . . .	Using . . .	According to the following requirements . . .
* 3. the sum of all solvent coating process vents.	* a. each existing or new cellophane operation.	* i. measure toluene emissions.	* (1) EPA Method 18 in appendix A to part 60 of this chapter; or	* (a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 18 to determine the control efficiency of any control device for organic compounds; for a combustion device, you must use only HAP that are present in the inlet to the control device to characterize the percent reduction across the combustion device; (c) you must conduct testing of emissions from continuous solvent coating process vents and combinations of batch and continuous solvent coating process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch solvent coating process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the initial compliance demonstration; or

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), (g)(1), and (h)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	At . . .	You must . . .	Using . . .	According to the following requirements . . .
*	*	*	*	*
4. the sum of all cellulose either process vents.	a. each existing or new cellulose either operation.	i. measure total organic HAP emissions.	*** (2) ASTM D6420-99	*** (b) you may use ASTM D6420-99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) as an alternative to EPA Method 18 only where: the target compound(s) are those listed in Section 1.1 of ASTM D6420-99; and the target concentration is between 150 ppbv and 100 ppmv; for target compound(s) not listed in Section 1.1 of ASTM D6420-99, but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble; and for target compound(s) not listed in Section 1.1 of ASTM D6420-99 and not amenable to detection by mass spectrometry, ASTM D6420-99 does not apply; target concentration is between 150 ppbv and 100 ppmv; for target compound(s).
*	*	*	*	*

- 11. Table 5 is amended by:
 - a. Revising entries 1.a. ii. and iii;
 - b. Revising entry 3.a and adding entry 3.b;
 - c. Revising entries 5.a. i, ii, and iv; and
 - d. Revising entry 8 to read as follows:

TABLE 5 TO SUBPART UUUU OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS

*	*	*	*	*	*	*
For . . .	At . . .	For the following emission limit or work practice standard . . .	You must demonstrate continuous compliance by . . .			
1. the sum of all viscose process vents.	a. each existing or new viscose process affected source.	*** ii. for each vent stream that you control using a control device (except for retractable hoods over sulfuric acid baths at a cellophane operation), route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems (except for retractable hoods over sulfuric acid baths at a cellophane operation).	***			
*	*	*	*	*	*	*
3. the sum of all cellulose either process vents.	a. each existing or new cellulose ether operation using a performance test to demonstrate initial compliance; or b. each existing or new cellulose ether operation using a material balance compliance demonstration to demonstrate initial compliance	i. reduce total uncontrolled organic HAP emissions by at least 99%; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and, iii. comply with the work practice standard for closed-vent systems; or i. reduce total uncontrolled organic HAP emissions by at least 99% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to control device; and iii. comply with the work practice standard for closed-vent systems.	(1) complying with the continuous compliance requirements for closed-vent systems; or (1) maintaining a material balance that includes the pertinent data used to determine the percent reduction of total organic HAP emissions; (2) documenting the percent reduction of total organic HAP emissions using the pertinent data from the material balance; (3) if using extended cookout to comply, monitoring reactor charges and keeping records to show that extended cookout was employed; (4) complying with the continuous compliance requirements for closed-vent systems.			

[FR Doc. 05-15733 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[OAR–2003–0193; FRL–7948–6]

RIN 2060–AL91

National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule; amendments.

SUMMARY: The EPA is proposing amendments to the national emission standards for hazardous air pollutants (NESHAP) for cellulose products manufacturing, which were issued on June 11, 2002, under section 112 of the Clean Air Act (CAA). This action proposes to improve implementation of the emission standards by revising the work practice standards, general and initial compliance requirements, definitions, and General Provisions applicability, as well as correcting typographical, formatting, and cross-referencing errors in the final rule.

In the Rules and Regulations section of this **Federal Register**, we are issuing the amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments. We have explained our reasons for the revisions in the preamble to the direct final rule.

If we receive any adverse comment on one or more distinct amendments in the direct final rule, we will publish a timely notice of withdrawal in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no adverse comments are received, no further action will be taken on the proposal, and the direct final rule will become effective as provided in that action.

The regulatory text for the proposal is identical to that for the direct final rule published in the Rules and Regulations section of this **Federal Register**. For further supplementary information, see the direct final rule.

DATES: *Comments.* Written comments must be received on the companion

direct final rule by September 9, 2005, unless a hearing is requested by August 22, 2005. If a hearing is requested, written comments must be received by September 26, 2005.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by August 22, 2005, a public hearing will be held on August 24, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0193, by one of the following methods:

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

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

- E-mail: air-and-r-docket@epa.gov.

- Fax: (202) 566–1741.

- Mail: EPA Docket Center, EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.

- Hand Delivery: Air and Radiation Docket, EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions. Direct your comments to Docket ID No. OAR–2003–0193. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the Federal [regulations.gov](http://www.regulations.gov) Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](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 docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hardcopy at the Air and Radiation 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 Air Docket is (202) 566–1742.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, North Carolina or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Schrock, Organic Chemicals Group, Emission Standards Division (C504–04), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5032, facsimile number (919) 541–3470, electronic mail (e-mail) address schrock.bill@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include those listed in the following table:

Category	NAICS code*	Examples of regulated entities
Industry	326121	Cellulose food casing operations.
	325221	Rayon operations.
	326199, 325211	Cellulosic sponge operations.
	326199	Cellophane operations.
	325199	Cellulose ether operations.
Federal Government .....	.....	Not affected.
State/local/tribal government .....	.....	Not affected.

* North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.5485 of the national emission standards. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

What should I consider as I prepare my comments for EPA? Submitting CBI. Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

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

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

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

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mr. William Schrock, Organic Chemicals Group, Emission Standards Division (Mail Code C504-04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5032, electronic mail address schrock.bill@epa.gov, at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Mr. Bill Schrock to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules <http://www.epa.gov/ttn/oarpg>. The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control.

Direct Final Rule. A direct final rule identical to the proposal is published in the Rules and Regulations section of today's **Federal Register**. If we receive any adverse comment pertaining to the amendments in the proposal, we will publish a timely notice in the **Federal Register** informing the public that the amendments are being withdrawn due to adverse comment. We will address all public comments concerning the withdrawn amendments in a subsequent final rule. If no adverse comments are received, no further action will be taken on the proposal, and the direct final rule

will become effective as provided in that action.

The regulatory text for the proposal is identical to that for the direct final rule published in the Rules and Regulations section of today's **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published in a separate part of this **Federal Register**.

What Are the Statutory and Executive Order Reviews for This Action?

For information regarding other statutory and executive order reviews for this action, please see the direct final rule action that is located in the Rules and Regulations section of this **Federal Register**.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that has fewer than 1,000 employees for NAICS codes 325221, 325188, and 325199; fewer than 750 employees for NAICS code 325211; or fewer than 500 employees for NAICS codes 326121 and 326199; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small

entities. The proposed amendments will not impose any new requirements on small entities. This action proposes to improve implementation of the emission standards, by revising the work practice standards, general and initial compliance requirements, definitions, and General Provisions applicability, as well as correcting typographical, formatting, and cross-

referencing errors in the final rule. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Cellulose products

manufacturing, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 1, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05-15735 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-P



Federal Register

**Wednesday,
August 10, 2005**

Part IV

Environmental Protection Agency

40 CFR Part 180

**Order Denying Objections to Issuance of
Tolerances; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180**

[OPP-2005-0190; FRL-7727-4]

Order Denying Objections to Issuance of Tolerances**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final Order.

SUMMARY: On four occasions in the first half of 2002, the Natural Resources Defense Council (NRDC) and various other parties filed objections with EPA to final rules under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), (21 U.S.C. 346a), establishing pesticide tolerances for various pesticides. The objections apply to 14 pesticides and 112 separate pesticide tolerances. Although the objections raise numerous pesticide-specific issues, they all focus on the potential risks that the pesticides pose to farm children. This Order responds to NRDC's objections as to all of the challenged tolerances with the exception of the objections pertaining to the imidacloprid tolerance on blueberries which were previously denied. The objections to the other tolerances are denied for the reasons stated herein.

FOR FURTHER INFORMATION CONTACT: Nicole Williams, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-5551; fax number: (703) 308-6920; e-mail address: williams.nicole@epa.gov.

SUPPLEMENTARY INFORMATION: This order is outlined as follows:

I. General Information

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- XII. References**

I. General Information**A. Does This Action Apply to Me?**

In this document EPA denies objections to a tolerance actions filed by the Natural Resources Defense Council (NRDC) and the following additional parties: Boston Women's Health Book Collective, Breast Cancer Action, Californians for Pesticide Reform, Commonweal, Lymphoma Foundation of America, Natural Resources Defense

Council, Northwest Coalition for Alternatives to Pesticides, Pesticide Action Network, North America, Pineros y Campesinos Unidos del Noroeste, SF-Bay Area Chapter of Physicians for Social Responsibility, and Women's Cancer Resource Center. This action may also be of interest to agricultural producers, food manufacturers, or other pesticide manufacturers. Potentially affected categories and entities may include, but are not limited to:

- Industry, e.g., NAICS 111, 112, 311, 32532, Crop production, Animal production, Food manufacturing, Pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities who may be interested in today's action.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2005-0190. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically.

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in

the system, select "search," then key in the appropriate docket ID number.

II. Introduction

A. What Action Is the Agency Taking?

On four occasions in the first half of 2002, the NRDC and various other parties filed objections with EPA to final rules under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), (21 U.S.C. 346a), establishing pesticide tolerances for various pesticides. [The objectors are hereinafter collectively referred to as "NRDC.']. The objections apply to 14 pesticides and 112 separate pesticide tolerances. This Order responds to objections as to all of the tolerances other than the objections as to the imidacloprid tolerance on blueberries. Those objections were denied previously. (69 FR 30042, May 26, 2004).

Although the objections raise numerous pesticide-specific issues, they all primarily focus on the potential risks that the pesticides pose to farm children. Further, each of the objections makes two main assertions with regard to the pesticide tolerances in question: (1) That EPA has not properly applied the additional 10X safety factor for the protection of infants and children in section 408(b)(2)(C); and (2) that EPA has not accurately assessed the aggregate exposure of farm children to pesticide residues. NRDC did not exercise the option provided in section 408(g)(2) to request a hearing on its objections, but instead asked that the Agency rule on its objections on the basis of its written objections and attached submissions.

Because the objections raised questions of broad interest, EPA published a representative copy of the objections in the **Federal Register** for comment, (67 FR 41628, June 19, 2002), and made all of the objections available for public review on its website. On May 26, 2004, EPA denied the objections as to one of the challenged tolerances (imidacloprid on blueberries) because that tolerance had expired. (69 FR 30042, May 26, 2004). At the same time EPA denied the objections to the imidacloprid tolerance on mootness grounds, EPA also established a new imidacloprid blueberry tolerance and as part of that action addressed the issues raised by the NRDC objections. (69 FR 30076, May 26, 2004). In the course of addressing these issues, EPA responded to a petition concerning farm children filed in 1998 by NRDC and various other parties. (69 FR at 30069-70, May 26, 2004). This Order relies heavily on much of the reasoning set forth in connection with the establishment of

the new imidacloprid blueberry tolerance.

The body of this document contains the following sections. First, there is a background section which explains the applicable statutory and regulatory provisions, the relevant EPA science policy documents, and prior NRDC actions with regard to farm children. Second, EPA describes the objected-to tolerance actions. Third, there is a section setting forth in greater detail the substance of the objections. Fourth, a summary of the public comment is presented. Finally, EPA announces its response to the objections and responds to public comments.

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

The procedure for filing objections to tolerance actions and EPA's authority for acting on such objections is contained in section 408(g) of the FFDCA and regulations at 40 CFR part 178. (21 U.S.C. 346a(g)).

III. Statutory and Regulatory Background

A. Statutory Background

EPA establishes maximum residue limits, or "tolerances," for pesticide residues in food under section 408 of the FFDCA. (21 U.S.C. 346a). Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce. (21 U.S.C. 331, 342). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U. S. Department of Agriculture (USDA).

A pesticide tolerance may only be promulgated by EPA if the tolerance is "safe." (21 U.S.C. 346a(b)(2)(A)(i)). "Safe" is defined by the statute to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." (21 U.S.C. 346a(b)(2)(A)(ii)). Section 408 directs EPA, in making a safety determination, to "consider, among other relevant factors- . . . available information concerning the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances, including dietary exposure under the tolerance and all other tolerances in effect for the pesticide chemical residue, and

exposure from other non-occupational sources.” (21 U.S.C. 346a(b)(2)(D)(vi)). Other provisions address in greater detail exposure considerations involving “anticipated and actual residue levels” and “percent of crop actually treated.” (See 21 U.S.C. 346a(b)(2)(E) and (F)). Section 408(b)(2)(C) requires EPA to give special consideration to risks posed to infants and children. This provision directs that “an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children.” (21 U.S.C. 346a(b)(2)(C)). EPA is permitted to “use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children.” (Id.). [The additional safety margin for infants and children is referred to throughout this notice as the “children’s safety factor.”] These provisions establishing the detailed safety standard for pesticides were added to section 408 by the Food Quality Protection Act of 1996 (FQPA), an act that substantially rewrote this section of the statute.

Tolerances are established by rulemaking under the unique procedural framework set forth in the FFDCA. Generally, the rulemaking is initiated by the party seeking the tolerance by means of filing a petition with EPA. (See 21 U.S.C. 346a(d)(1)). EPA publishes in the **Federal Register** a notice of the petition filing along with a summary of the petition, prepared by the petitioner. (21 U.S.C. 346a(d)(3)). After reviewing the petition, and any comments received on it, EPA may issue a final rule establishing the tolerance, issue a proposed rule, or deny the petition. (21 U.S.C. 346a(d)(4)). Once EPA takes final action on the petition by either establishing the tolerance or denying the petition, any affected party has 60 days to file objections with EPA and seek an evidentiary hearing on those objections. (21 U.S.C. 346a(g)(2)). EPA’s final order on the objections is subject to judicial review. (21 U.S.C. 346a(h)(1)).

EPA also regulates pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), (7 U.S.C. 136 et seq). While the FFDCA authorizes the establishment of legal limits for pesticide residues in food, FIFRA requires the approval of pesticides prior to their sale and distribution, (7 U.S.C. 136a(a)), and establishes a registration regime for regulating the use of

pesticides. FIFRA regulates pesticide use in conjunction with its registration scheme by requiring EPA review and approval of pesticide labels and specifying that use of a pesticide inconsistent with its label is a violation of Federal law. (7 U.S.C. 136j(a)(2)(G)). In the FQPA, Congress integrated action under the two statutes by requiring that the safety standard under the FFDCA be used as a criterion in FIFRA registration actions as to pesticide uses which result in dietary risk from residues in or on food, (7 U.S.C. 136(bb)), and directing that EPA coordinate, to the extent practicable, revocations of tolerances with pesticide cancellations under FIFRA. (21 U.S.C. 346a(l)(1)).

B. Assessing Risk Under the FFDCA

In assessing and quantifying non-cancer risks posed by pesticides under the FFDCA as amended by the FQPA, EPA first determines the toxicological level of concern and then compares estimated human exposure to this level of concern. This comparison is done through either calculating a safe dose in humans (incorporating all appropriate safety factors) and expressing exposure as a percentage of this safe dose (the reference dose (RfD) approach) or dividing estimated human exposure into the lowest dose at which no adverse effects from the pesticide are seen in relevant studies (the margin of exposure (MOE) approach). How EPA determines the level of concern, chooses safety factors, and assesses risk under these two approaches is explained in more detail below. EPA’s general approach to estimating exposure is also briefly discussed.

For dietary risk assessment (for risks other than cancer), the dose at which no adverse effects are observed (the “NOAEL”) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern. However, the lowest dose at which adverse effects of concern are identified (the “LOAEL”) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. A safety or uncertainty factor is then applied to this toxicological level of concern to calculate a safe dose for humans, usually referred to by EPA as an acute or chronic reference dose (RfD). The RfD is equal to the NOAEL divided by all applicable safety or uncertainty factors. Typically, a safety or uncertainty factor of 100X is used, 10X to account for uncertainties inherent in the extrapolation from laboratory animal data to humans and 10X for variations in sensitivity among members of the human population as well as other

unknowns. Further, under the FQPA, an additional safety factor of 10X is presumptively applied to protect infants and children, unless reliable data support selection of a different factor. To quantitatively describe risk using the RfD approach, estimated exposure is expressed as a percentage of the RfD. Dietary exposures lower than 100 percent of the RfD are generally not of concern.

For non-dietary, and combined dietary and non-dietary, risk assessments (other than cancer risk assessments) the same safety factors are used to determine the toxicological level of concern. For example, when 1,000X is the appropriate safety factor (10X to account for interspecies differences, 10X for intraspecies differences, and 10X for FQPA), the level of concern is that there be a 1,000-fold margin between the NOAEL from the toxicology study identified as appropriate for use in risk assessment and human exposure. To estimate risk, a ratio of the NOAEL to aggregate exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the level of concern. In contrast to the RfD approach, the higher the MOE, the safer the pesticide. Accordingly, if the level of concern for a pesticide is 1,000, MOE’s exceeding 1,000 would generally not be of concern.

For cancer risk assessments, EPA generally assumes that any amount of exposure will lead to some degree of cancer risk. Using a model based on the slope of the cancer dose-response curve in relevant studies, EPA estimates risk in terms of the probability of occurrence of additional cancer cases as a result of exposure to the pesticide. An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1 X 10⁻⁵), one in a million (1 X 10⁻⁶), or one in ten million (1 X 10⁻⁷). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. No further discussion of cancer risk assessment is included here because NRDC’s objections do not relate to cancer risks.

Equally important to the risk assessment process as determining the toxicological level of concern is estimating human exposure. As explained in more detail in Unit VII.D.5. of this document, EPA uses a tiering system to estimate exposure which attempts to minimize resources expended in exposure estimates. The first tier is generally a worst case assessment that is relatively easy to conduct because it relies on conservative (health-protective) assumptions. Only if that tier suggests

that the pesticide may pose a risk of concern are more resource-intensive tiers triggered where the focus is on obtaining more realistic exposure values. (Ref. 1).

C. Science Policies

As part of implementation of the major changes to FFDCA section 408 included in the FQPA, EPA has issued a number of policy guidance documents addressing critical science issues. Of particular interest to the NRDC objections are the science policies covering the children's safety factor, aggregate pesticide exposure, and the population percentile of exposure used in estimating aggregate exposure.

1. *Children's safety factor policy.* On January 31, 2002, EPA released its science policy guidance on the children's safety factor. (Ref. 2) [This policy is hereinafter referred to as the "Children's Safety Factor Policy"]. That policy had undergone an intensive and extended process of public comment as well as internal and external science peer review. An EPA-wide task force was established to consider the children's safety factor in March 1998. Taking into account reports issued by the task force on both toxicity and exposure issues, EPA's Office of Pesticide Programs (OPP) released a draft children's safety policy document in May 1999. That document was subject to an extended public comment period as well as review by the FIFRA Scientific Advisory Panel. (Id. at 5). Although the January 31, 2002 policy differed in some respects from prior Agency practice, for the most part the policy statement reflected EPA's experience in implementing the children's safety factor provision since the passage of the FQPA.

The Children's Safety Factor Policy emphasizes throughout that EPA interprets the children's safety factor provision as establishing a presumption in favor of application of an additional 10X safety factor for the protection of infants and children. (Id. at 4, 11, 47, A-6). Further, EPA notes that the children's safety factor provision permits a different safety factor to be substituted for this default 10X factor only if reliable data are available to show that the different factor will protect the safety of infants and children. (Id.). Given the wealth of data available on pesticides, however, EPA indicates a preference for making an individualized determination of a protective safety factor if possible. (Id. at 11). EPA states that use of the default factor could under- or over-protect infants and children due to the wide variety of issues addressed by the

children's safety factor. (Id.). EPA notes that "[i]ndividual assessments may result in the use of additional factors greater or less than, or equal to 10X, or no additional factor at all." (Id.). Concluding that individualized assessments would be able to be made in most cases, EPA indicates that "this guidance document focuses primarily on the considerations relevant to determining a safety factor 'different' from the default 10X that protects infants and children. Discussions in this document of the appropriateness, adequacy, need for, or size of an additional safety factor are premised on the fact that reliable data exist for choosing a 'different' factor than the 10X default value." (Id. at 12).

In making such individual assessments regarding the magnitude of the safety factor, EPA stresses the importance of focusing on the statutory language that ties the children's safety factor to concerns regarding potential pre- and post-natal toxicity and the completeness of the toxicity and exposure databases. (Id. at 11-12). As to the completeness of the toxicity database, EPA recommends use of a weight-of-the-evidence approach which considers not only the presence or absence of data generally required under EPA regulations and guidelines but also the availability of "any other data needed to evaluate potential risks to children." (Id. at 20). EPA indicates that the principal inquiry concerning missing data would center on whether the missing data would significantly affect calculation of a safe exposure level (commonly referred to as the RfD). (Id. at 22; accord 67 FR 60950, 60955, September 27, 2002) (finding no additional safety factor necessary for triticonazole despite lack of developmental neurotoxicity (DNT) study because the "DNT [study] is unlikely to affect the manner in which triticonazole is regulated.")). When the missing data are data above and beyond general regulatory requirements, EPA indicates that the weight of evidence would generally only support the need for an additional safety factor where the data "is being required for 'cause,' that is, if a significant concern is raised based upon a review of existing information, not simply because a data requirement has been levied to expand OPP's general knowledge." (Ref. 2 at 23). Finally, with regard to the DNT study, EPA lists several important factors addressing the weight of evidence bearing on the degree of concern when such a study has been required but has not yet been completed. (Id. at 24). Moreover, EPA

reiterates that, like any other missing study, the absence of the DNT study does not trigger a mandatory requirement to retain the default 10X value, but rather requires an individualized assessment centering on the question of whether "a DNT study is likely to identify a new hazard or effects at lower dose levels of the pesticide that could significantly change the outcome of its risk assessment" (Id.). The extent to which the policy stresses the need for EPA's evaluation of the completeness of the database to focus directly on whether missing data might possibly lower an existing RfD was a change in emphasis from past actions.

As to potential pre- and post-natal toxicity, the Children's Safety Factor Policy lists a variety of factors that should be considered in evaluating the degree of concern regarding any identified pre- or post-natal toxicity. (Id. at 27-31). As with the completeness of the toxicity database, EPA emphasizes that the analysis should focus on whether any identified pre- or post-natal toxicity raises uncertainty as to whether the RfD is protective of infants and children. (Id. at 31). Once again, the presence of pre- or post-natal toxicity, by itself, is not regarded as determinative as to the children's safety factor. Rather, EPA stresses the importance of evaluating all of the data under a weight-of-evidence approach focusing on the safety of infants and children. (Id.). This attention on the overall database also indicated a shift in emphasis for EPA's implementation of the children's safety factor provision as previous decisions had often treated a finding of increased sensitivity in the young as almost necessitating some additional safety factor.

In evaluating the completeness of the exposure database, EPA explains that a weight-of-the-evidence approach should be used to determine the confidence level EPA has as to whether the exposure assessment "is either highly accurate or based upon sufficiently conservative input that it does not underestimate those exposures that are critical for assessing the risks to infants and children." (Id. at 32). EPA describes why its methods for calculating exposure through various routes and aggregating exposure over those routes generally produce conservative exposure estimates - i.e. health-protective estimates due to overestimation of exposure. (Id. at 40-43). Nonetheless, EPA emphasizes the importance of verifying that the tendency for its methods to overestimate exposure in fact were adequately

protective in each individual assessment. (Id. at 44).

Given that this policy was released at roughly the same time the challenged tolerance actions were issued and that the toxicological, exposure, and risk assessments leading up to such actions can take several months or even years, the challenged tolerance actions were not evaluated prior to being finalized under this new restatement of EPA's policy on the children's safety factor. EPA's experience in making decisions under the 2002 policy is that while for many pesticides the safety factor determination remains unchanged, for others the safety factors may go up or down. To generalize, in situations where the database is incomplete, EPA's heightened emphasis on whether the missing data may affect the assessment of risk has tended to make it more likely that EPA will retain the full 10X children's safety factor. (See, e.g., 70 FR 7876, 7882, February 16, 2005) (ivermectin - 10X factor retained due to lack of DNT study and acute and subchronic neurotoxicity studies and residual toxicological concerns as to safety of young); 70 FR 7886, 7891, February 16, 2005) (clothianidim - 10X factor retained due to lack of developmental immunotoxicity study); 69 FR 58058, 58062-58063, September 29, 2004) (fenamidone - 10X factor retained due to lack of DNT study); but see 69 FR 52182, 52187, August 25, 2004) (folpet - 10X removed despite lack of DNT study because the DNT study is unlikely to change RfD)). On the other hand, in instances where a study shows increased sensitivity in the young, the focus on whether in the context of the overall database such sensitivity indicates that EPA's risk assessment is not protective of infants and children, has frequently resulted in the removal of the factor. (See, e.g., 69 FR 63083, 63092-63093, October 29, 2004) (pyraclostrobin - 10X factor removed because additional sensitivity well-characterized); 69 FR 58290, 58295, September 30, 2004) (cyazofamid - 10X factor removed because additional sensitivity well-characterized); but see 69 FR 62602, 62610, October 27, 2004) (deltamethrin - 10X factor lowered but not removed taking into consideration level at which additional sensitivity was observed)). As these decisions evidence, the determination on the children's safety factor is heavily dependent on the results from the studies specific to the pesticide in question. (See, e.g., 70 FR 14535, 14541-14542, March 23, 2005) (dinotefuran - 10X factor retained as to some risk assessments due to the lack of a developmental immunotoxicity study;

no additional factor on any risk assessment found necessary to address lack of a DNT study)).

2. *Aggregate exposure policies.* As mentioned above, the FQPA-added safety standard directs that the safety of pesticide residues in food be based on "aggregate exposure" to the pesticide. (21 U.S.C. 346a(b)(2)(A)(ii)). Aggregate exposure to a pesticide includes all "anticipated dietary exposure and all other exposures for which there is reliable information." (Id.). The statute makes clear that in assessing aggregate exposure pertaining to a pesticide EPA must consider not only exposure to the pesticide in the food covered by the tolerance in question but exposure to the pesticide as a result of other tolerances and from "other non-occupational sources." (Id. 346a(b)(2)(D)(vi)). Further, the statute directs EPA to consider aggregate exposure to other substances related to the pesticide so long as that exposure results from a non-occupational source. (Id. 346a(b)(2)(D)(vi)). In November 2001, EPA released a science guidance document entitled "General Principles for Performing Aggregate Exposure and Risk Assessments." This document deals primarily with the complex subject of integrating distributional and probabilistic techniques into aggregate exposure analyses. (Ref. 3).

More relevant to the current objections is the science guidance document issued in March 2000 addressing the population percentile of exposure used in making acute exposure estimates for applying the safety standard under section 408. (Ref. 4) [hereinafter referred to as "Percentile Policy"]. Traditionally, EPA had used the 95th percentile of human exposure in acute dietary exposure assessments as representing a reasonable worst case scenario. (Id. at 15). Due to the very conservative (health-protective) assumptions used for acute exposure assessments, the 95th percentile was viewed as a reasonable approximation of an exposure level not likely to be exceeded by any individuals. (Id. at 15-17). For these assessments EPA generally assumed that all crops for which there is a tolerance are treated with the pesticide and all treated crops have residues at the highest level legally permitted.

More recently, because of the availability of better data on residue values and new risk assessment techniques, EPA has restructured its approach to the use of population exposure percentiles in making safety determinations for acute risks under section 408. EPA has retained the 95th percentile as the starting point of

analysis for worst case (tolerance level) assessments. EPA, however, generally uses higher percentiles of exposure when less conservative assumptions are made concerning residue values. (Id.). For example, beginning in the late 1990's, EPA has increasingly relied upon probabilistic assessment techniques for assessing acute dietary exposure and risk. Because EPA generally uses much more realistic exposure values (e.g., monitoring data on pesticide levels in food) in conducting probabilistic assessments, a higher population exposure percentile was generally found to be necessary to ensure that exposure for the overall population was not understated. The Percentile Policy explains and defends EPA's choice of the 99.9th percentile as a starting point for evaluating exposure and acute risk with probabilistic assessments.

EPA confirms in the Percentile Policy document that it will generally continue to use the 95th percentile of exposure for non-probabilistic, or what has been referred to as "deterministic" acute risk assessments that use worst case exposure assumptions." (Id. at 17, 29). The conservative (health-protective) nature of this approach is confirmed by data EPA cites showing that deterministic assessments of exposure at the 95th percentile assuming residues at tolerance levels regularly result in exposure predictions significantly higher than probabilistic exposure estimates of the 99.9th percentile using monitoring data. (Id. at 16-17).

Importantly, EPA's Percentile Policy makes clear that in choosing a population percentile to estimate exposure, EPA is not intending to define the portion of the population that is to be protected. The policy explicitly states that: "OPP's goal is to regulate pesticides in such a manner that everyone is reasonably certain to experience no harm as a result of dietary and other non-occupational exposures to pesticides." (Id. at 28).

D. NRDC Farmworker Children Petition

On October 22, 1998, NRDC and 58 other public interest organizations and individuals submitted a petition to EPA asking that EPA "find that farm children are a major identifiable subgroup and must be protected under FQPA when setting allowable levels of pesticide residue in food." (Ref. 5) [hereinafter referred to as the "Farm Children Petition"]. The Farm Children Petition claims that "[a]n increasing body of scientific evidence, including biomonitoring data and residential exposure studies, indicates that farm children face particularly significant

exposures and health risks from pesticides.” (Id. at 3). In addition to requesting the “major identifiable subgroup” designation, the Petition also asked that EPA use the children’s safety factor to protect farm children, require additional exposure data on farm children exposure and not issue any new tolerances until such data are available, deny registration for any pesticide without a validated method for detecting residues in food, increase

research into issues concerning farm children exposure to pesticides, and honor the President’s Executive Order on Environmental Justice.

EPA responded to the Farm Children Petition in the Imidacloprid Order. EPA declined to name farm children as a separate major, identifiable subgroup pointing out that any pesticide exposures to children as a result of proximity to agricultural fields can be fully taken into account as part of the

consideration of EPA’s already existing major identifiable subgroups of children. (69 FR 30069, May 26, 2004). EPA agreed with most of the other aspects of NRDC’s petition. (69 FR 30076–30077, May 26, 2004).

IV. The Challenged Tolerance Decisions

Table 1 lists the tolerance actions challenged by NRDC. The tolerance actions are grouped as they were by NRDC in NRDC’s four sets of objections.

TABLE 1.—CHALLENGED TOLERANCE ACTIONS

Pesticides Involved	FR Citations (respectively)
halosulfuron-methyl, pymetrozine	66 FR 66333, December 26, 2001; 66 FR 66778, December 27, 2002; 66 FR 66786, December 27, 2001
imidacloprid, mepiquat, bifentazate, zeta-cypermethrin, diflufenuron	67 FR 2580, January 18, 2002; 67 FR 3113, January, 23, 2002; 67 FR 4913, February 1, 2002; 67 FR 6422, February 12, 2002; 67 FR 7085, February 15, 2002
2,4-D	67 FR 10622, March 8, 2002
isoxadifen-ethyl, acetamiprid, propiconazole, furilazole, fenhexamid, fluazinam	67 FR 12875, March 20, 2002; 67 FR 14649, March 27, 2002; 67 FR 14866, March 28, 2002; 67 FR 15727, April 3, 2002; 67 FR 19114, April 18, 2002; 67 FR 19120, April 18, 2002

Each of these tolerance actions, except imidacloprid, is summarized briefly below.

1. *Halosulfuron-methyl*. NRDC challenged two separate tolerance actions on halosulfuron-methyl: (1) A December 26, 2001 action establishing tolerances on the melon subgroup; (66 FR 66333, December 26, 2001), and (2) a December 27, 2001 action establishing time-limited tolerances in connection with an emergency exemption under FIFRA on asparagus, (66 FR 66778, December 27, 2002). The risk assessments for both actions yielded similar results. Given halosulfuron-methyl’s exposure pattern and toxicological characteristics, EPA determined that halosulfuron-methyl potentially presented acute, chronic, short-term, and intermediate-term risks and EPA quantitatively assessed these risks in making its safety determination. (66 FR 66336–66339; 66 FR 66783–66784). All of these risks were found to be below the Agency’s level of concern. (Id.). Although a DNT study was outstanding, EPA determined that the additional 10X children’s safety factor was not needed to protect infants and children because the toxicological data showed no evidence of greater sensitivity to the young and indicated that the DNT study was unlikely to affect the risk assessment. EPA explained the latter conclusion by noting that:

(a) The alterations in the fetal nervous system occurred in only one species (in rats

and not in rabbits); (b) the fetal effects which will be investigated in the required developmental neurotoxicity study were seen only at a dose of 750 mg/kg/day which is close to the Limit-Dose (1,000 mg/kg/day); (c) there was no evidence of clinical signs of neurotoxicity, brain weight changes, or neuropathology in the subchronic or chronic studies in rats; (d) the developmental neurotoxicity study is required only as confirmatory data to understand what the effect is at a high exposure (dose) level. (66 FR at 66782).

2. *Pymetrozine*. NRDC challenged a December 27, 2001 action establishing tolerances for pymetrozine on cotton seed, cotton gin byproducts, the fruiting vegetables crop group, the cucurbit vegetables crop group, the leafy vegetables crop group (except Brassica), head and stem Brassica, leafy Brassica, turnip greens, dried hops, and pecans. (66 FR 66786, December 27, 2001). Given pymetrozine’s exposure pattern and toxicological characteristics, EPA determined that pymetrozine potentially presented acute, chronic, short-term, and cancer risks and EPA quantitatively assessed these risks in making its safety determination. (66 FR at 66791–66792). All of these risks were found to be below the Agency’s level of concern. (Id.). Although a DNT study was outstanding, EPA determined that the additional 10X children’s safety factor could generally be reduced to 3X because the toxicological data showed no evidence of greater sensitivity to the young and there was no evidence of abnormalities in the development of the

fetal nervous system. (64 FR 52438, 52444, September 29, 1999). Because the endpoint used for assessing acute dietary and short-term risk for the general population, including infants and children, was based on a LOAEL a second 3X safety factor was used for these risk assessments. (Id.).

3. *Mepiquat*. NRDC challenged a January 23, 2002 action establishing tolerances for mepiquat on cotton gin byproducts and meat byproducts of cattle, goats, hogs, horses and sheep. (67 FR 3113, January, 23, 2002). Given mepiquat’s exposure pattern and toxicological characteristics, EPA determined that mepiquat potentially presented acute and chronic risks and EPA quantitatively assessed these risks in making its safety determination. (67 FR at 3116). All of these risks were found to be below the Agency’s level of concern. (Id.). Although a DNT study was outstanding, EPA determined that the additional 10X children’s safety factor was not needed to protect infants and children because the toxicological data showed no evidence of greater sensitivity to the young and the evidence signaling a need for a DNT study did not show “some special concern for the developing fetuses or young” such as “neuropathy in adult animals; [central nervous system] malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring.” (65 FR 1790, 1794, January 12, 2000).

4. *Bifenazate*. NRDC challenged a February 1, 2002 action establishing tolerances for bifenazate on wet apple pomace, undelinted cotton seed, cotton gin byproducts, the pome fruit crop group, grapes, raisins, dried hops, nectarines, peaches, plums, strawberries and the fat of cattle, goats, hogs, horses, and sheep. (67 FR 4913, February 1, 2002). Given bifenazate's exposure pattern and toxicological characteristics, EPA determined that bifenazate potentially presented a chronic risk and EPA quantitatively assessed this risk in making its safety determination. (67 FR at 4919). As assessed, chronic risk was below the Agency's level of concern. (Id.). Because there was no outstanding toxicity data, the existing toxicity data showed no evidence of increased sensitivity of the young, and exposure data were deemed unlikely to understate exposure, EPA determined that it was safe for infants and children to remove the children's safety factor. (67 FR at 4918–4919).

5. *Zeta-cypermethrin*. NRDC challenged a February 12, 2002 action establishing tolerances for zeta-cypermethrin on the podded legume vegetable crop group; the succulent, shelled peas and beans crop group; dried shelled peas and beans crop group; soybeans; the fruiting vegetables crop group; grain sorghum; sorghum stover; sorghum forage; wheat grain; wheat forage; wheat hay; wheat straw; aspirated grain fractions; and meat of cattle, goats, hogs, horses and sheep. (67 FR 6422, February 12, 2002). Given zeta-cypermethrin's exposure pattern (including the exposure pattern of a toxicologically similar pesticide, cypermethrin) and toxicological characteristics, EPA determined that zeta-cypermethrin potentially presented acute, chronic, short-term, intermediate-term, and cancer risks and EPA quantitatively assessed these risks in making its safety determination. (67 FR at 6426–6429). All of these risks were found to be below the Agency's level of concern. (Id.). Although a DNT study was outstanding, EPA determined that the additional 10X children's safety factor was not needed to protect infants and children because the toxicological data showed no evidence of greater sensitivity to the young and the evidence signaling a need for a DNT study did not show "some special concern for the developing fetuses or young" such as "neuropathy in adult animals; [central nervous system] malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or

functional changes in offspring." (Id. at 6426).

6. *Diffubenzuron*. NRDC challenged a February 15, 2002 action establishing a tolerance for diflubenzuron on pears. (67 FR 7085, February 15, 2002). Given diflubenzuron's exposure pattern and toxicological characteristics, EPA determined that diflubenzuron potentially presented a chronic risk and EPA quantitatively assessed this risk in making its safety determination. (Id. at 7089–7090). As assessed, chronic risk was below the Agency's level of concern. (Id.). EPA determined that the additional 10X children's safety factor was not needed to protect infants and children because the toxicological data showed no evidence of greater sensitivity to the young, there was no missing toxicological data, and the exposure assessments were unlikely to understate exposure. (Id. at 7089).

7. *2,4-D*. NRDC challenged a March 8, 2002, action establishing a time-limited tolerance for 2,4-D on soybeans. (67 FR 10622, March 8, 2002). Given 2,4-D's exposure pattern and toxicological characteristics, EPA determined that 2,4-D potentially presented acute, chronic, and short-term risks and EPA quantitatively assessed these risks in making its safety determination. (Id. at 10628–10629). All of these risks were found to be below the Agency's level of concern. (Id.). Although a DNT study was outstanding, EPA determined that the additional 10X children's safety factor could be reduced because the toxicological data showed no evidence of greater sensitivity to the young and all other required toxicological data was complete. (Id. at 10627–10628). A factor of 3X was retained because the DNT study was triggered based on a finding of neuropathology (retinal degeneration) and was applied to all population subgroups for all durations of exposure.

8. *Isxadifen-ethyl*. NRDC challenged a March 20, 2002, action establishing tolerances for isxadifen-ethyl on corn commodities. (67 FR 12875, March 20, 2002). Given isxadifen-ethyl's exposure pattern and toxicological characteristics, EPA determined that isxadifen-ethyl potentially presented acute and chronic risks and EPA quantitatively assessed these risks in making its safety determination. (Id. at 12876–12877; 66 FR 33179, 33184–33185, June 21, 2001). All of these risks were found to be below the Agency's level of concern. (Id.). Although the data showed evidence of increased pre-natal sensitivity, EPA determined that the additional 10X children's safety factor could be reduced to 3X because the toxicological data were complete (i.e., there were no outstanding studies such

as a DNT study). (Id. at 33184). This additional factor was applied to the acute dietary risk assessment for females aged 13–50 because the increased sensitivity resulted from *in utero* exposure. (Id.).

9. *Acetamiprid*. NRDC challenged a March 27, 2002, action establishing tolerances for acetamiprid on dried citrus pulp, the citrus fruit crop group, cotton gin byproducts, cotton undelinted seed, grapes, the fruiting vegetable crop group, the leafy brassica vegetable crop group, the leafy vegetable crop group, the pome fruit group, tomato paste, as well as various animal products. (67 FR 14649, March 27, 2002). Given acetamiprid's exposure pattern and toxicological characteristics, EPA determined that acetamiprid potentially presented acute, chronic, short-term, and intermediate-term risks and EPA quantitatively assessed these risks in making its safety determination. (Id. at 14656–14657). All of these risks were found to be below the Agency's level of concern. (Id.). Although the data showed qualitative evidence of increased pre-natal sensitivity and a DNT study was outstanding, EPA determined that the additional 10X children's safety factor could be reduced to 3X because two of the three toxicological studies bearing on effects on the young showed no increased sensitivity in the young, the evidence of increased sensitivity was only qualitative and not quantitative, and the DNT study was not requested based on evidence indicating a special concern for developing fetuses or the young. (Id. at 14656). This additional factor was applied for all population subgroups for all exposures other than acute dietary exposure because the increased sensitivity resulted from chronic exposure. (Id.).

10. *Propiconazole*. NRDC challenged a March 28, 2002, action re-establishing a time-limited tolerance for propiconazole on blueberries in connection with an emergency exemption under FIFRA. (67 FR 14866, March 28, 2002). Given propiconazole's exposure pattern and toxicological characteristics, EPA determined that propiconazole potentially presented acute, chronic, short-term, intermediate-term, and cancer risks and EPA quantitatively assessed these risks in making its safety determination. (64 FR 2995, 2999–3001, January 20, 1999). All of these risks were found to be below the Agency's level of concern. (Id.). Based on the completeness of the toxicity database and the lack of any evidence showing increased pre- or post-natal sensitivity, EPA determined that removing the additional 10X children's safety factor

would be protective of infants and children. (Id. at 3000).

11. *Furilazole*. NRDC challenged an April 3, 2002, action establishing tolerances for furilazole on corn commodities. (67 FR 15727, April 3, 2002). Given furilazole's exposure pattern and toxicological characteristics, EPA determined that furilazole potentially presented acute, chronic, and cancer risks and EPA quantitatively assessed these risks in making its safety determination. (Id. at 15732–15733). All of these risks were found to be below the Agency's level of concern. (Id.). Although EPA was lacking a chronic toxicity study in dogs for furilazole, EPA determined that the additional 10X children's safety factor could be removed and that a 3X additional factor would be protective of infants and children because otherwise the database was complete, there was no evidence of pre- or post-natal sensitivity, and the subchronic toxicity studies in rats and dogs show that the toxicity of furilazole is similar, both qualitatively and quantitatively, in both species. The 3X factor was applied to the chronic risk assessment because the missing study was a chronic study. (Id. at 15730).

12. *Fenhexamid*. NRDC challenged an April 18, 2002, action establishing tolerances for fenhexamid on the caneberry crop subgroup, the bushberry crop subgroup, juneberry, lingonberry, salal, and pistachio. (67 FR 19114, April 18, 2002). Given fenhexamid's exposure pattern and toxicological characteristics, EPA determined that fenhexamid potentially presented a chronic risk and EPA quantitatively assessed this risk in making its safety determination. (Id. at 19118). As assessed, chronic risk was found to be below the Agency's level of concern. (Id.). Although the data showed qualitative evidence of increased pre-natal sensitivity, EPA determined that the additional 10X children's safety factor could be reduced to 3X because the toxicological data were complete, two of the three toxicological studies bearing on effects on the young showed no increased sensitivity in the young, and the evidence of increased sensitivity was only qualitative and not quantitative. (Id. at 19117).

13. *Fluazinam*. NRDC challenged an April 18, 2002, action establishing a tolerance for fluazinam on the wine grapes. (67 FR 19120, April 18, 2002). Given fluazinam's exposure pattern and toxicological characteristics, EPA determined that fluazinam potentially presented acute and chronic risks and EPA quantitatively assessed these risks in making its safety determination. (Id. at 19127–19128). All of these risks were

found to be below the Agency's level of concern. (Id.). Because the data showed qualitative evidence of increased pre-natal sensitivity and a DNT study had been required (but not yet submitted) based on evidence of neurotoxic lesions, EPA retained the additional 10X safety factor for acute dietary exposure to the population subgroup females aged 13–50. For other populations and exposures the additional 10X factor was reduced to 3X because the increased sensitivity had only been seen with *in utero* exposure. (Id. at 19126–19127).

V. NRDC Objections

A. In General

As mentioned above, NRDC submitted four separate sets of objections on various pesticide tolerances during the first half of 2002. The objections were received on February 25, 2002; March 19, 2002; May 7, 2002; and May 20, 2002. (Refs. 6, 7, 8, and 9). NRDC was joined in the objections concerning 2,4-D by the following public interest and/or advocacy organizations: Boston Women's Health Book Collective, Breast Cancer Action, Californians for Pesticide Reform, Commonweal, Lymphoma Foundation of America, Northwest Coalition for Alternatives to Pesticides, Pesticide Action Network North America, Pineros y Campesinos Unidos del Noroeste, SF-Bay Area Chapter of Physicians for Social Responsibility, and Women's Cancer Resource Center.

B. Generic Issues

NRDC raises a myriad of claims in its objections. Most of the claims fall fairly neatly into three categories: (1) Children's safety factor issues; (2) aggregate exposure issues; and (3) issues regarding use of findings from hazard studies in calculating safe exposure levels - the "no observed effect level" (NOEL) versus "no observed adverse effect level" (NOAEL) and the "lowest observed adverse effect level" (LOAEL) questions.

1. *Children's safety factor issues*. For each of the pesticides included in the objections, NRDC asserts that EPA used an additional safety factor for the protection of infants and children that is different from the default 10x value. NRDC claims that EPA erred in doing so due to the "significant toxicity and exposure data gaps" corresponding to the tolerances established. (See, e.g., Ref. 7 at 3). Three types of data gaps are cited by NRDC. First, NRDC notes that as to certain of the pesticides EPA has required a developmental neurotoxicity study but such study has not yet been submitted. Pointing to various EPA

documents recommending that this study be widely required and EPA's specific finding that this study is required as to the pesticides in question, NRDC argues that use of a factor different than the default 10X is precluded. Second, NRDC claims EPA lacks "pesticide-specific data on water-based exposure" to the pesticides. (Id. at 6). NRDC argues that exposure estimates EPA calculated through the use of models cannot qualify as the "reliable data" needed to vary from the default 10X value. (Id.). Third, NRDC claims that "EPA failed to consider important exposure routes for millions of infants and children, including exposure to children living on farms and who accompany their parents into farm fields [], and exposure from spray drift." (Ref. 9 at 5).

2. *Aggregate exposure issues*. NRDC raises several issues relating to whether EPA properly estimated "aggregate exposure" for the pesticides in question. First, NRDC argues that farm children are a "major identifiable subgroup" and that EPA has failed to consider information concerning the sensitivities and exposures of farm children as a major identifiable subgroup" in conducting its aggregate exposure assessment. According to NRDC, farm children have unique exposures to pesticides "from their parents' clothing, dust tracked into their homes, contaminated soil in areas where they play, food eaten directly from the fields, drift from aerial spraying, contaminated well water, and breast milk." (Ref. 7 at 12). Further, NRDC asserts farm children's exposure is increased because they "often accompany their parents to work in the fields . . ." (Id.). NRDC cites various studies collected in its "Farm Children Petition" as well as more recent studies in support of these claims. (Ref. 7 at 12–13). Second, NRDC argues that EPA's aggregate exposure assessment is flawed for these pesticides because EPA did not consider the added exposure to pesticides that farmworkers receive as a result of their occupation. (Id. at 14). NRDC states that EPA's interpretation of the statute as excluding occupational exposure is incorrect. (Id.). Third, NRDC claims that EPA has underestimated aggregate exposure for several of the pesticides because EPA used "anticipated residues" for estimating exposure rather than assuming residues would be at the tolerance level. NRDC argues that "EPA must ensure that the legal level of pesticide chemical residue - the established tolerance levels - are themselves safe." (Ref. 9 at 20). Additionally, NRDC asserts that using

“anticipated residues” does not take into account the “significant number of consumers who purchase produce at farmers markets, farm stands, and ‘pick-your-own’ farming operations.” (Id. at 19). These “potentially millions of consumers,” NRDC contends, are exposed “to residues of these pesticides at the tolerance level.” (Id. at 20). Fourth, NRDC argues that for several of the pesticides EPA has, in effect, underestimated aggregate exposure by using the 95th population percentile of exposure instead of the 99.9th percentile in determining whether exposure to the pesticide meets the safety standard. (Ref. 7 at 19). NRDC claims that this is inconsistent with existing Agency policy. (Id.).

3. *Reliance on LOAELs and NOAELs.* NRDC asserts that, in the absence of identifying a NOEL in relevant animal studies, EPA cannot make a safety finding under section 408(b)(2). In support of this argument, NRDC cites to legislative history using the term NOEL. NRDC calls particular attention to the instances where EPA determined safety relying on a LOAEL: Use of acute neurotoxicity LOAEL to evaluate oral exposure for pymetrozine; (Ref. 6 at 9), use of reproductive toxicity LOAEL for mepiquat; (Id.), use of developmental toxicity LOAEL for zeta-cypermethrin; (Ref. 7 at 19), use of LOAEL for dermal toxicity for fluzazinam; (Ref. 9 at 18), and reliance on rat and mouse dietary studies for fluzazinam that identified only a LOAEL. (Id.). NRDC, however, also objects to several pesticide tolerances for use of a NOAEL in making the safety determination. (Ref. 9 at 17–18).

C. Pesticide-specific Issues

NRDC’s pesticide-specific objections to some extent build upon the more general objections described immediately above. As to each of the pesticides, NRDC identifies allegedly missing toxicity or exposure data and argues that these missing data necessitate retention of the default 10X children’s safety factor. Additionally, for several of the pesticides, NRDC raises specific issues regarding the aggregate exposure estimate. One aggregate exposure issue raised repeatedly is EPA’s reliance on allegedly arbitrary processing factors for estimating residues in processed food. These objections are addressed in detail in Unit VIID.7.b. and f. below, respectively.

Finally, NRDC objects to the 2,4-D tolerance on soybeans arguing that EPA relied upon a human exposure study “in an arbitrary departure from the Agency’s stated policy on considering human

tests and a violation of international and federal law.” (Ref. 8 at 22). Also with regard to 2,4-D, NRDC discusses various toxicological studies that according to NRDC show that 2,4-D is a carcinogen, an endocrine disruptor, and a neurotoxicant. (Id. at 4–7). NRDC did not link these toxicological claims to its specific objections.

VI. Public Comment

A. In General

On June 19, 2002, EPA published a notice in the **Federal Register** calling attention to and requesting comments on the NRDC Objections. (67 FR 41628, June 19, 2002). As part of that notice, EPA published the full text of one set of objections in the **Federal Register**. A period of 60 days was initially allowed for comment but that period was extended twice and was closed on October 16, 2002. (See 67 FR 58536, September 17, 2003; 67 FR 53505, August 16, 2002). In addition to a large number of form letters (principally supporting the objections) and the NRDC’s comments mentioned above, EPA received roughly 20 sets of substantive comments. These comments were for the most part from pesticide manufacturers and each requested denial of the objections. The most significant of these comments are summarized below. EPA has not repeated comments in instances where they were made by more than one commenter.

B. Individual Comments

1. *The FQPA Implementation Working Group.* Extensive comments were filed by the FQPA Implementation Working Group (IWG), an organization comprised of associations representing pesticide manufacturers, growers, and food processors. (Ref. 10) [hereinafter cited as “IWG comments”]. The IWG comments provided two alternative approaches as to why the NRDC’s objections should be denied. First, the IWG asserted that EPA has misinterpreted the concept of “aggregate exposure” ever since passage of the FQPA, and once this interpretation is corrected, it becomes clear that the objections, for the most part, are flawed. These comments by IWG were thoroughly described and responded to in the Imidacloprid Order. (69 FR at 30072–30073, May 26, 2004).

Second, in the alternative, the IWG, assuming the EPA’s aggregate exposure interpretation is retained, explained that the NRDC objections are factually flawed. IWG’s comments concerning pesticide exposure to farm children and exposure to pesticides in drinking water were discussed in the Imidacloprid

Order. (69 FR at 30049, 30069). One issue not addressed was IWG’s comments on pesticide exposure from food purchased at farm stands. The IWG challenges the NRDC’s assertion that levels of pesticide residues in foods purchased at farm stands are higher than residue levels in food purchased at other retail outlets. The IWG notes that “NRDC does not provide information to support its allegations, and we are not aware of any credible data to suggest that this is the case.” (Ref. 10 at 16). The IWG cites two demonstrable reasons undermining NRDC’s claim: first, label directions and restrictions on pesticide use apply equally to food grown for sale at farmstands and food grown for distribution through broader channels of trade; and second, “[t]he various circumstances (weather, pest pressure, etc.) that affect residue levels resulting from a given treatment regimen are the same for those who grow crops to market through wholesale channels and for those who grow crops to sell at retail.” (Id.). Finally, the IWG notes that assuming residue levels are at the tolerance value would vastly overstate exposure amounts given that FDA data has shown “no pesticide residues in 41 percent and 73.5 percent of fruit and vegetable samples and either no residues or below tolerance residues in 99.5 percent and 98.9 percent of fruit and vegetable samples.” (Id. at 17).

2. *Inter-Regional Research Project Number 4 (IR-4).* The IR-4 is a program sponsored by the US Department of Agriculture and land grant universities and directed toward obtaining regulatory approval for pesticide uses on minor and specialty food crops that are not likely to be supported by private sector companies. In its comments, the IR-4 notes that several of the pesticides covered in the objections - diflubenzuron, halosulfuron-methyl, and fenhexamid - are both “critical to minor crop growers” and safer, reduced risk pesticides. (Ref. 11). The IR-4 asserts that diflubenzuron provides an alternative to the organophosphate pesticides and that halosulfuron-methyl is a methyl bromide alternative. (Id.).

3. *ISK Biosciences - Fluazinam.* ISK Biosciences is the owner of the data used to support the fluzazinam tolerance on wine grapes. (Ref. 12). ISK Biosciences notes that this is an import tolerance for wine grapes meaning that as to this use there will be no exposure in the United States other than through the consumption of wine. (Id. at 4). ISK Biosciences also points out that children do not usually consume wine. (Id.). ISK Biosciences notes several factors that contributed to the conservativeness of EPA’s risk assessment, including (1) use

of tolerance level residues; (2) assumption of 100 percent crop treated even though fluazinam can be at most used on wine imported to the United States (22 percent of the wine); and (3) use of a default processing factor for wine of 1.0 even though wine processing studies show significant reductions in residue levels. (Id. at 5–7). As regards reliance on a LOAEL, ISK Biosciences states that EPA did indicate the 21-day dermal toxicity study did not identify a NOAEL for dermal irritation but that EPA did find a systemic NOAEL from that study which was used for aggregate risk assessment. According to ISK Biosciences, NOAELs were used for dietary risk. (Id. at 7).

4. *Bayer CropScience - Isoxadifen-ethyl*. Bayer CropScience claims that EPA assigned a 3X children's safety factor to isoxadifen-ethyl due to concerns regarding a rat teratology study and EPA requested historical control information pertaining to the study. (Ref. 13). Bayer states that that information has been submitted and should alleviate any concerns EPA has with regard to the study regarding potential increased sensitivity of the young. With respect to the conservativeness of EPA drinking water exposure estimates Bayer CropScience cites a study which it asserts demonstrates that EPA models typically overstate exposures by 100- to 10,000-fold. (Id. at 2 (citing Ref. 14)). Finally, as to EPA's use of default processing factors, Bayer CropScience argues they are not arbitrary because they assume a worst case concentration of residues in the processed food based on the ratio of the weights of the raw and processed foods. (Ref. 13 at 6).

5. *Aventis CropScience - Acetamiprid*. Aventis CropScience asserts "there was no specific concern on the part of [EPA with regard to acetamiprid] that would give concern for the developing fetuses or young. The developmental neurotoxicity study was required by EPA to expand knowledge, not for reasons of specific concerns." (Ref. 15). Further, Aventis CropScience claims that "[t]here is no reason to expect that a lower NOEL than previously determined will be found for acetamiprid in a developmental neurotoxicity study." (Id.).

6. *FMC Corporation - Zeta-cypermethrin*. FMC Corporation argues that no DNT study has been required for zeta-cypermethrin because no data call-in has been issued. (Ref. 16). If a DNT study has not been required, FMC Corporation reasons, then the absence of a DNT study cannot make the database incomplete. Further, FMC asserts that even if such a study was requested any

decision on the children's safety factor would have to be based on whether the data "give rise to concerns for potential developmental effects." (Id.). Challenging claims by NRDC, FMC contends that the DCVA degradates of zeta-cypermethrin were considered by EPA, (Id. at 3–4), and the residential exposure due to cypermethrin was taken into account in the aggregate risk assessment for zeta-cypermethrin. (Id. at 6). As to the DCVA metabolites, FMC asserts that EPA considered them and decided not to include them in an aggregate assessment due to their lack of toxicological significance. (Id. at 3).

7. *Crompton Corporation - Diflubenzuron and Bifenazate*—a. *Diflubenzuron*. Crompton Corporation argues that NRDC's criticisms of the adequacy of the residential exposure assessment for diflubenzuron are misplaced given that an exposure assessment for agricultural workers showed minimal exposure under conditions much more likely to result in exposure than the sole registered residential use for diflubenzuron on trees and shrubs limited to professional application only. (Ref. 17).

b. *Bifenazate*. Crompton Corporation asserts that NRDC has misconstrued a statement in **Federal Register** notice establishing the bifenazate tolerances in question. (Id. at 4). In a table summarizing toxicological studies, EPA at one point states that "a clear assessment of developmental toxicity was not possible." (67 FR at 4915.). Crompton Corporation contends that this statement only applied to a range-finding study and that once the main study was completed developmental toxicity could be clearly assessed. Crompton Corporation acknowledges that the database does not include, as NRDC has noted, several inhalation studies; however, Crompton argues this does not render the database incomplete because "significant toxicity by this exposure route would not be expected" given data from short-term inhalation studies and information pertaining to the particle size of bifenazate formulations. (Ref. 17 at 4). In response to NRDC's claim that arbitrary processing factors were used for estimating bifenazate residues on processed apples and grapes, Crompton points out that, at least in part, actual processing data from bifenazate-treated grapes and apples were used to derive processing factors. (Id. at 7–8).

8. *Syngenta Crop Protection - Propiconazole and Pymetrozine*—a. *Propiconazole*. Syngenta Crop Protection responds to NRDC's claim that drinking water models cannot be relied upon to provide reliable data on

exposure by citing to a study done to evaluate the residue levels of propiconazole in drinking water reservoirs. (Ref. 18). According to Syngenta, "[i]n 312 samples of raw water, propiconazole was detected in only one, and that at the limit of detection. Propiconazole was not detected in ANY finished water samples analyzed. (Id.). As to exposure to farm children, Syngenta notes that:

[m]any of the exposure scenarios depicted in the NRDC objections are the result of poor hygiene (contaminated work clothing being worn inside the home instead of being washed after use, . . .) substandard living conditions due to poverty, and lack of information on safe pesticide handling. These kinds of issues cannot be managed within the constraints of a risk assessment based on labeled use of a pesticide, but rather must be addressed through appropriate stewardship, education, and outreach. Recognizing this as an issue, particularly in the growing Latino community of North Carolina, Syngenta has sponsored and actively participated in projects with the Department of Family and Community Medicine at Wake Forest University to develop safety videos in Spanish for pesticide handlers. These modules include a discussion of proper hygiene for pesticide handlers/field workers once inside the home. (Id. at 3–4).

b. *Pymetrozine*. Syngenta defends the use of a LOAEL reduced by a factor of 3X for assessing the acute dietary risk of pymetrozine by noting that the effects observed at the LOAEL "were reversible and not of severe magnitude (for example, body temperature was decreased at the LOEL, but only by about 2 percent compared to controls)." (Id. at 5). Syngenta cites to reports indicating that a very high percentage of toxicity studies have a ratio between LOAELs and NOAELs of 5X to 6X or less. (Id.). Syngenta notes that "Dourson et al. (1996) conclude that when faced with a LOEL and not a NOEL, the choice of uncertainty factor should generally depend on the severity of the effect at the LOEL." (Ref. 18 at 5).

9. *BASF Corporation - Mepiquat*. BASF Corporation disputes NRDC's claim that a NOEL was not identified by EPA for the mepiquat reproductive toxicity study in rats. Citing to EPA's Reregistration Eligibility Document for mepiquat chloride, BASF Corporation concludes that "this study established a NOEL for all parameters investigated, both for parents and pups." (Ref. 19).

10. *Industry Task Force II on 2,4-D Research Data*. A good portion of the 2,4-D Industry Task Force II's comments pertain to NRDC statements regarding the toxicity of 2,4-D. (Ref. 20). Because NRDC did not directly relate these statements to its objections, neither its allegations nor the Industry Task Force's

rebuttal is repeated in any detail here. In sum, the Industry Task Force disagreed with NRDC's conclusions asserting that NRDC had focused on a few studies of questionable reliability without considering the extensive database on 2,4-D. The Task Force noted that "[i]t is difficult to understand the toxicological arguments put forth by NRDC as many are simply threads of ideas that have been only loosely woven into a fabric." (Id. at 2). To the extent necessary, toxicological issues concerning 2,4-D are discussed below in EPA's response to the objections.

On the children's safety factor for 2,4-D, the Industry Task Force defends EPA's selection of a 3X factor based on the assertion that it would be "double counting" to "require both a database uncertainty factor for the lack of a DNT study and an FQPA safety factor for neurological sensitivity." (Id. at 15). The Industry Task Force also notes that the neurological sensitivity was only found at a high dose. (Id. at 14). As to regulation of farm children as a major identifiable subgroup, the Industry Task Force protests that "NRDC did not define farm children as a subgroup by their type of living situation, food consumption, and other population characteristics that would discriminate them from children generally." (Id. at 16). The Industry Task Force also challenges NRDC's claims regarding high exposures for farm children noting that in three recent biomonitoring studies of farm applicators, spouses, and their children "only a small fraction of the spouses and children have levels of 2,4-D detectable at 1 part per billion." (Id.). Studies cited by NRDC in support of its claims regarding high exposure to farm children, the Industry Task Force asserts, "fail to concurrently demonstrate a measurable internal dose of 2,4-D to the home residents." (Id. at 20). Finally, as to the human testing data relied upon by EPA in evaluating the safety of 2,4-D, the Industry Task Force points out that they were biomonitoring studies conducted by a provincial Canadian government agency and not "third-party clinical trials [conducted by the pesticide industry] to determine effects in humans." (Id. at 25).

VII. Response to Objections

As summarized above, NRDC's Objections can be grouped into a few main categories and EPA has organized its response to the objections around these categories instead of by pesticide. Further, even among these categories, one consistent theme emphasized by NRDC is the potential heightened exposure of "farm children" to

pesticides. For that reason, EPA begins its substantive response in Unit VII.B. below with an analysis of the data bearing on children's exposure to pesticides in agricultural areas. Then EPA turns to NRDC's specific objections. Unit VII. C. below addresses the objections raising issues regarding the children's safety factor. Unit VII.D. below covers aggregate exposure questions. Unit VII.E. below responds to claims regarding use of LOAELs and NOAELs. Finally, Unit VII.F. below addresses the human study issue.

Prior to addressing these substantive issues, EPA responds in Unit VII.A. below to the objections as to several tolerances which have now expired.

A. Expired Tolerances

The following time-limited tolerances that were objected to by NRDC have now expired and are, therefore, no longer in effect: halosulfuron-methyl on asparagus, (66 FR 66778, December 27, 2001) (expired on December 31, 2003); 2,4-D on soybeans, (67 FR 10622, March 8, 2002) (expired on December 31, 2004); and propiconazole on blueberries, (67 FR 14866, March 28, 2002) (expired December 31, 2003). Because these tolerance actions are without legal force, NRDC's objections are denied as moot. Other halosulfuron tolerances objected to by NRDC have not expired and are included in the response below. Additionally, because EPA has already, or may in the future, undertake tolerance actions as to propiconazole and 2,4-D, EPA's analysis to the specific issues raised by propiconazole and 2,4-D are included in this notice.

B. Children's Exposure to Pesticides in Agricultural Areas

Children can be exposed to pesticides through multiple sources and pathways. The Agency currently considers children's exposure to pesticides by three broad pathways: food, drinking water, and residential use. NRDC, however, has asserted that children residing in agricultural communities also are significantly exposed to agricultural pesticides through additional exposure pathways.

Children in agricultural areas may be exposed to agricultural pesticides through pathways such as contact with treated fields, roadsides and other areas; contact with residues on clothing of parents who work in agriculture; contact with moving spray drift while near application areas; contact with spray drift residues left by any spray drift that may reach their homes, yards or other areas they frequent, such as schools and schoolyards; and contact with pesticide

residues that have volatilized after application. In addition, some of these children may also be exposed to agricultural pesticides in their homes via other pathways.

In analyzing the potential exposure of children in agricultural areas, EPA first focused on data from studies relied upon by NRDC or otherwise known to EPA that attempted: To measure levels of pesticides in the homes of children in agricultural areas; to measure levels of pesticide metabolites in body fluids of children in agricultural areas; and/or to compare levels of pesticide exposure of farm children to those experienced by non-farm children, based on similar types of measurements. In addition, EPA examined data NRDC submitted relating to airborne levels of pesticides (stemming from spray drift or post-application volatilization drift) in farm communities. Finally, EPA reviewed data it has concerning the potential for pesticides to drift offsite during application.

1. *Studies focusing on exposure to children in agricultural areas.* In response to objections filed by NRDC with regard to the imidacloprid tolerance on blueberries, EPA discussed various studies focusing on exposure to children in agricultural areas (other than the data cited by NRDC regarding airborne residues). In brief, EPA found that the data concerning levels of pesticides in homes or children's bodily fluids are limited and inconclusive, and do not demonstrate that children in agricultural areas as a group receive more pesticide exposure than children in non-agricultural areas. (In fact, some data suggest that pesticide residues in houses in urban or non-agricultural areas may be higher than those in houses in agricultural areas.) EPA incorporates that discussion into this response. (69 FR at 30050-30054, May 26, 2004).

Since issuing its response to the imidacloprid objections, EPA has received several additional studies bearing on exposure of farm children. First, EPA has received a study it funded investigating, among other things, aggregate exposure of children to persistent pollutants, including pesticides. (Ref. 21). Pesticides in the study included chlorpyrifos, diazinon, permethrin, and 2,4-D. The Pilot Study of Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants (CTEPP) was designed to investigate the relative contribution of various routes of exposure (dietary, indirect oral exposure, and inhalation) and to determine if there are differences in exposure due to such factors as income

level, child care location, and regional location. CTEPP was conducted in two states, Ohio and North Carolina, and involved 257 children in both urban and rural (farmland) areas of these states. What the results of CTEPP show are that (1) the dietary route is the dominant route of exposure for the pesticides and other pollutants in the study (ranging from 55 to 95 percent for the six pesticides studied); (Id. at 9-75), and (2) although there were some differences in exposure for some pesticides for some routes of exposure, where differences were present it was the urban children that received higher exposures than rural children (e.g. exposure of urban children in North Carolina to 2,4-D through indirect ingestion exceeded exposure of rural children to 2,4-D by the same route by a factor of 3), (Id. at 9-66, 9-67).

A second source of information bearing on farm children exposure is a partial report from the Agricultural Health Study (AHS), which is a prospective epidemiologic study of pesticide applicators and their spouses in Iowa and North Carolina. (Ref. 22). Exposure to 2,4-D was measured in conjunction with agricultural applications for a subset of applicators in the AHS Pesticide Exposure Study. Urinary Biomarker levels were measured in pre-and post-application samples collected from applicators and their spouses and children using 2,4-D in broadcast and hand spray applications. The results indicated applicator exposure increased approximately 3-fold between the pre-and post-application periods. For spouses and children exposure increased but in smaller increments, approximately 50 percent and 25 percent, respectively. The values, however, are questionable due to the fact that one of the spouses admitted using a 2,4-D product, there were a low number (9) of children participating, and it is not clear whether any of the children assisted in farm work.

The final study, the Farm Family Exposure Study (FEES), which was funded by a group of pesticide manufacturers, was designed to quantify real world pesticide exposures in farmers and family members around the time of a single pesticide application. (Ref.23). Pesticides involved in the study included 2,4-D, chlorpyrifos, and glyphosate. The farm families were randomly selected from a public list of licensed private pesticide applicators from Minnesota and South Carolina. Exposures were measured in applicators, spouses and children by collection of 24 hour urine samples on the day of and for three days following

a pesticide application. Urine samples were also collected prior to application. With regard to children, the study concluded that exposure levels of chlorpyrifos and glyphosate increased marginally on post-application days and that these marginal increases were caused by children who directly assisted in pesticide application or who were around the application process. Greater increases were seen between pre-application and post-application exposure levels of children in connection with use of 2,4-D. The study found that the highest levels of exposure were seen in children who assisted with application although increases were seen in some children not directly involved in the application process. Specifically, the study concluded:

Exposure related to chemical application was also higher in children when compared to spouses. Unlike the spouses, the children were more often present during the application process and some assisted their parent with the application. These opportunities for direct exposure accounted for the higher concentrations of the chemicals in the urine. While the children did exhibit an overall positive change from baseline, the geometric mean differences in urine concentration were very small (2 µg/L for 2,4-D). Not all children who had measurable changes in urine concentration were directly involved with the application process, yet identifying a potential route of exposure will be difficult as the exposures are subtle.

(Ref. 23 at 28). Comparisons of the exposure levels in this study with other population-based exposure data showed mixed results. To evaluate the significance of the exposures measured in the study, EPA compared the exposure levels for children aged 4-15 to the dose level of concern. Children in that range were chosen because fewer children of this age would be expected to directly assist or otherwise participate in agricultural activities. All exposure levels for this group were found to be well below safe levels with margins of exposure ranging from 4,000 to 2.6 million and averaging 42,000. (Ref. 24). Thus, although there were increases in exposure for some children, these increases were not meaningful in terms of risk.

The CTEPP study further confirms EPA's conclusions in the Imidacloprid Order regarding differential exposures of urban and rural (farm) children. The other two studies suggest that some farm children may be exposed to pesticides as a result of living in proximity to fields treated with pesticides; however, these exposures for farm children are generally a result of occupational-type exposures from the children participating in the application of

pesticides or otherwise assisting in or being present in the field during agricultural operations. Occupational source exposure to pesticides is not appropriately considered under FFDCA section 408. 21 U.S.C. 346a(b)(2)(D)(vi). Importantly, even as to the increases in 2,4-D exposure in the FFES, the only pesticide as to which increased exposure could not be definitively tied to occupational-type exposures, the data did not indicate that children were receiving any exposures that were even close to levels of concern. Moreover, these studies did not indicate EPA's risk assessment process was under-protective. For example, EPA's risk assessment for 2,4-D, both as presented in the tolerance document and as described in Unit VII.B.2.a., predicts significantly higher risks (i.e., lower margins of exposure) for children from exposure to 2,4-D. Thus, EPA reaffirms its earlier finding that data concerning levels of pesticides in homes or children's bodily fluids are limited and inconclusive, and do not demonstrate that children in agricultural areas as a group receive significantly more non-occupational pesticide exposure than children in non-agricultural areas.

2. *Information bearing on exposure levels as a result of spray drift and post-application drift of volatilized residues.* Although the epidemiology data mentioned above and discussed in the Imidacloprid Order generally do not indicate that pesticide exposures to children in agricultural areas differ significantly from such exposures to children in urban or suburban areas, EPA has examined whether data on the drift of pesticide during applications (spray drift) and the transport of volatilized pesticide residues following application (post-application drift) suggest that these sources of exposure should be included in EPA calculations of aggregate exposure.

a. *Pesticide spray drift during application.* EPA defines spray drift as the movement of droplets off-target during or shortly after application, which is independent of the chemical properties of the pesticide being sprayed. EPA has gathered substantial data on the potential of pesticides, as applied, to drift offsite through the work of the Spray Drift Task Force (SDTF). The SDTF is a group of pesticide registrants who have worked collaboratively to develop a database to meet the majority of their collective spray drift data requirements under 40 CFR 158.440. The group was chartered on April 17, 1990. (Ref. 25). Since its formation, the SDTF has generated standardized data on spray drift levels resulting from different application

methods under varying meteorological conditions. The data developed by the SDTF was reviewed by EPA internally, through external peer review workshops, and through FIFRA Scientific Advisory Panel meetings. The reviews generally identified the data set associated with aerial applications to be the most robust, followed by the data sets from ground boom applications, orchard/vineyard airblasting, and chemigation, respectively. After the spray drift data were available, the SDTF worked with EPA's Office of Research and Development, as well as the USDA's Agricultural Research Service and Forest Service to use the data in the development/evaluation of the AgDRIFT model. (See generally Refs. 26, 27, and 28).

The AgDRIFT model has been incorporated to a limited extent in EPA exposure assessments. It is used most prominently in environmental assessments in estimating potential exposure of offsite animals and plant life to pesticide residues. The AgDRIFT model has also been used in the context of FFDCA risk assessment through use of model estimates as an input to the various models used to estimate potential exposure in drinking water. Importantly, EPA has regarded its drinking water models as screening models and not as realistic predictors of actual exposure. For that reason, until recently EPA has not directly summed exposure estimates from its drinking water models with estimates of exposure from food in calculating aggregate exposure. Rather, EPA has used water model estimates more indirectly by comparing them to Drinking Water Levels of Comparison which are estimates of the amount of safe exposure that can occur taking exposure through residues in food into account. This indirect approach to the use of water model estimates of pesticide exposure keeps distinct the

screening nature of water model estimates.

In estimating pesticide exposure from various pathways EPA is careful to avoid relying on maximum values from every input because such an approach can grossly overestimate exposure. As EPA's exposure guidelines note: "When constructing this [exposure] estimate from a series of factors [environmental concentrations, intake rates, individual activities, etc.], not all factors should be set to values that maximize exposure or dose, since this will almost always lead to an estimate that is much too conservative." (Ref. 29). Given that EPA's approach to estimating pesticide exposure from food, water, and residential uses already tends to be very conservative (health-protective), EPA has been cautious about simply adding in yet another screening level value in calculating aggregate exposure. Certainly, the epidemiology data discussed above and in the Imidacloprid Order does not strongly suggest that EPA exposure estimates have been ignoring a major pathway of exposure.

That does not mean that the AgDRIFT model does not have a role to play in considering aggregate exposure to pesticides. It may prove useful in designing buffer zones for pesticides that otherwise have potentially high exposures. Alternatively, as data on exposure expands and modeling improves, some aspect of AgDRIFT modeling may be meaningfully incorporated into probabilistic modeling of exposure. However, as the analysis below shows, exposure as a result of spray drift is unlikely to be a significant contributor to any substantial number of individuals.

To evaluate potential exposures from spray drift, EPA: (1) Compared potential spray drift exposures to exposures from residential lawn uses; and (2) computed MOE's for each of the 13 pesticides assuming spray drift exposure is a component of residential exposure. Both

exercises confirm EPA's view that spray drift is unlikely to be a significant contributor to risk.

1. *Comparison of AgDrift model estimates of exposure with exposure from residential lawn use generally.* AgDRIFT version 2.01 is a computer model that can be used to estimate downwind deposition of spray drift from aerial, ground boom, and orchard and vineyard airblast applications. The model contains "Toolbox" screens that can be used to estimate deposition levels in terrestrial and aquatic environments and estimate concentrations in water bodies. The model contains three tiers of increasing complexity for aerial application. In Tier 1, the user can estimate downwind deposition resulting from each of the application methods under several predefined scenarios. In higher tiers more options are available. AgDRIFT only allows Tier 1 level analyses for ground boom and airblast application methods. The aerial portion of the model is based on a mechanistic U.S. Forest Service model, (Ref. 30). The SDTF field trial data were used to validate the aerial portion of AgDRIFT, (Refs. 31 and 32). The ground boom and orchard airblast portions use data collected by the Spray Drift Task Force (SDTF) to empirically calculate spray drift deposition. AgDRIFT was developed under a cooperative research and development agreement between EPA, USDA, and the SDTF.

The AgDRIFT model can provide a picture for each of the three application techniques (aerial, groundboom, and airblast) of what amount of an agriculturally-applied pesticide may drift onto areas ranging from 10 feet to 210 feet from the treated field. In the following Table 2, high-end spray drift deposition as modeled by AgDrift is presented in terms of deposition rate offsite as a percentage of the pesticide application rate. (Ref. 33).

TABLE 2.—HIGH-END DOWNWIND SPRAY DRIFT DEPOSITION LEVELS BY APPLICATION METHOD

Lawn placement relative to application area	Spray drift deposition (percent of application rate)				
	aerial	ground boom	airblast		granular
			dormant orchards	dense or tall canopies	
10 to 60 ft downwind	34.1	9.3	25.0	8.4	0
20 to 80 ft downwind	31.6	6.4	16.1	6.0	0
40 to 90 ft downwind	27.9	4.1	8.0	3.7	0
80 to 130 ft downwind	22.0	2.4	3.0	1.9	0
160 to 210 ft downwind	14.9	1.3	0.8	0.9	0

As Table 2 shows, the highest off-target deposition levels from agricultural applications occur adjacent to the treated area and those levels decrease with increasing distance from the treatment area. Importantly, in EPA's experience, application rates for residential uses are generally equal to or greater than the levels allowed for agricultural applications. Thus, deposition on residential lawns from spray drift is generally a small fraction of deposition from direct residential treatment and, unless the residential lawn is relatively close to the treated agricultural field, the ratio of spray drift deposition to deposition from direct treatment is exceedingly low.

2. *Evaluation of MOE's based on AgDrift Model for the pesticides in the objections.* Another way of evaluating the potential significance of application drift exposure is by calculating potential high-end application drift for each pesticide for areas adjacent to treated fields and combining these values with other exposure values for the pesticide. Due to the high-end nature of the estimates from the AgDrift model and the limited number of persons that would be exposed at the field boundary, EPA does not believe it is reasonable to simply add these values to other high-end exposure values in determining pesticide safety. Nonetheless, in the context of these objections, EPA has

performed this calculation to show how even making such low probability exposure assumptions does not result in any safety concerns.

The exposure/risk scenario deemed most appropriate for evaluating application drift exposures is the short-term exposure scenario. Short-term exposures are those likely to occur over a 1- to 7-day window. This is the exposure window most commonly used with assessing exposure from residential turf use of a pesticide and the turf use is the residential use that most closely approximates the exposure that may result from application drift. To estimate potential exposure to application drift, EPA first calculated the amount of deposition that may drift to an area 10-60 feet downwind of the application site using the combination of permitted application technique and rate that yielded the highest deposition. Then EPA used the predicted deposition amount as an input in its model for estimating post-application exposure to toddlers on turf. EPA focused on toddlers because toddlers have the greatest post-application turf exposure to pesticides of any population subgroup due to their behavior patterns (i.e., crawling, rolling on turf; hand-to-mouth activity; soil ingestion). As is done with evaluating aggregate short-term post-application exposures to turf uses, predicted post-application

exposure from drift was then summed with background exposures to the pesticide from residue-containing food and water. If the pesticide has residential exposures, those predicted exposures were summed as well. After combining all of these exposures, the overall exposure value was divided into the safety endpoint used to evaluate short-term exposure to quantify the Margin of Exposure (MOE). To ensure that this assessment was conservative, EPA combined oral and dermal exposure where appropriate. Where combining oral and dermal exposures was not supported by the data, EPA calculated separate MOEs for dermal and oral exposures and then combined the MOEs. (Ref. 33 at 3-5).

The following Table 3 presents estimated MOEs for the 13 pesticides for background food and water exposure, residential exposure (where applicable), application drift exposure, and combined exposure. Table 3 also lists the Level of Concern (LOC) for each pesticide. The LOC is the minimum level that a MOE must obtain to ensure that the MOE includes adequate safety factors, including the children's safety factor. As can be seen, even when assessing risk using this unrealistic exposure approach, the MOEs for these pesticides remain above their respective LOC.

TABLE 3.—COMBINING APPLICATION DRIFT SHORT-TERM EXPOSURES WITH OTHER EXPOSURES OF TODDLERS

Pesticide	Food and Water Background MOE		Residential MOE		Appl. Drift MOE		Combined MOE	LOC
	food	water	oral	dermal	oral	dermal		
halosulfuron-methyl	140,000	300,000	60,000	3,100	2,500,000	110,000	2,800	100
pymetrozine	220,000	63,000	2,200	na	15,000	na	1,800	1,000
mepiquat	29,000	550,000	na	na	180,000	27,000	13,000	100
bifenazate	2,500	880,000	na	na	3,700	1,100	650	100
zeta-cypermethrin	710	22,000	4,400	na	40,000	na	570	100
diflubenzuron	13,000	220,000	na	na	1,600	15,000	1,300	100
2,4-D	17,000	17,000	970	1,100	2,500	1,600	330	300
isoxadifen-ethyl	5,600	3,500	na	na	33,000	9,100	1,600	300
acetamiprid	1,000	38,000	na	na	12,000	1,800	610	300
propiconazole	18,000	3,300,000	na	na	19,000	1,800	1,500	100
furilazole	330,000	130,000	na	na	200,000	19,000	15,000	300
fenhexamid	3,500	300,000	na	na	13,000	14,000	1,300	300
fluazinam	93,000	4,300	na	na	3,800	370	310	300

Table 3 has been compiled based on analyses and data in existence at the time of the tolerance action. Since the tolerance actions, EPA has received new information or conducted new analyses as to these pesticides. That data and analyses has resulted in changes, or potential changes to the assessment of the risk posed by these pesticides. The changes come in the form of adjusted safety factors, more realistic exposure estimates, and new toxicity endpoints. EPA has not incorporated that information into this objection response because consideration of this new information was not needed to address NRDC's objections. EPA would have considered expanding its response to address new information if NRDC's objections had convinced EPA that its prior analysis was flawed or EPA had a completed risk assessment showing risks of concern.

EPA cautions that it would be inappropriate to focus on any one aspect of the underlying risk assessment variables and conclude that based on a change in that one variable alone the risk of a particular pesticide is unacceptable. Not only must EPA assess all of the variables in combination, but EPA's risk assessment process is tiered such that more elaborate techniques to predict realistic exposure values are not used if use of worst case default exposure assumptions suggest there is not a risk of concern. (Refs. 29 at 22922; 1 at 11). For example, NRDC has argued that for some of the pesticides in the objections, use of a different safety factor would demonstrate that the objected-to tolerances are unsafe. Given, however, the very conservative exposure assumptions for many of these pesticides, such arguments are likely to be incorrect even if NRDC could support its argument for a greater safety factor.

b. *Volatilization of applied pesticides.* On June 19, 2003, NRDC supplemented its submission to the Agency with several pieces of additional information. Included was a report by the Californians for Pesticide Reform generally addressing the issue of spray drift from pesticide applications in California. (Ref. 34) [hereinafter referred to as the "CFPR Report"]. Although EPA defines spray drift as the movement of droplets off-target during or shortly after application, which is independent of the chemical properties of the pesticide being sprayed, the CFPR Report looked more broadly at atmospheric pesticide transport including pesticide volatilization as a potential mechanism by which pesticides travel beyond treated fields. Also included in NRDC's supplemental information was a research article containing an analysis

and ranking of the degree of inhalation risk posed by certain migrating pesticides in California, based on ambient air monitoring data gathered, in part, by the California Air Resources Board and the California Department of Pesticide Regulation. (Ref. 35) [hereinafter referred to as the "Ranking Study"].

The Ranking Study conducted screening level assessments for many of the pesticides regarded as having the highest potential as toxic air contaminants by the California Department of Pesticide Regulation as well as several pesticides categorized as hazardous air pollutants by EPA. This screening level assessment, using conservative (health-protective) assumptions, only identified three soil fumigants (MITC, methyl bromide, telone) and one heavily-used non-fumigant pesticide (chlorpyrifos) as potentially presenting non-cancer acute or chronic risks of concern. (Id. at 1179). The study concluded that "vapor pressure is a significant predictor of [] ranking of inhalation risks. (Id. at 1182). The CFPR Report examined the potential health risks from air levels of three pesticides characterized as moderate to highly volatile (chlorpyrifos, diazinon, and molinate) measured at the field boundary and at more distant locations. The Report concluded that in many instances the measured air levels of these pesticides posed risks of concern. The Report also concluded that drift due to volatilization was not a concern for pesticides that are not highly volatile. (Ref. 34 at 40).

(1) *Analysis of CFPR report and ranking study.* In terms of volatility, pesticides can be broadly grouped into three categories: (1) Those of high volatility (vapor pressure of 10^{-1} to 10^{-3} millimeter of mercury (mmHg)); (2) those of moderate volatility (vapor pressure of 10^{-4} to 10^{-5} mmHg); and (3) those of low volatility (vapor pressure of 10^{-6} mmHg and below). EPA and NRDC seem to be in general agreement regarding the exposure potential from the first and third groups. Both EPA and NRDC believe that significant airborne exposures may occur as a result of the application of pesticides of high volatility and that exposure through volatilization is unlikely for pesticides of low volatility. Where EPA and NRDC differ is regarding the middle group. NRDC argues, based on the CFPR Report, that pesticides in this group can result in exposures that raise levels of concern. EPA believes the evidence NRDC has presented on this point is open to question. Although there is a greater possibility for volatilization of

residues of pesticides of moderate volatility than those of low volatility, EPA is not convinced that volatilization exposure from the former group is likely to be meaningful. In any event, as discussed below, there is no reason to expect any meaningful exposure due to volatilization from any of the 13 pesticides involved in these objections.

In the CFPR Report, CARB data is presented and analyzed for two pesticides that fall in the middle group: Diazinon and chlorpyrifos. The CFPR Report concludes that exposure to volatilized residues alone from these two pesticides raise risks of concern. The risks of concern were due to acute, not chronic exposures, and occurred primarily as a result of exposure in areas immediately adjacent to treated fields within a day or two of treatment. EPA questions the validity of this determination due to various assumptions made in the Report that tend to exaggerate exposure and risk. First, the CFPR Report estimates exposure based on the amount of air breathed in a 24-hour period. The field studies analyzed in the report, however, show that volatilization exposures peak in a relatively narrow time window that is significantly shorter than 24 hours.

Second, the measured residues in the field studies were sampled in an outdoor location just a few feet from the field. Yet, it is unlikely that any individual would remain stationary outdoors in such a location for a 24-hour period. Moreover, even if an individual did stay in that same location for a 24-hour period, it is unlikely that he or she would be outdoors the entire time. Thus, the Report's exposure estimate rests on the assumption that indoor air concentrations are the same as concentrations measured in outdoor air. This assumption is reportedly based on a pilot study supporting the prospective Agricultural Health Study of American farmers and their families. (Ref. 36). These data suggested higher air concentrations were found inside the residences of farmers than were measured outdoors. The outdoor measurements were collected either on the farmer's lawn or porch. However, it is not clear either when the actual pesticide applications were made with respect to the timing of the air concentration data collection or their location with respect to the distance from the treated field. Meteorological details were not provided. In one example from this study (lindane), indoor concentrations were traced to work clothing while the application of lindane was made to hogs situated inside a separate production facility.

In EPA's view, it is more likely that indoor levels of pesticides would be lower in homes situated near agricultural sites or other sites of pesticide application than levels that might be measured outdoors. This is particularly the case in situations involving acute exposures where airborne levels rapidly peak and dissipate. For example, Segawa et al. reported in 1991 that, when malathion was sprayed in Southern California for Mediterranean fruit fly control, indoor levels of malathion were 4 to 5 times lower than outdoor air concentrations. (Ref. 37). In a study evaluating the impact of track-in following applications of 2,4-D to lawns (Ref. 38), it was suggested that spray drift and particle intrusion had little effect on indoor carpet dust concentrations. Likewise, Solomon et al. (Ref. 39) have reported minimal impact on indoor air measurements of bystander homes adjacent to treatment areas (2,4-D applications to lawns). Therefore, the assumption that indoor air concentrations are equivalent to outdoor air concentrations appears to exaggerate risk. Consistent with this view, California DPR measurements of indoor air versus outdoor air following methyl bromide structural fumigations indicated that, within the first hour,

outdoor air concentrations of methyl bromide (first 50 feet from treatment site) are approximately 5 to 8 times higher than those in indoor air, and up to 13 times higher than indoor air at distances equal to or greater than 100 feet. Only after 24 hours, when the majority of the plume had passed by the house, were indoor air measurements roughly the same as outdoor measurements.

Third, the CFPR compares these exposure estimates to reference doses from subchronic inhalation studies. With chlorpyrifos, the reference dose is based on lack of effects in two 90-day rat inhalation studies at the highest dose tested and incorporates a 1,000-fold safety factor. For diazinon, the reference dose is from a LOAEL in a 21-day inhalation study and incorporates a 300-fold safety factor. Use of reference doses from subchronic studies to assess what, in the case of the field trials, are at most short-term exposures (1 to 7 day duration) - and more likely acute exposures (single event) - is a very conservative approach. This factor should be taken into account in characterizing any risk estimation.

Finally, an EPA report on pesticide exposure to children along the United States/Mexico border (discussed in the Imidacloprid Order, (69 FR at 30052))

presents a vivid contrast to conclusions reached in the CFPR report. (Ref. 40). This report concluded that both indoor and outdoor air concentrations had a minimal impact on the exposed population. The pesticides diazinon and chlorpyrifos are two chemicals widely used in that region. Thus, this report casts doubt on the conclusions in the CFPR Report.

(2) *Vapor pressure.* As noted, EPA is in general agreement that vapor pressure is a key factor in predicting whether a pesticide has the potential to volatilize and drift offsite in significant amounts. Because soil fumigants traditionally have very high vapor pressures, and thus are highly volatile, EPA is now accounting for potential exposure due to volatilization of these pesticides in calculating their aggregate exposure. The CFPR Report concludes that post-application volatilization exposures are not of concern for pesticides with a low vapor pressure - i.e., less than or equal to 10^{-6} mmHg - but can be for pesticides with a moderate vapor pressure - i.e. between 10^{-4} and 10^{-6} mmHg. In Table 4 below, EPA has listed, according to vapor pressure, the five non-fumigant pesticides examined by the CFPR Report (including the CFPR's characterization of the vapor pressure) as well as the 13 pesticides in these objections. (Ref. 41).

TABLE 4. —VAPOR PRESSURE OF SELECTED PESTICIDES

Pesticide	Reason Included	Vapor Pressure (mmHg)
molinate	CFPR (high vapor pressure)	5.3×10^{-3}
diazinon	CFPR (moderate vapor pressure)	1.4×10^{-4}
chlorpyrifos	CFPR (moderate vapor pressure)	1.87×10^{-5}
fluazinam	Subject of objection	8×10^{-6}
mepiquat	Subject of objection	2.3×10^{-6}
propiconazole	Subject of objection	4.2×10^{-7}
2,4-D	Subject of objection	1.4×10^{-7}
paraquat	CFPR (low vapor pressure)	1×10^{-7}
halosulfuron	Subject of objection	1×10^{-7}
bifenazate	Subject of objection	1×10^{-7}
pymetrozine	Subject of objection	3×10^{-8}
isoxadifen-ethyl	Subject of objection	1.65×10^{-8}
acetamiprid	Subject of objection	7.5×10^{-9}
fenhexamid	Subject of objection	7×10^{-9}
propargite	CFPR (low vapor pressure)	4.4×10^{-9}
zeta-cypermethrin	Subject of objection	3.07×10^{-9}

TABLE 4. —VAPOR PRESSURE OF SELECTED PESTICIDES—Continued

Pesticide	Reason Included	Vapor Pressure (mmHg)
diflubenzuron	Subject of objection	9 x 10 ⁻¹⁰
furilazole	Subject of objection	6.63 x 10 ⁻¹⁰

As Table 4 illustrates, all but two of the pesticides in these objections have a low vapor pressure and thus, on this basis alone, are unlikely to result in significant exposures due to post-application volatilization. Two pesticides, fluazinam and mepiquat, have vapor pressures in the 10⁻⁵ to 10⁻⁶ mmHg range, but nonetheless below the vapor pressure of chlorpyrifos, the pesticide with the lowest vapor pressure that the CFPR Report concluded had significant levels of post-application drift. (A form of 2,4-D (2,4-D(BEE)) has a vapor pressure of 2.4 X 10⁻⁶ mmHg; however, whatever potential to volatilize exists for this form of 2,4-D is significantly lowered by its method of application (agitation into the water profile at aquatic sites)). Traditionally, general scientific opinion has been that substances with a vapor pressure of between 10⁻⁴ and 10⁻⁶ mmHg are relatively non-volatile and thus unlikely to result in significant exposures due to volatilization. (Ref. 42). NRDC contends otherwise based on the CFPR Report. Even assuming NRDC is correct, however, there are several characteristics of fluazinam and mepiquat in addition to their lower vapor pressure, that distinguish them from chlorpyrifos and make it unlikely that they have any significant post-application drift exposures either in the acute or chronic exposure time-frame.

In terms of acute exposure, it is first worth re-emphasizing that EPA has substantial questions as to whether the CFPR Report overstates the exposure that can be expected with regard to chlorpyrifos. Second, the maximum single application rates for fluazinam (0.8 lbs/acre) and mepiquat (0.25 lbs/acre) are much lower than chlorpyrifos (6 lbs/acre - this rate was used in the CFPR study) - factors of 7.5 and 24, respectively. (Refs. 43, 44 and 45). Finally, the acute inhalation endpoints of concern, adjusted by safety factors, for fluazinam (0.0046 mg/kg/day) and mepiquat (0.584 mg/kg/day) are much higher than for chlorpyrifos (0.0001 mg/kg/day) - factors of 46 and 5,840, respectively. (Refs. 46, 47 and 48).

As to chronic exposure, although a high enough vapor pressure appears to be a necessary condition to significant ambient air concentrations, vapor

pressure alone is not sufficient for such significant chronic exposures to occur. Equally necessary, is a substantial overall usage amount. In this regard, chlorpyrifos dwarfs fluazinam and mepiquat. Average annual usage for chlorpyrifos for the years 2001–2003, is estimated to have been in the range of 8 to 9 million pounds. On the other hand over the same period, mepiquat usage is estimated to have been in the range of 250,000 to 500,000 pounds. Fluazinam had so little usage it did not even show up in standard pesticide usage survey reports. (Ref. 49).

Finally, it is worth considering that occupational exposure assessments for the three pesticides as a means of comparing the relative inhalation risk posed by these pesticides. EPA's principal tool for assessing occupational exposure and risk is Pesticide Handlers Exposure Database (PHED). (Ref. 50). PHED is a software system consisting of two parts -- a database of measured exposure values for workers involved in the handling of pesticides under actual field conditions and a set of computer algorithms used to subset and statistically summarize the selected data. Currently, the database contains values for over 1,700 monitored individuals (i.e., replicates). One of the measured values is the level of pesticide residue in ambient air at the time of application. This value contains a mixture of volatilized residue as well as airborne non-volatilized residue and is likely to be substantially higher than any post-application levels even for highly volatile pesticides.

What PHED assessments for the three pesticides show is that for inhalation risks both fluazinam and mepiquat have high MOEs that are well above the level of concern (i.e., there is a large margin of safety) even without any protective equipment (e.g., respirators or enclosed cabs) but that chlorpyrifos had MOEs for some scenarios that are below the level of concern even assuming that applicators used enclosed cabs. (Refs. 46 at 7–8; 47 at 37 and Ref. 51).

For all of these reasons, EPA concludes the information submitted by NRDC does not suggest that the use of fluazinam and mepiquat, which have vapor pressures slightly above the 10⁻⁶ mmHg level, would result in significant

post-application exposures due to volatilization of residues. As the material relied upon by NRDC notes, post-application drift is unlikely for the other 11 pesticides in the objections.

c. *Conclusion.* EPA concludes that NRDC's arguments concerning exposure from application and post-application drift do not undermine EPA's conclusion that it has reliable data on exposure for these pesticides. Not only does the scientific literature not support a finding that pesticide drift is a major source of exposure but (1) EPA's application drift model demonstrates that exposure from application drift is likely to be marginal everywhere other than areas immediately adjacent to fields; (2) even combining application drift exposures with other aggregate exposures in a manner likely to significantly overstate exposure does not show a risk of concern for any of the 13 pesticides; (3) the vapor pressures for 11 of the 13 challenged pesticides are sufficiently low that even NRDC appears to concede that significant post-application drift would not be expected from any of them; and (4) for the two pesticides that have slightly higher vapor pressures, individual factors regarding them indicate that significant post-application drift is unlikely.

C. Failed to Retain Children's 10X Safety Factor

1. *Introduction.* NRDC's objections concerning the children's safety factor principally focus on an alleged lack of data that NRDC contends does not allow EPA to conclude that the children's safety factor may be reduced or removed. First, NRDC argues that 7 of the 13 pesticides (halosulfuron-methyl, pymetrozine, mepiquat, zeta-cypermethrin, 2,4-D, acetamiprid, and fluazinam) lack a required DNT study, and that this "is a crucial data gap that by itself should prohibit EPA from overturning the default 10X safety factor." (Refs. 6 at 4; 7 at 6–7; 8 at 10; and 9 at 6). In support of this argument NRDC relies on information showing that pesticides may cause developmental neurotoxic effects and that these effects may come at lower doses than doses causing other adverse effects. Second, NRDC cites, on a pesticide-by-pesticide basis, various

toxicological studies that NRDC claims are missing, or were not considered. The absence or non-consideration of these data, NRDC contends, warrants retention of the children's safety factor. Following the same pattern with exposure data, NRDC claims that the children's safety factor is required because EPA is lacking both generic data on exposure and various specific pieces of exposure information with regard to some of the individual pesticides named in the objections. NRDC's generic exposure data objections pertain to data on the exposure of farm children to pesticides and exposure to pesticides through drinking water. Additionally, NRDC claims that data are missing because EPA has allegedly failed to undertake certain, specific risk assessments as to some of the pesticides.

Each of these objections will be addressed individually.

2. *Lack of DNT study generally.* NRDC contends that "the absence of required developmental (DNT) tests for 2,4-D is a crucial data gap that by itself should prohibit EPA from overturning the default 10X safety factor." (See, e.g., Ref. 8 at 9). NRDC cites essentially three grounds in support of this contention. First, NRDC claims that there is extensive evidence showing that "pesticide exposures may disrupt the normal development of a child's brain and nervous system." (Id. at 9 and fn.16 (citing studies)). Second, NRDC references a paper by EPA staff scientist Susan Makris that NRDC asserts demonstrates that "DNT testing is more sensitive than other studies in measuring the effects of exposure on proper development of the brain and nervous system . . ." (Id. at 9). Third, NRDC cites the EPA's 10X Task Force Report which recommends the DNT testing be part of the minimum toxicity data set for pesticides requiring a tolerance for residues in or on food. (Id. at 10). NRDC further asserts that EPA's Children's Safety Factor Policy fails in its purported attempt to justify choosing a factor other than 10X when a required DNT study has not been submitted. According to NRDC, the Children's Safety Factor Policy "completely reverses" the statutory presumption in favor of an additional 10X factor by allowing EPA to choose a different factor not on the basis of reliable data but on a risk assessor's "intuition or professional judgment." (Id. at 11).

EPA disagrees that the mere absence of a required DNT study should, by itself, conclusively bar EPA from applying a different additional safety factor than the 10X default value. After all, the statute expressly authorizes EPA

to use a different additional factor if the Agency can determine on the basis of reliable data that a different factor "will be safe for infants and children." (21 U.S.C. 346A(b)(2)(C)). In line with the statute, EPA's Children's Safety Factor Policy calls for a careful examination of the existing database on a case-by-case basis to determine if a reliable basis exists for assigning a different factor. NRDC's argument here can only be successful if it can show that reliable data to support a different safety finding could never be available. This NRDC has not done. NRDC's objections contain no factual contention demonstrating that a case-specific approach cannot work or is inappropriate for the 13 pesticides in question.

a. *Pesticides may cause neurological developmental effects.* NRDC cites the National Research Council's 1993 Report on pesticides' effects on children in support of the claim that "pesticide exposures may disrupt the normal development of a child's brain and nervous system." (Ref. 8 at 9). EPA does not dispute that some pesticides have that potential; however, that some pesticides have that potential does not mean that defensible judgments about that potential cannot be made in the absence of a DNT study. Further, EPA would note that the National Research Council Report did not conclude that the evidence showed that exposure to pesticides was currently resulting in neurological developmental effects. According to the National Research Council, "[a]lthough the vulnerability of the developing brain to neurotoxic exposure is of serious concern, it is entirely unclear from the data available whether exposures at levels consistent with usual dietary exposures would pose a substantial risk to the long-term neurologic development of children in general or to particular subgroups of children that are neurologically vulnerable." (Id. at 65.)

NRDC also cites a number of studies showing that a particular pesticide, chlorpyrifos, does have neurological effects on the developing brain. Again, however, EPA does not deny that pesticides can cause such effects. The question is, however, whether in the absence of a DNT study, EPA can make a reliable prediction concerning whether a particular safety factor will be protective of infants and children from potential neurological effects. Citing the general capacity of a specific pesticide to cause neurological effects does not answer this question. EPA has received and reviewed a DNT study for the pesticide in question, chlorpyrifos. Although the results of the DNT study for chlorpyrifos were confirmatory of

results in other chlorpyrifos toxicology studies, the DNT results did not alter the regulatory endpoints chosen for that pesticide. (Ref. 52).

b. *1998 retrospective study on submitted DNT studies.* The conclusions presented in the Makris study are more relevant to the question at hand. (Ref. 53). After reviewing nine DNT studies that had been submitted on pesticides, Makris found that (1) for eight out of nine pesticides the fetal NOEL from the DNT study was lower than the fetal NOEL from the standard prenatal developmental toxicity study; (2) for six out of nine pesticides the offspring NOEL from the DNT study was lower than the offspring NOEL from the standard two-generation reproduction study; (3) for two out of nine pesticides, the acute endpoints and associated NOELs from the DNT study were selected for the acute dietary risk assessment; and (4) the DNT study did not provide an endpoint and associated NOEL for chronic risk assessment for any of the nine pesticides. The first two findings provide valuable scientific information with regard to understanding how pesticides may affect the developing human. More relevant to a decision regarding the children's safety factor, however, are the latter two findings because they highlight whether a DNT study may affect how the risk posed by a pesticide is characterized.

Some background information may be helpful in understanding the significance of Makris' findings. In assessing the risk posed by a pesticide, EPA examines numerous toxicological studies and identifies from each study the LOAEL resulting from exposure to the pesticide and the NOAEL. These NOAEL/LOAELs are then grouped by exposure scenario taking into account both the duration of the exposure (e.g., acute, chronic) and the route of exposure (e.g., oral, dermal). For each exposure scenario EPA selects the lowest of the appropriate NOAELs for the purpose of assessing risk. For evaluating acute and chronic oral dietary exposure, EPA uses this NOAEL to derive a safe dose - this safe dose is commonly referred to as a Reference Dose (RfD). Generally, a RfD is calculated by dividing the selected NOAEL by one or more safety or uncertainty factors. When more data becomes available, it may change a RfD but only if the NOAEL from the new data is lower than all previous NOAELs identified for the relevant exposure scenario.

What Makris found in looking at the 9 pesticides was that, out of the 18 potential exposure scenarios examined

(1 acute oral and 1 chronic oral for each pesticide), in only 2 instances did the DNT study produce a NOAEL that was below all other NOAELs for that exposure scenario for that pesticide. In other words, in 16 out of 18 cases, the DNT study made no difference in the calculation of the safe human dose (i.e., RfD) for the pesticide. Although this information shows that the DNT study can be an important study is assessing the risk of pesticides because it has the potential to show adverse effects at levels below those previously identified, the potential for a DNT study to change an existing RfD is hardly so overwhelming to suggest that there is no room for exercise of the discretion to examine the individual facts involving the safety of each pesticide that is expressly provided by the statute.

Today, EPA has considerably more experience with the DNT study than when the 1998 Retrospective Study was conducted. That experience has confirmed both that the DNT study has a role to play in assessing the hazard posed by pesticides, (Ref. 54), and that DNT studies only infrequently affect the projection of a safe endpoint for a pesticide. EPA is currently in the process of completing another retrospective study of the DNT study based on the roughly 50 DNT studies it has now received. The full retrospective study will not be completed until later this year; however, some preliminary information is now available. (Ref. 55). It shows that out of the 38 pesticides for which a DNT study has been submitted and EPA's analysis completed, the DNT study has resulted in a lowering of at least 1 endpoint for a pesticide in 8 instances. Again, these numbers do not suggest there is no room for judgment in evaluating the impact a DNT study may have on a risk assessment.

c. 10X Task Force Report. NRDC also cites the recommendation in the report of EPA's 10X Task Force that the DNT study be included in the core toxicology database for pesticides. Although the Task Force did note the significance of the DNT study for assessing potential risks for children, the Task Force also concluded that any decision on the size of any safety factor (described by the Task Force as a database uncertainty factor) used when a DNT study had not been submitted called for the exercise of "good scientific judgment." (Ref. 56). According to the Task Force, "[t]he size of the database uncertainty factor applied will depend on other information available in the database and how much impact the missing data may have on determining the potential toxicity of the pesticide for children." (Id.). As described above, EPA's policy

on evaluating the size of the safety factor when a required DNT study has not yet been submitted is fully consistent with this recommendation by the 10X Task Force. When a required DNT study is absent, EPA has focused on the other information available on the pesticide and the possible impact the DNT study may have on estimating the risk of the pesticide.

d. EPA's 10X Policy. Finally, EPA disagrees that its Children's Safety Factor Policy completely reverses the statutory presumption to include an additional 10X safety factor for the protection of infants and children. In the opening paragraph of the policy the Agency states that "[t]he Office of Pesticide Programs (OPP) interprets this statutory provision [Section 408(b)(2)(C)] as establishing a presumption in favor of applying an additional 10X safety factor." (Ref. 2 at 4). The presumptive aspect of the additional 10X safety factor (also described as the "default position") is referenced throughout the document. (See, e.g., Id. at 10, 11, 17, 26, 46, 47–48, and A–6).

NRDC cites to language in the policy statement stating that in evaluating what safety factor decision should be made for pesticides for which a DNT study has been requested, risk assessors should consider "if the available information indicates that a DNT study is likely to identify a new hazard or effects at lower dose levels of the pesticide that could significantly change the outcome of its overall risk assessment . . ." (Ref. 7 at 8–9). NRDC argues that this language reverses the statutory presumption because it allows the presumption to be removed not based on reliable data but upon the "risk assessor's expectation. (Id. at 9).

NRDC, however, is mistaken in its interpretation of this language. In directing the risk assessor to consider the likely impact of a DNT study on a risk assessment, EPA was not asking the risk assessor to guess at the results of the DNT study. Rather, EPA was directing the risk assessor to consider what the reliable data available on the pesticide told the risk assessor about the likely outcome of the DNT study. To ensure that the policy was not misunderstood on this point, the policy explicitly states that "[d]iscussions in this document of the appropriateness, adequacy, need for, or size of an additional safety factor are premised on the fact that reliable data exist for choosing a 'different' factor than the 10X default value." (Ref. 2 at 12). To the extent the policy statement injects any uncertainty with regard to this issue, EPA herein confirms that a decision to

choose a factor different than the default 10X factor must be based on reliable data.

e. Conclusion. EPA rejects NRDC's contention that an EPA finding that a DNT study is needed in evaluating the risks posed by the pesticide is outcome-determinative as regards to retaining the children's safety factor until such time as the DNT study is submitted and reviewed. The statute specifically grants EPA discretion to apply a different additional safety factor where EPA can conclude based on reliable data that the different factor is safe for infants and children. NRDC has made no argument that would justify an across-the-board conclusion that in the absence of a DNT study an individual examination of the existing data pertaining to a pesticide cannot provide a reliable basis for concluding that a different safety factor would be safe for infants and children. NRDC's claim that a DNT study may lower EPA's RfD (which EPA does not disagree with) is not by itself sufficient to bar EPA from making a case-by-case inquiry into the safety of a different additional safety factor for the protection of infants and children in the absence of such a study. Further, NRDC has offered no pesticide-specific arguments as to the pesticides in this proceeding as to why the absence of a DNT study requires the retention of the default 10X additional factor.

*3. Other pesticide-specific missing toxicity data—*a. *Diflubenzuron.* NRDC claims that EPA is missing toxicology data for two diflubenzuron metabolites, deemed necessary by EPA to justify an unconditional registration.

As EPA has previously noted, the toxicology database for diflubenzuron is complete for assessment of increased susceptibility to infants and children. (67 FR 59006, 59013, September 19, 2002; 67 FR 7085, 7089, February 15, 2002). EPA has received and reviewed all required studies bearing on the assessment of the effects of diflubenzuron following *in utero* and/or postnatal exposure. These studies demonstrated that diflubenzuron presented a low risk to the developing organism. For example, in the prenatal developmental toxicity studies in rats and rabbits, no developmental toxicity was seen at the Limit Dose (1,000 mg/kg/day) and in the two-generation reproduction study in rats toxicity in the offspring was manifested as decreased body weight at approximately 4,000 mg/kg/day (4 times the Limit Dose) The Limit Dose is generally regarded as the highest dose that could be tested in animal studies to maximize detection of potential adverse effects of a chemical (e.g. systemic toxicity,

carcinogenicity) without overloading the metabolic and/or physiological process of the animals. This upper limit dose (1,000 mg/kg/day) is equivalent to dietary concentrations of approximately 20,000 parts per million (ppm) in the diet of rats, 7,000 ppm in the diet of mice, and 40,000 ppm in the diet of dogs.

With regard to the alleged need for additional data on the diflubenzuron metabolites, PCA and CPU, the **Federal Register** notice establishing the challenged tolerance specifically stated that "there are no residue chemistry or toxicology data requirements that would preclude the establishment of a conditional registration and permanent tolerance for the combined residues of diflubenzuron, . . . and its metabolites 4-chloroaniline [PCA] and 4-chlorophenylurea [PCU] in/on pears at 0.05 ppm." (Id. at 7090, February 15, 2002). EPA's risk assessment for diflubenzuron noted no toxicology data needs and no other data needs other than validation of the analytical enforcement method (which has now been submitted, see Unit VII.C.5.d. of this document). (Ref. 57) The diflubenzuron registration on pears was conditional because validation of the analytical method was required. (Id.) Further, EPA considered and rejected NRDC's claims regarding the need for more toxicology data on the diflubenzuron metabolites in a tolerance rulemaking in September 2002. EPA noted that "the rate of metabolism of diflubenzuron to PCA or CPU in plants, ruminants, and the environment is low and, thus, exposure to these metabolites will be minimal." (67 FR 59006, 59013, September 19, 2002). EPA relied upon the fact that when PCA and CPU were evaluated using a low dose linear model for cancer risk assessment - the most sensitive and conservative method for evaluating risk, whether from cancer or any other endpoint - these metabolites were found to pose a negligible risk. (Id.) EPA concluded that "additional hazard testing for these metabolites will not lead to a more protective regulatory decision." (Id.) In these circumstances, EPA is confident that it has adequate reliable data to assign a factor different than the 10x default value to diflubenzuron, taking into account its PCA and CPU metabolites.

b. *Fluazinam*. NRDC asserts that for fluazinam EPA is missing a 28-day inhalation study, and a conditionally-required subchronic neurotoxicity battery. In response, EPA notes that a subchronic neurotoxicity study conducted with fluazinam has been received and reviewed. No treatment-related effects were observed in males or

females at the highest dose tested in this study. (Ref. 58). EPA reserved the right to require this study to be redone because a toxic impurity of fluazinam was at a low level in the test material used in the study. EPA plans to reevaluate this issue once the DNT study is submitted and reviewed. (Id. at 39-40). Nonetheless, a clear NOAEL and LOAEL was identified for the impurity in other studies and EPA has "high confidence in the hazard endpoints and dose-response assessments" for fluazinam. (Id. at 42-44). Regarding the data requirement for the 28-day inhalation study, this study is primarily required to assess worker risk and is not relevant to the exposure patterns for fluazinam examined in making the safety determination under FFDC section 408. Accordingly, there is reliable data to assess the risks of fluazinam to infants and children despite the lack of a repeat subchronic neurotoxicity study and 28-day inhalation study.

c. *Furilazole*. NRDC claims that EPA lacks a chronic dog study for furilazole. NRDC is correct that EPA does not have a chronic dog study for furilazole. EPA determined that because furilazole is an inert ingredient (safener) with a limited use that the chronic dog study was not needed given consideration of the rest of the toxicological data on furilazole. Nonetheless, to be protective, EPA applied an additional FQPA safety factor of 3X in deriving the chronic reference dose. The chronic reference dose was calculated by dividing the NOAEL of 0.26 mg/kg/day in the 2-year rat study (based on increased absolute and relative liver and kidney weights in males at 5.05 mg/kg/day in rats) by both the standard safety/uncertainty factors (10X for inter-species variability and 10X for intra-species variability) and a 3X factor to account for the lack of the chronic dog study (i.e., $0.26 \div 300X = 0.0009$ mg/kg/day). A factor of 3X was judged to be adequate because the results from the subchronic toxicity studies in rats and dogs show that the toxicity of furilazole is similar, both qualitatively and quantitatively, in both species. The liver was the target organ in both species. EPA found there to be no significant quantitative difference in the relative responses of dogs and rats to the hepatotoxic effects of furilazole in the subchronic studies. The NOAELs/LOAELs for both species were based on hepatotoxicity and are effectively the same value (5/15 and 7/34 mg/kg/day in dogs and rats, respectively). No target organs were identified in dogs that were not also identified in rats. (Ref. 59).

d. *2,4-D*. In an introductory section to its objections that was not linked to any

specific objection, NRDC expressed concern that EPA has not adequately considered epidemiological studies linking 2,4-D with non-Hodgkin's lymphoma and canine malignant lymphoma which NRDC; (Ref. 8 at 5), animal studies showing potential endocrine effects of 2,4-D; (Id. at 5-6), epidemiological data showing endocrine effects on adverse reproductive outcomes; (Id. at 6), and animal studies evidencing 2,4-D's affect on the developing brain and nervous system. Reference to cancer studies does not appear relevant to objections concerning the children's safety factor. That safety factor is designed to provide additional protection for risks that have a safe threshold and not non-threshold risks such as cancer. (21 U.S.C. 346a(b)(2)(C)). The epidemiological data cited by NRDC is either weak (few subjects, questionable controls, not performed by epidemiologists) or not specific to 2,4-D. (See Ref. 60). As to the animal studies on brain/nervous system effects, NRDC cites a published article involving single dose studies (Ref. 8 at 7) that show nervous system effects at levels consistent with the levels at which the data before EPA evidenced effects. (Ref. 61). Accordingly, the cited data does not materially affect EPA's analysis.

As part of the reregistration of 2,4-D, EPA is comprehensively reviewing these issues. This review has considered a considerable amount of new data that have become available since 2002. EPA's draft risk assessment for 2,4-D is available in EPA's electronic docket under the docket number OPP-2004-0167.

4. *Missing exposure data - general—*
a. *Farm children exposure*. NRDC argues that EPA is lacking data on exposure to farm children and thus may not remove the additional 10X safety factor. EPA disagrees. As discussed above and in the Imidacloprid Order, the epidemiological data cited by NRDC have not shown that there are significant exposures to farm children that occur as a result of living in close proximity to agricultural operations. EPA concluded that the evidence presented by NRDC is fragmentary, at best, as to whether pesticide exposure levels in homes of children living in agricultural areas are significantly different than levels in other homes and whether children living in agricultural areas have significantly different exposures than non-agricultural children.

NRDC also submitted two articles addressing pesticide spray drift and post-application volatilization drift of pesticides. EPA's analysis of exposure due to pesticide drift in Unit VII.B.2., however, showed that, as to the

pesticides involved here, there was little basis to find that drift could result in exposure posing a risk of concern. In fact, the recent data from the CTEPP study suggest that dietary exposure is generally the dominant exposure. What the CTEPP data show, therefore, is that NRDC, by asserting that the 10X safety factor should be retained to protect farm children from additional exposures they allegedly receive, is essentially asking that the dominant dietary exposure and other quantified non-dietary exposures be multiplied by 10 in estimating risk to protect against underestimating a potential non-dietary exposure that is likely to be, at most, a fraction of the dietary exposure alone. This is so because retaining an additional 10X safety factor decreases the estimated safe dose for humans by a factor of 10 making estimated exposure 10 times greater compared to the revised safe dose.

After considering all of data bearing on exposure to the 13 pesticides in NRDC's objections, including both pesticide-specific data and the more general data on children's exposure to pesticides, EPA concludes it has sufficient reliable exposure data on these pesticides to find that an additional 10X factor is not needed to protect the safety of infants and children. Specifically, the data reviewed in this Order, in the Imidacloprid Order, and in the individual tolerance actions give EPA confidence that it has not underestimated exposure as to these pesticides.

In this regard, EPA would note that, for 8 of the 13 pesticides, it used its most conservative (health protective) method of estimating dietary exposure assuming that all food covered by the pesticide tolerances contained residues at the tolerance level. (66 FR at 66335, December 26, 2001 (halosulfuron); 67 FR at 3115, January 23, 2002 (mepiquat); 67 FR at 4917, February 1, 2002 (bifenazate); (67 FR at 6424-6425, February 12, 2002 (zeta-cypermethrin); 66 FR at 33182-33183, June 21, 2001 (isoxadifen-ethyl); 67 FR at 14653-54, March 27, 2002 (acetamiprid); 67 FR at 15731, April 3, 2002 (furilazole); 67 FR at 19116, April 18, 2002 (fenhexamid). (The reasons these assumptions produce such large overestimates is discussed in detail in Unit VII.D.5). Even for the other five pesticides, EPA's dietary exposure estimate was not highly refined. In none of these exposure estimates did EPA use a probabilistic risk assessment, the assessment technique that produces the most realistic picture of potential risk, or rely on food monitoring data to estimate residue levels. For all but one

of the pesticides, EPA refined exposure estimates as to only some but not all food commodities. (See Unit VII.D.6; 66 FR at 66786, December 27, 2001 (for pymetrozine, exposure assessment refined only as to chronic risks); 67 FR at 7087, February 15, 2002 (for diflufenzuron, exposure assessment refined only as to chronic risks and only as to some crops); 67 FR at 10625, March 8, 2002 (for 2,4-D, exposure estimates refined for only citrus for acute risk and for only some crops for chronic risk); 64 FR at 2998, January 20, 1999 (for propiconazole, exposure estimates refined for only some crops for chronic risk; no refinement for acute risk); 67 FR at 19120, April 18, 2002, Ref. 46 at 6 (for fluazinam, exposure estimates refined for one of three crops for chronic risk; no refinement for acute risk)). Further, EPA's conservative method of modeling drinking water exposure was used, at least in part, for all of the pesticides. (See 69 FR at 30058-30065, May 26, 2004). For those pesticides that have residential uses, EPA relied upon its very conservative approach for estimating exposures that can occur around the home from such uses. (See 69 FR at 30055, May 26, 2004). The conservativeness of EPA's exposure estimates is perhaps evidenced most dramatically by a comparison between exposure estimates for 2,4-D from a study relied upon by NRDC involving actual sampling of 2,4-D residues in homes and the EPA's exposure estimates. The 2,4-D exposure estimate EPA prepared for this Order is almost two orders of magnitude greater than the estimates from the cited study and the exposure estimate for the challenged tolerance action is well over an order of magnitude greater. (See Unit VII.D.7.e).

b. *Lack of comprehensive drinking water (DW) monitoring data.* NRDC contends that, because EPA used a model for calculating drinking water exposure, EPA does not have, as a definitional matter, "reliable data" for choosing a factor different than the 10X default value. Similar comments were made during the development of EPA's Children's Safety Policy. This issue was addressed at length in the response to the imidacloprid objections. (69 FR at 30058-30064, May 26, 2004). That response is incorporated herein and is summarized below.

Although the availability of drinking water monitoring data has increased dramatically in the last several years, EPA still finds it necessary to rely for most pesticides upon various exposure models to estimate exposure levels in drinking water. These models are based on generic data regarding fate and

transport of pesticides in the environment, and they operate by combining this generic data with pesticide-specific data on chemical properties to estimate exposure. EPA has primarily used its drinking water models to "screen" those pesticides that may pose unacceptable risks due to exposures in drinking water from pesticides not likely to result in such exposures. To accomplish this goal, the models are based on data from studies at sites that are highly vulnerable to runoff of pesticides to surface water or leaching of pesticides to ground water. If a pesticide fails this conservative (health-protective) screen, EPA would investigate whether the model is significantly overstating the residue levels that actually occur.

EPA has developed models for estimating exposure in both surface water and ground water. EPA uses a two-tiered approach to modeling pesticide exposure in surface water. In the initial tier, EPA uses the FQPA Index Reservoir Screening Tool (FIRST) model. FIRST replaces the GENERIC Estimated Environmental Concentrations (GENEEC) model that was used as the first tier screen by EPA from 1995-1999. If the first tier model suggests that pesticide levels in water may be unacceptably high, a more refined model is used as a second tier assessment. The second tier model is actually a combination of the models, Pesticide Root Zone Model (PRZM) and the Exposure Analysis Model System (EXAMS). For estimating pesticide residues in groundwater, EPA uses the Screening Concentration In Ground Water (SCI-GROW) model. Currently, EPA has no second tier groundwater model.

Whether EPA assesses pesticide exposure in drinking water through monitoring data or modeling, EPA uses the higher of the two values from surface and ground water in assessing overall exposure to the pesticide. In most cases, pesticide residues in surface water are significantly higher than in ground water.

In the Imidacloprid Order, EPA analyzed each of its water models extensively. Based on the results of design characteristics of the models, outside peer review of the models, validation of the models, and comparison between the models' predictions and extensive water monitoring data, EPA concluded that the models are based on reliable data and will produce estimates that are unlikely to underestimate exposure to pesticides in drinking water. (69 FR at 30065). Accordingly, EPA reaffirms its earlier conclusion that its drinking

water models provide a reliable basis for finding that exposure to pesticide residues in water are not underestimated.

5. *Missing exposure data - specific—*
a. *Mepiquat*. NRDC asserts that there is a data gap for side-by-side residue field trials for mepiquat. (Ref. 7 at 5). The tolerance in question covers both mepiquat chloride (*N,N*-dimethylpiperidinium chloride) and mepiquat pentaborate (*N,N*-dimethylpiperidinium pentaborate) on cotton. A full toxicological and residue database was submitted on mepiquat chloride. As to mepiquat pentaborate, the petitioner relied on the mepiquat chloride data and a dissociation study demonstrating that “pentaborate salt” of mepiquat dissociates in water in an identical physical manner to the “chloride salt” of mepiquat. Based on this data, EPA concluded that the proposed foliar application of mepiquat pentaborate to cotton is not expected to result in residues of mepiquat per se greater than those resulting from the application of mepiquat chloride. (67 FR at 3114, January 23, 2002). The required residue studies are confirmatory in nature. (Ref. 62). Accordingly, EPA concludes it has reliable data on mepiquat residues in cotton.

b. *Bifenazate-assessment of drinking water exposure to bifenazate degradates*. NRDC claims that EPA has failed to complete “an assessment of drinking water exposure to bifenazate degradates.” (Ref. 7 at 5). As the **Federal Register** notice establishing the contested tolerances for bifenazate reveals, however, EPA scientists considered environmental persistence of bifenazate and its two major degradates, D3598 (diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethylester) and D1989 (4-methylethylester). Aqueous photolysis and soil metabolism studies demonstrated that the parent bifenazate and the D3598 degradate “quickly metabolize under aerobic soil conditions.” (67 FR at 4918, February 1, 2002). Noting the lack of persistence of these two compounds and the absence of any acute dietary endpoint, EPA focused its drinking water exposure assessment for bifenazate on the degradate that had a possibility of being present in drinking water. (Id.). Accordingly, NRDC is incorrect to assert that potential exposure to bifenazate degradates in drinking water was not assessed by EPA and hence, NRDC’s assertion does not call into question EPA’s decision concerning the children’s safety factor for bifenazate.

c. *Zeta-cypermethrin—assessment of drinking water exposure zeta-*

cypermethrin degradates. NRDC claims that EPA has “failed to address drinking water exposure to zeta-cypermethrin degradates.” (Ref. 7 at 5). To the contrary, EPA has determined that DCVA need not be included in drinking water assessments for zeta-cypermethrin or other pyrethroids.

DCVA is the hydrolysis product of several pyrethroids (permethrin, cypermethrin, zeta-cypermethrin, cyfluthrin). It is the acid portion of these insecticides (which are esters) and its full chemical name is 3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropane carboxylic acid. Although it is significantly more mobile than the parent pyrethroids, EPA has not included it in drinking water assessments for the following reasons.

(1) Based on its structure (i.e., lacking the ester function in the parent insecticides), it would be devoid of the neurotoxic properties of the parent and thus, it would not be of significant concern with respect to the neurotoxicity endpoints on which the dietary risks of the pyrethroids are assessed.

(2) *Mutagenicity and acute toxicity data have been provided for DCVA*. The submitted salmonella reverse mutation assay (Ames assay) conducted with DCVA indicated that the compound was negative in the presence and absence of metabolic activation in all five tester strains. The submitted acute oral toxicity study in rats conducted with DCVA concluded that the acute oral LD₅₀ is 1,609 mg/kg for males and 1,192 mg/kg for females. These values are higher than those for the parent cypermethrin compounds (cypermethrin: LD₅₀ = 247 mg/kg for males, LD₅₀ = 309 mg/kg for females; zeta-cypermethrin: LD₅₀ = 134.4 mg/kg for males, LD₅₀ = 86.0 mg/kg for females).

(3) Although DCVA does contain the electrophilic dichlorovinyl group which raises a potential concern with carcinogenicity, it is not likely this compound is a carcinogen. The latter conclusion is based on the different toxicity profiles of the parent pyrethroids which produce DCVA in significant quantities. Cyfluthrin, permethrin, and zeta-cypermethrin/cypermethrin are all extensively metabolized by cleavage of the ester linkages with formation of DCVA as shown by the amount and nature of the radioactivity appearing in urine of rats. In the case of cypermethrin, similar metabolism and pharmacokinetics are observed in mice and dogs. As a result, toxicological testing of the parent compounds results in testing of DCVA at approximately one-third of the dose

of the parent on a weight basis. In spite of that fact, the parent compounds have markedly different profiles of toxicity. For example, using an earlier cancer classification system, cyfluthrin is a category E carcinogen (i.e., no evidence of carcinogenicity), zeta-cypermethrin is category C (i.e., possible human carcinogen), and permethrin is category C(q) (i.e., possible human carcinogen with sufficient evidence to quantify cancer risk). On this basis, the common metabolite DCVA is not likely to be carcinogenic.

(4) Even though DCVA is more mobile than its parent compounds, it is expected to reach groundwater in very low levels. Exposure is further mitigated by the DCVA’s high polarity and the likelihood of it being readily excreted from the body due to the presence of the carboxylic acid group. (Refs. 63, 64 and 65)

d. *Diflubenzuron—Residue data on two metabolites*. NRDC states that there is a data gap for residue chemistry data on two diflubenzuron metabolites. (Ref. 7 at 6). As discussed in Unit VII.C.3.a. of this document, the only missing data at the time of the tolerance action was Agency validation of the analytical enforcement method. The **Federal Register** notice does note, however, that the analytical enforcement methods have been successfully validated independently, (67 FR at 7090; Ref. 66). The Agency validation has now been successfully completed. (Ref. 67). In any event, a second validation is conducted by EPA not for the purposes of refining its risk assessment but to insure that the procedures for conducting enforcement monitoring are adequately described so that accurate and reproducible results can be produced by enforcement personnel. Accordingly, this objection is without merit.

e. *Acetamiprid—oral exposure from residential uses*. NRDC asserts that EPA is missing data bearing on oral exposure to acetamiprid from residential uses of the pesticide. (Ref. 9 at 6). The **Federal Register** notice on the contested acetamiprid tolerance notes that “incidental oral exposure is an insignificant pathway of exposure” for acetamiprid. (67 FR at 14657, March 22, 2004). Little or no incidental oral exposure is expected since acetamiprid’s residential uses are limited to ornamentals, flowers, vegetable gardens, and fruit trees. Incidental oral exposure to pesticides can occur when young children engage in “mouthing” behavior (i.e. repeatedly placing their hands or other objects in their mouth) in a location where a pesticide is present. EPA assumes that incidental oral exposure to a pesticide

may occur when a pesticide is used to treat a home lawn because young children frequently play on home lawns. EPA, however, considers it unlikely that young children would spend an extended time in flower, vegetable, or ornamental gardens, and thus treatment of such gardens with a pesticide is not likely to lead to a significant exposure to children by the incidental oral route.

EPA would note that NRDC was mistaken in its objections when it claimed that EPA estimated the MOE for short- and intermediate-term residential exposure to be 189 for adults and 239 for children aged 10–12. (Ref. 9 at 9-10). As the **Federal Register** notice made clear the MOEs for these two groups are 1,858 and approximately 3,000, respectively, for pesticide exposures in food and 18,000 and 23,000, respectively for non-dietary pesticide exposures. (67 FR at 14657).

6. *Missing risk assessments.* As to several of the pesticides, NRDC has claimed that there is a data gap for a specific type of risk assessment (e.g., short-term residential risk assessment) and that therefore the full 10X children's safety factor must be retained. There are two problems with this argument. First, a risk assessment is not data or information that is required to be submitted to EPA but rather an analysis of the data and information that is submitted. Thus, NRDC has mislabeled these allegedly missing risk assessments by calling them "data gaps."

Second, and more important, NRDC appears to have misread the relevant **Federal Register** notices in reaching the conclusion that various risk assessments are missing. In some cases, risk assessments that are claimed to be missing were performed and were described in the pertinent **Federal Register** notice. In other cases, NRDC may have been confused by language in **Federal Register** notices that states a certain risk assessment was not conducted or performed. In conducting the safety evaluation required by section 408, EPA performs various risk assessments depending on the types of risks posed by a pesticide and the varieties of exposure routes related to its use. The number and scope of risk assessments may vary considerably from pesticide to pesticide. Language that a risk assessment was not required or performed has been frequently used by EPA to indicate circumstances where a quantitative risk assessment was not needed either because the pesticide did not present a particular hazard (e.g., a quantitative acute risk assessment is not performed for a pesticide not judged to pose a risk due to a one-day or single

exposure) or there was no exposure (e.g., a residential risk assessment is not performed when the pesticide does not have residential uses). As explained below, in each instance where NRDC objected to a "missing" risk assessment, EPA had either performed the risk assessment or determined that such risk assessment was not needed.

a. *Halosulfuron-methyl.* NRDC claims that EPA, in evaluating halosulfuron, failed to conduct a cancer risk assessment, and short-term and intermediate-term residential risk assessments for children and for adults. (Ref. 6 at 5). As an initial matter, EPA questions the relevance of this argument to the children's safety factor given the fact that EPA treats cancer as a non-threshold effect unless data show otherwise, and the children's safety factor only applies to threshold effects. (See 21 U.S.C. 346a(b)(2)(C)). NRDC has not contended that halosulfuron-methyl is a non-threshold carcinogen. In any event, based on its qualitative assessment of the data bearing on cancer, EPA concluded that halosulfuron-methyl was not likely to be a human carcinogen, and therefore did not conduct a quantitative risk assessment. (66 FR at 66338, Dec. 26, 2001). As to the missing short-term and intermediate-term risk assessments, those risk assessments were performed and summarized on pages 66337 and 66338 of the **Federal Register** notice to which NRDC filed objections. (Id. at 66337–66338).

b. *Bifenazate.* NRDC asserts there is a data gap for a developmental toxicity assessment for bifenazate. (Ref. 7 at 5). NRDC appears to be referring to language in the **Federal Register** notice establishing the contested bifenazate tolerances that states that "a clear assessment of developmental toxicity was not possible" in the range-finding study used to choose dose levels for the main developmental toxicity study in rabbits. (67 FR at 4915). The statement "a clear assessment of developmental toxicity was not possible" in the range finding study is an error in the Data Evaluation Record (Ref. 68) since a detailed assessment of developmental toxicity is not performed in the range finding study. The objective of this study is to demonstrate definite maternal toxicity and to guide selection of dose levels for the main study regarding development toxicity in rabbits. This main study was submitted and considered in conducting the risk assessment for bifenazate. (67 FR at 4914). The study showed no developmental toxicity at 200 mg/kg/day (highest dose tested). The doses tested in this study was judged to be

adequate since abortions were seen at ≥ 250 mg/kg/day and decreases in body weight seen at doses ≥ 500 mg/kg/day in the range-finding study. This study provided a clear assessment of developmental toxicity in rabbits for bifenazate.

c. *Isoxadifen-ethyl.* NRDC claims that short-term and intermediate-term residential risk assessments are missing for isoxadifen-ethyl. (Ref. 9 at 6). As the relevant **Federal Register** notice notes, however, EPA determined these residential risk assessments were not necessary because isoxadifen-ethyl is not approved for any residential uses. (67 FR at 33185).

d. *Propiconazole.* NRDC argues that there is a data gap for all residential risk assessments for propiconazole. (Ref. 9 at 6). For propiconazole, EPA did quantitatively assess the short-term and intermediate-term residential risks resulting from the treatment of wood with propiconazole. (64 FR at 2999, January 20, 1999). EPA determined it was unnecessary to assess quantitatively short-term and intermediate-term residential risks connected with the turf use of propiconazole because of the unlikelihood of exposure. (Id.). EPA considered exposure to be minimal due to a combination of a number of factors: (1) Propiconazole is infrequently used on lawns; and (2) even when used, it is generally applied by lawn care operators rather than homeowners.

e. *Fenhexamid.* NRDC claims that short-term and intermediate-term residential risk assessments are missing for fenhexamid. (Ref. 9 at 6). As the relevant **Federal Register** notice notes, however, EPA determined these residential risk assessments were not necessary because fenhexamid is not approved for any residential uses. (67 FR at 19118, April 18, 2002).

f. *Fluazinam.* NRDC argues there is a data gap for a cancer risk assessment for fluazinam. (Ref. 9 at 6). As with its objection concerning the halosulfuron-methyl cancer risk assessment, EPA questions the relevance of this argument to the children's safety factor decision. NRDC has not contended that fluazinam is a non-threshold carcinogen. In any event, EPA did qualitatively assess the cancer potential of fluazinam and found that the data showed, at most, suggestive evidence of carcinogenicity but that the evidence was not strong enough to warrant quantifying this risk. (67 at 19128, April 18, 2002). This decision was based on the fact that there was equivocal/some evidence of carcinogenicity in one species and one sex. Thyroid tumors were seen in male rats, but not in female rats, while liver tumors were seen in male mice but not

in female mice. In addition, fluazinam was negative in mutagenicity assays. (Ref. 69).

g. *2,4-D*. NRDC claims that short-term and intermediate-term residential assessments have not been completed for 2,4-D. (Ref. 8 at 8). This claim is not supported by the record. The **Federal Register** notice associated with the challenged tolerances summarizes EPA's short-term residential risk quantitative assessment, (67 FR at 10629, March 8, 2002), and explains why no intermediate-term exposure, and hence no intermediate-term risk, is expected, (Id. at 10627).

7. *Conclusion on children's safety factor objections*. After examining each of NRDC's objections, EPA has found no basis in the objections to revise its conclusions regarding the children's safety factor as to the 13 pesticides.

C. LOAEL/NOAEL

NRDC argues that EPA cannot legally make the reasonable certainty of no harm finding for pymetrozine, mepiquat, zeta-cypermethrin, and fluazinam because EPA has relied on a LOAEL in assessing the safe level of exposure to the pesticide. NRDC claims EPA "cannot lawfully establish tolerances in the absence of a no-observed-effect-level (NOEL)." (Ref. 7 at 18). Implicit in this argument is that EPA cannot use a no-observed-adverse-effect-level (NOAEL) in making a safety finding. In later objections, NRDC confirmed that in fact it was contending that section 408's safety standard does not permit EPA to rely on a NOAEL in concluding a tolerance is safe. Rather, according to NRDC, EPA may only make a safety finding for a pesticide where EPA has determined the dose in animals at which no effects, adverse or otherwise, are elicited from exposure to the pesticide. (Ref. 7 at 17-18). Below EPA identifies the flaws in NRDC's generic argument concerning LOAELs and NOAELs and addresses the pesticide-specific concerns NRDC raises with regard to use of a LOAEL as to pymetrozine, zeta-cypermethrin, and fluazinam.

1. *Generic legal argument*. EPA believes that it can make a reasonable certainty of no harm finding based on a LOAEL from an animal study (where no NOAEL or NOEL was found) in appropriate circumstances. Whether or not a reasonable certainty of no harm finding can be made when only a LOAEL is identified in a study depends on whether EPA has sufficient toxicological evidence to estimate with confidence a projected NOAEL that is unlikely to be higher than the actual NOAEL. Typically, when a LOAEL but

not a NOAEL has been identified by a study, EPA will, when the data support it, project a NOAEL for that study by dividing the LOAEL by a safety factor.

There is nothing in the statutory safety standard explicitly addressing the use of NOELs, NOAELs, or LOAELs. Moreover, nothing in the phrase "reasonable certainty of no harm" legally precludes use of NOAELs or LOAELs to make a finding regarding the likelihood that harm will occur at a given dose. Whether a NOAEL or LOAEL provides a sufficient basis for a reasonable certainty of no harm finding is a question of scientific fact. EPA fully responded to the arguments raised by NRDC in the Imidacloprid Order, (69 FR at 30066-30067, May 26, 2004), and incorporates that response herein.

2. *Objections pertaining to specific pesticides*—a. *Pymetrozine*. NRDC asserts that EPA unlawfully relied upon a LOAEL in assessing both short-term risk and acute risks to pymetrozine. (Ref. 6 at 9). NRDC is correct that EPA used the LOAEL from an acute neurotoxicity study with pymetrozine to assess both the acute dietary risk and short-term residential risk for the general population. (Acute risk to the developing fetus, however, was based on the developmental study in the rabbit which had a NOAEL.) (Ref. 70). To ensure that there would be a reasonable certainty of no harm, EPA retained two additional 3X safety factors in assessing acute risk to the infants and children. (Id. at 18). This decision was based both on the lack of a LOAEL from the acute neurotoxicity study and the absence of a required DNT study. The protectiveness of this approach is demonstrated by the fact that the LOAEL from the acute neurotoxicity study used for conducting the safety assessment for acute risk faced by the general population is only higher by a factor of 2 than the NOAEL from the subchronic neurotoxicity study. Retaining what is essentially a 10X safety factor results in a projected acute NOAEL five times lower than the NOAEL found in a subchronic study measuring the same endpoint. Thus, this projected NOAEL is more conservative for a single exposure than the measured result in the repeated exposure study (i.e., 13 weeks).

Syngenta, the registrant for pymetrozine, defends EPA's reliance on a LOAEL here noting that the effects observed at the LOAEL "were reversible and not of severe magnitude (for example, body temperature was decreased at the LOEL, but only by about 2 percent compared to controls)." (Ref. 18 at 5). EPA agrees that the severity of the effect at the LOAEL

should be considered in the weight of the evidence regarding a safety determination and relied on the lack of severity and reversibility in its determination on pymetrozine. (Ref. 71).

b. *Mepiquat*. NRDC claims that for mepiquat EPA "measured reproductive toxicity only on the basis of a LOAEL." (Ref. 7 at 18). NRDC was misled, however, by the **Federal Register** notice's description of the rat reproduction study which states: "The study did not establish a reproductive NOAEL; however, the systemic NOAEL of 1,500 ppm would also be regarded as the reproductive NOAEL." (65 FR at 1792, January 12, 2000). This was an error by EPA in preparing the **Federal Register** notice. In fact, in the two-generation reproduction study, the NOAEL for reproductive toxicity was 5,000 ppm (highest dose tested); a LOAEL was not established. (Ref. 72).

c. *Zeta-cypermethrin*. NRDC argues that EPA relied upon a LOAEL from a zeta-cypermethrin developmental toxicity study. (Ref. 7 at 18). NRDC, however, is mistaken. In the four developmental studies conducted with cypermethrin and zeta-cypermethrin in rats and rabbits, no developmental effects were observed at the highest dose tested. (Ref. 73). Maternal toxicity was seen in all four studies. NRDC may have been misled by an error in one of the data tables in the **Federal Register** that lists the NOAEL for one of the four developmental studies as <35 mg/kg/day." (66 FR at 47981, September 17, 2001 (Table 2)). The table should have read ≥ 35 mg/kg/day. (Id.)

d. *Fluazinam*. NRDC claims that for fluazinam EPA relied upon a LOAEL in assessing dermal toxicity and that only a LOAEL was achieved in dietary studies in mice and rats. (Ref. 9 at 18). NRDC is correct that a dermal NOAEL (as distinguished from a systemic NOAEL) was not found in the 21-day dermal toxicity study. (67 FR at 19121, April 18, 2002). Nonetheless, EPA did not rely on the LOAEL from this study in setting the fluazinam tolerances because there are no residential uses for fluazinam and dermal toxicity is only relevant to exposure occurring in the residential setting. Moreover, the data were sufficient to set a systemic NOAEL from dermal exposure, as opposed to a NOAEL for dermal effects. (Ref. 58 at 14). A systemic NOAEL is the information needed to conduct an aggregate risk assessment. EPA had adequate data on oral toxicity for evaluating dietary exposure.

As to not achieving a NOAEL in dietary studies with mice and rats, NRDC appears to be referring to a 4-week dietary range-finding study in

mice and a special 90-day liver study in rats. The lack of a NOAEL in these studies is irrelevant to the fluazinam risk assessment. The lack of a NOAEL in the mouse study is not a concern because it is a range finding study (*i.e.* a preliminary study used to gauge dosing for another study) and the LOAEL (555 mg/kg/day) is approximately 50-fold higher than the LOAEL (10.7 mg/kg/day) and the NOAEL (1.1 mg/kg/day) in the chronic mouse study which was used establishing the chronic RfD. (67 at 19121, April 18, 2002 (Table 1)). The 90-day study in rats was a special non-guideline study (not requested by EPA) that tested one relatively high dose level (500 ppm) to evaluate the hepatotoxic effects of fluazinam and determine their reversibility. It was not considered for the purpose of determining a NOAEL and a RfD. Because the study only resulted in the modest liver changes of questionable toxicologic significance it was of marginal value. (Refs. 74 and 75) Neither of these studies were used for overall risk assessments (Ref. 46).

e. Isoxadifen-ethyl, acetamiprid, propiconazole, furilazole, and fenhexamid. NRDC has lodged a blanket legal objection to the use of NOAELs in assessing the risk to isoxadifen-ethyl, acetamiprid, propiconazole, furilazole, and fenhexamid. (Ref. 9 at 18). NRDC has offered no factual evidence or argument as to why reliance on these specific NOAELs invalidates EPA's safety determination. Accordingly, EPA denies this objection for the reasons given above and in the Imidacloprid Order, (69 FR at 30066–30067, May 26, 2004), for rejecting the argument that EPA is barred, as a matter of law, from using NOAELs in assessing the safety of pesticide residues.

D. Aggregate Exposure

1. *Worker exposure.* EPA has interpreted "aggregate exposure" to pesticide residues not to extend to pesticide exposure occurring at the workplace based on the language in section 408(b)(2)(D) explaining what exposures are included in the term "aggregate exposure:"

[T]he Administrator shall consider, among other relevant factors - . . . available information concerning the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances, including the dietary exposure under the tolerance and all other tolerances in effect for the pesticide chemical residue, and exposure from other non-occupational sources . . .

This language quite plainly directs EPA to limit consideration of aggregate

exposure of pesticide residues and other related substances to those exposures arising from non-occupational sources. NRDC's claim that EPA erred by not considering worker risks in making tolerance decisions under section 408 runs afoul of Congress' explicit mandate that such exposures not be included. Although there is some ambiguity as to precisely how the factors listed in section 408(b)(2)(D) relate to the safety finding described in section 408(b)(2)(A)(ii), for the reasons set forth in the Imidacloprid Order, (69 FR at 30067–30068, May 26, 2004), NRDC's interpretation of the statutory language is unreasonable.

2. *Classification of farm children as a major identifiable population subgroup.* NRDC points out that FFDCA section 408 directs EPA to consider not just the general population in assessing aggregate exposure but also "major identifiable subgroups of consumers." (21 U.S.C. 346a(b)(2)(D)(vi)). In this regard, NRDC argues that children living in agricultural communities should be treated as such a major identifiable subgroup. These children are an identifiable subgroup, according to NRDC, because of the allegedly heightened exposure to pesticides that they receive due to their proximity to farm operations and farm land and, for some, due to their contact with parents involved in agriculture. (Ref. 9 at 11–12). NRDC claims these children comprise a "major" subgroup citing statistics showing that "320,000 children under the age of six live on farms in the United States[, . . . many hundreds of thousands of children play or attend schools on or near agricultural land, . . . [and] [t]he nation's 2.5 million farm workers have approximately one million children living in the United States." (Id.)

Whether or not EPA attaches the label "major identifiable subgroup" to farm children, EPA's risk assessment approach to children, including the major identifiable subgroups of children used in its risk assessments, adequately takes into account any pesticide exposures to children - whether as a result of living close to agricultural areas or otherwise. For some time, EPA has treated infants and children grouped by ages (*e.g.*, infants younger than 1 year, children 1 – 2 years) as major identifiable subgroups. These age groupings have been chosen to reflect different eating patterns of the age groups. In evaluating exposure to these or any other subgroup, however, EPA considers the range of exposures across the subgroup not just as a result of pesticide residues in food but from all non-occupational exposures. If a

significant number of any of the population subgroups of children have higher exposures due to a non-food source (*e.g.*, residential uses of a pesticide, proximity to agricultural areas), EPA believes that that exposure is appropriate to consider in evaluating the range of exposures for the subgroup. The fact that the children in the subgroup receiving the higher exposures are not themselves labeled a major identifiable subgroup in no way lessens EPA's consideration of their exposures. Further, EPA questions whether NRDC has properly characterized farm children as a major identifiable subgroup in that it is not at all clear that the members of this group are readily identifiable nor does the evidence support that this group consistently receives higher pesticide exposures. These issues are discussed in greater depth in the Imidacloprid Order and that discussion is incorporated herein. (69 FR at 30068–30069, May 26, 2004).

3. *Adequacy of EPA's assessment of the aggregate exposure of children, including children in agricultural areas.* EPA believes that it has adequately assessed the aggregate exposure of children to the 13 pesticides (including both farm children and non-farm children), through its assessment of exposure through food, drinking water and residential use pathways. In support of its objection to this assessment, NRDC cites numerous studies for the proposition that other pathways (*e.g.*, track-in) increase farm children's exposures, and it also cites information purportedly suggesting that volatilization and spray drift lead to higher exposures among farm children. For reasons discussed above (see Unit VII.B. and C.), and in the Imidacloprid Order, however, EPA does not believe that the epidemiological data relied upon demonstrate that the pathways asserted, to the extent they exist, lead to farm children experiencing pesticide exposure levels significantly higher than those experienced by other children. Rather, these studies are largely inconclusive, and to the extent they show anything, tend to suggest that farm children and non-farm children generally receive similar levels of exposure.

Further, EPA's evaluation of the potential additional exposure to the 13 pesticides challenged in these objections from spray or volatilization drift showed little likelihood of significant exposure. In any event, an overly conservative (health-protective) estimate of overall drift, food, water, and residential exposures shows no safety concerns for any of these pesticides.

4. *Residential exposure as a result of use requiring a tolerance.* NRDC also argues that EPA has erred in not assuming that additional residential exposure occurs each time an additional agricultural use is added. The reasons explained above as to why any additional exposure to children as a result of their proximity to farming operations is expected to be insignificant as regards the 13 pesticides apply with equal or more force as to this contention.

5. *Anticipated residues/exposures due to purchase of food at farm stands.*

NRDC claims that EPA has underestimated aggregate exposure for several of the pesticides because EPA used "anticipated residues" for estimating exposure rather than assuming residues would be at the tolerance level. NRDC argues that "EPA must ensure that the legal level of pesticide chemical residue - the established tolerance levels - are themselves safe." (Ref. 9 at 20). Additionally, NRDC asserts that using "anticipated residues" does not take into account the "significant number of consumers who purchase produce at farmers markets, farm stands, and 'pick-your-own' farming operations." (Ref. 9 at 19). NRDC cites information from the National Association of Farmers' Market Nutrition Programs indicating that 1.9 million people purchase food from farm stands.

NRDC is wrong in its assertion that EPA must assume all residues in food are at tolerance levels in assessing the safety of tolerances. The statute is quite clear that EPA may consider data on anticipated or actual pesticide residue levels in establishing tolerances. (21 U.S.C. 346a(b)(2)(E)). This statutory provision essentially codifies EPA practice developed and implemented over the last 20 years.

EPA's approach to estimating exposure for tolerance risk assessments, at least as far back as the late 1980's, is to first make a worst case assessment of the exposure, and then, only if this

worst case exposure assessment indicates that there might be risk concerns would EPA undertake a more sophisticated assessment using more realistic data such as data on "anticipated residues." (See Ref. 76). Worst case exposure was designated by EPA as the Theoretical Maximum Residue Level (TMRC) and was calculated by assuming all foods covered by tolerances had residues at the tolerance level. (See, e.g., 59 FR 54818, 54820, November 2, 1994; (metalaxyl tolerance); 50 FR 26683, June 27, 1985; (chlorpyrifos-methyl tolerance)). When such an assessment shows no risks of concern, EPA's resources are conserved because a more complex risk assessment is avoided and regulated parties are spared the cost of any additional studies that may be needed.

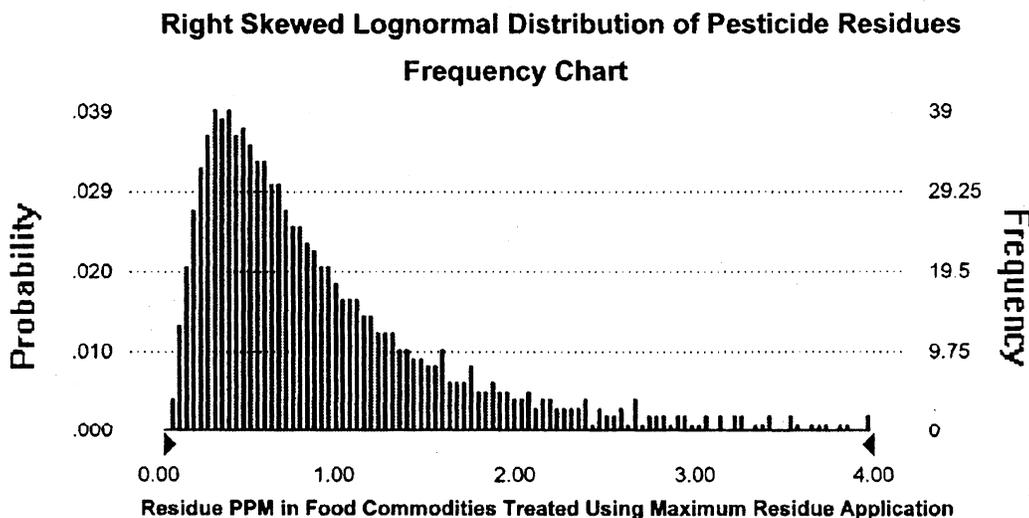
If, however, a first tier assessment suggests there could be a risk of concern, EPA then attempts to refine its exposure assumptions to yield a more realistic picture of residue values through use of data on the percent of the crop actually treated with the pesticide and data on the level of residues that may be present on the treated crop. These latter data are used to estimate what has been traditionally referred to by EPA as "anticipated residues." (Ref. 76 at 1; see, e.g., 54 FR 33044, 33045, August 11, 1989) (iprodione tolerance)).

Use of percent crop treated data and anticipated residue information is appropriate because EPA's worst case assumptions of 100 percent treatment and residues at tolerance value significantly overstate residue values. There are several reasons this is true. First, all growers of a particular crop would rarely choose to apply the same pesticide to that crop; generally, the proportion of the crop treated with a particular pesticide is significantly below 100 percent. For example, the 2001 USDA Agricultural Chemical Usage survey notes 14 insecticides used on tomatoes with percent crop treated values ranging from 2 to 26 percent,

including 9 insecticides used on less than 10 percent of the crop. In another example, the survey notes 39 herbicides used on corn with percent crop treated values ranging from less than 1 to 68 percent, including 32 herbicides used on less than 10 percent of the crop. (Refs. 77 and 78). Obviously, if a portion of a crop is not treated, food from that portion of the crop will not contain residues.

Second, for that portion of the crop that is treated, residues on most treated commodities are likely to be significantly lower than the tolerance value, even when the pesticide is applied in the manner and amount permitted by the label that is likely to yield the highest possible residue [hereinafter referred to as a "maximum residue application"]. EPA's general practice is to set tolerance values just slightly above the highest value observed in crop field trials conducted using maximum residue applications. For example, based on the hypothetical pesticide residue data set in Figure 1, EPA would set the tolerance value at 4 ppm or slightly higher. As Figure 1 illustrates, there may be some commodities from a treated crop that approach the tolerance value where the maximum residue applications are followed, but most commodities generally fall significantly below. In fact, EPA's experience is that crop field trial data generally does not sort out into a normal, bell-shaped distribution; rather, the distribution when plotted based on frequency/probability (Y axis) and level of residues (X axis) is generally "log-normal" or "right-skewed" - that is, there is a clumping of values close to, or on, the Y axis (i.e. approaching non-detectable residues) with a few higher values out farther on the X axis (i.e. approaching the tolerance value) resulting in a long "tail" stretching out to the right. (Ref. 4 at 12, Ref. 79 and Ref. 80 at 10). Figure 1 presents a hypothetical example of how residue data generally fall in a right-skewed curve.

FIGURE 1



Third, if less than the maximum residue application is followed (e.g., lower than the maximum amount applied, applications are not as frequent as allowed, the pre-harvest interval after the last application exceeds the legal minimum), residues will be even lower than measured by crop field trials using maximum residue applications. Essentially, the entire distribution curve illustrated in Figure 1 shifts to the left. Finally, residue levels measured in the field do not take into account the lowering of residue values that frequently occurs as a result of degradation over time and through food processing and cooking. (Ref. 4 at 14, and Ref. 79).

EPA uses several techniques to refine residue value estimates from worst case levels to more realistic levels. (See Ref. 1 at 10-12). First, where appropriate, EPA may take into account all the residue values reported in the crop field trials, either through use of an average or individually. Second, EPA may consider data showing what portion of the crop is not treated with the pesticide. Third, data may be produced showing pesticide degradation and decline over time, and the effect of commercial and consumer food handling and processing practices. Finally, EPA may consult monitoring data gathered by FDA, the US Department of Agriculture, or pesticide registrants, on pesticide levels in food at points in the food distribution chain removed from the farm, including retail food establishments. EPA's experience has been that, even without the use of probabilistic risk assessment techniques discussed below, reliance on these refinements, and particularly use of

food monitoring data, reduces exposure and risk estimates by over an order of magnitude. (See 55 FR 20416, 20422, May 16, 1990) ("Earlier registrant residue monitoring studies and FDA and State monitoring studies indicate that [EBDC] residues may be 1 to 2 orders of magnitude lower than the Agency's current residue estimates."); 54 FR 22558, 22565, May 24, 1989) (using a residue value of 1 ppm from market basket survey to assess risk of daminozide on apples; tolerance value was 20 ppm, 40 CFR 180.246(b)(1989)); (Ref. 79).

In the FQPA, Congress essentially adopted EPA's approach, including EPA's terminology with the slight change that it labeled one category of anticipated residue data, monitoring results, as "actual residue data." (See 21 U.S.C. 346a(b)(2)(E)(1) (designating that data on actual residues measured in food "includ[es] residue data collected by the Food and Drug Administration").

That Congress was codifying existing practice is confirmed by the legislative history of the FQPA. EPA's use of anticipated residue data had been questioned by some and several bills were introduced that essentially prohibited EPA from using its traditional risk assessment approach. For example, H.R. 1725, a bill introduced in the 101st Congress, directed that "in calculating dietary exposure to the pesticide chemical residue in or on the raw agricultural commodity or processed food for which the tolerance is proposed or is in effect, the Administrator shall consider the level of exposure to be the amount of exposure that would occur if all the commodities and food for which the

pesticide chemical residue has a tolerance have amounts of pesticide chemical residues equal to their respective tolerances. . . ." (H.R. 1725, 101st Cong. section 4 (establishing a new section 408(b)(2)(C)(ii)) (1989) (an exception to this bar on the use of anticipated residue data was allowed if a second tolerance was established to insure residue levels did not exceed the levels used to calculate dietary exposure); see S. 722, 101st Cong. section 4 (establishing a new section 408(b)(2)(C)(ii)) (1989) (same)). A similar approach was taken in the Clinton Administration proposal in 1994. (H.R. 4362, 103d Cong. section 3 (establishing a new section 408(b)(2)(B)(i)) (the Administrator shall assume that the food bears or contains residues of the pesticide chemical equal to the level established by the tolerance set at the point closest to the time the food is purchased); see also S. 2084, 103d Cong., section 3 (establishing a new section 408(b)(2)(B)(i)) (same)). However, this approach was not included in the bill passed in 1996 as the FQPA. Rather, Congress specifically authorized EPA to consider "anticipated residues," terminology EPA had long regarded as describing evidence demonstrating the residues were below tolerance levels.

NRDC is also incorrect in its claim that failure to focus on food purchased at farm stands will vastly underestimate dietary exposure to pesticides. This underestimation occurs, according to NRDC because EPA does not take into account that a significant number of consumers buy produce at farm stands. Even assuming that food consumed as a result of purchases at farm stands

constitute more than a negligible amount of the diet, NRDC's claims here are inaccurate whether EPA is relying on anticipated residues estimated based on crop field trials or monitoring data. Crop field trials measure residue levels at harvest after use of application rates and procedures that will produce maximum residues under the currently-approved pesticide label. Thus, anticipated residue values from crop field trials, if anything, will overstate the values found at farm stands or U-pick farms. Even where EPA uses monitoring data it is likely to differ little from the values at farm stands or U-pick farms. The monitoring data EPA relies upon most frequently is from the Pesticide Data Program (PDP) run by USDA. PDP data is extensive and covers a wide spectrum of residue values. Samples are generally collected at wholesale and central distribution points prior to distribution to supermarkets and grocery stores. For fresh produce, the type of food most likely to be found at a farm stand or U-pick farm, rapid distribution is critical and thus central food distribution points are likely to very close to the farm in terms of time from harvest. This would be particularly true for those commodities which are transported quickly from farm to distribution center under controlled-environment conditions (e.g., strawberries, blueberries). For all of these reasons, EPA concludes that its exposure estimates are not likely to understate exposure without use of specific data on residue levels at farm stands and U-pick farms.

6. *Population percentile used in aggregate exposure estimates*—a. *In General.* NRDC contends that EPA in making the reasonable certainty of no harm finding must make such a finding as to “all children”—that is, EPA must find that “no children will be harmed” by exposure to the pesticide. Although EPA is somewhat uncertain as to precisely what approach to risk assessment and safety findings NRDC is advocating, EPA believes that its approach to implementing the reasonable certainty of no harm standard is consistent with the statutory framework. As specified in the statute, EPA focuses its risk assessment and safety findings on major identifiable population subgroups. (21 U.S.C. 346a(b)(2)(D)(vi)). For children EPA has identified the following subgroups: nursing infants (0–6 months); non-nursing infants (6 months – year); 1–2 year-olds; 3–5 year olds; 6–12 year olds; and 13–19 year olds. EPA evaluates each of these subgroups to determine if

it can be determined that there is a reasonable certainty of no harm for individuals in these subgroups. (See Refs. 2 at 40; and 1 at 14).

b. *Choice of population percentile.* NRDC asserts that EPA erred by allegedly making its safety decision as to the acute risk posed by pymetrozine, mepiquat, isoxadifen-ethyl, acetamiprid, and furilazole based on only a portion of the population, leaving the rest of the population unprotected. According to NRDC, EPA only considered 95 percent of the affected population. This argument was rejected in the Imidacloprid Order, and EPA incorporates the reasoning used there. (69 FR at 30070–30071, May 26, 2004).

EPA relies on population percentages as one of several inputs in estimating the full range of exposures in each population subgroup and not because it has concluded that a certain percentage of the population is unworthy of protection. As EPA explained in its Imidacloprid Order:

the use of a particular percentile of exposure is a tool to estimate exposures for the entire population and population subgroups and not a means to eliminate protection for a certain segment of a subgroup. When inputs for pesticide residue values in the exposure estimate are high end (e.g., assuming all food contains tolerance level residues), a lower percentile of exposure (e.g., 95 percent) is thought to be representative of exposure to the overall population as well as subgroups. As increasingly realistic residue values are used (e.g., information from pesticide residue monitoring), a higher percentile of exposure (e.g., 99.9 percent) is generally necessary to be protective of the overall population and its subgroups.

(69 FR at 30070). As EPA pointed out, a risk assessment using the 95th population percentile and worst case residue values is likely to estimate much higher exposure levels than an assessment using the 99.9th population percentage and residue values from monitoring studies. (Id. at 30071).

For each of the pesticides as to which NRDC raised concerns with the use of the 95th population percentile for estimating exposure, EPA estimated exposure using the gross overestimate of all crops covered by the tolerance containing residues at tolerance levels. (66 FR at 66788, December 27, 2001 (pymetrozine); 65 FR at 1790, 1792–93, January 12, 2000 (mepiquat); 66 FR 33179, 33184, June 21, 2001 (isoxadifen-ethyl); 67 FR at 14653, March 27, 2002 (acetamiprid); 67 FR at 15731, April 3, 2002 (furilazole)). Thus, EPA concludes it reasonably estimated exposure in making its reasonable certainty of no harm finding for these pesticides.

7. *Alleged inadequacies pertaining to specific pesticides*—a. *Pymetrozine.*

NRDC argues the EPA has underestimated aggregate exposure to pymetrozine because (1) “EPA assumes that a toddler’s hand-to-mouth exposure occurs very few times per hour;” (2) EPA fails to consider that children put other objects in their mouths beside their hands; and (3) EPA ignores children’s consumption of “‘feral’ food - food that has been dropped on the floor and which picks up residues from contaminated surfaces.” (Ref. 6 at 8). NRDC is incorrect. First, several years ago EPA modified its estimate of hand-to-mouth exposures from 1.28/hour to 20/hour, a 90th percentile value. (Ref. 81). As to the other types of oral exposures cited by NRDC, EPA’s experience has shown that any exposures that occurs in such a manner is inconsequential beside the non-dietary oral exposures EPA estimates through its models. In modeling toddler exposure, EPA assumes that the toddler plays in the treated area engaging in repeated mouthing behavior immediately after treatment. NRDC is referencing potential exposures that may occur occasionally in areas inside the home and thus well-separated from the treatment area (the lawn).

b. *Bifenazate.* NRDC claims that EPA relied upon “unsupported and apparently arbitrary processing factors to reduce estimates of dietary exposure to bifenazate on apples and grapes.” (Ref. 7 at 16). Further, NRDC alleges that despite the fact that bifenazate is registered for use on landscape ornamentals, EPA ignores this source of exposure. (Ref. 7 at 17).

EPA’s default processing factors are neither unsupported nor arbitrary. EPA uses all available data and analyzes it in a manner to ensure that the application of default processing factors will not understate pesticide exposure. In fact, EPA’s manner of applying default processing factors tends to exaggerate greatly exposure levels in processed food compared to the level of residues that is actually present.

Default processing factors are a numerical measure of the potential of pesticide residues to concentrate in processed foods when a raw food is partitioned into its component fractions. They are derived from the weight-to-weight ratio of raw and processed commodities and intended to reflect the highest potential concentration of pesticide residue that can occur. In calculating default processing factors EPA assumes that concentration will be inversely proportional to the reduction of weight (mass) that occurs during processing (e.g., if processing reduces

the mass of processed commodity proportional to the raw commodity by 50 percent, the default processing factor would be 2X). Importantly, EPA applies default processing factors using the worst case assumption that all pesticide residue in the raw commodity remains in any commodity processed from such raw commodity. Thus, if the raw food contains 2 ppm of a pesticide and the default processing factor for a processed commodity from such raw food is 2X, EPA will assume that the processing commodity contains 4 ppm of the pesticide. The 4 ppm estimate should be regarded as a theoretical upper bound level, however, because actual processing data generally shows residues are reduced during processing, or at least not concentrated at EPA's theoretically-derived default level (i.e., the inverse proportion of reduction in mass of the processed commodity). EPA's use of default processing factors further exaggerates residue estimates in processed food because EPA assumes that each processed commodity from a raw food contains all of the pesticide present in the raw food (with the precise level being estimated by the default processing factor). (Refs. 82 and 83)

Several examples will help to elucidate how EPA calculates and applies default processing factors. Perhaps the simplest example of how EPA calculates default processing factors involves potatoes and dried potato flakes. The default processing factor for potatoes is calculated by determining the weight-to-weight ratio of whole potatoes to dried potatoes. This ratio is assumed to be the concentration factor of the pesticide in the dried potato. USDA information indicates that it takes 6.5 pounds of fresh potatoes to produce 1 pound of dried potato flakes. Thus, the default processing factor for potato flakes is 6.5X and this factor is multiplied times the residue level found in fresh potatoes to estimate residues in potato flakes. This approach produces a worst case estimate because it assumes that the processing process does not result in any loss or degradation of the pesticide residues in or on the potato - i.e., that the washing, peeling, heating, and drying that occurs in the processing of fresh potatoes into potato flakes does not result in any reduction in total pesticide residues.

The processing of potatoes also is a good example of how EPA applies default processing factors in a manner that will exaggerate estimates of pesticide levels in processed food. With potato processing, EPA assumes that all of the pesticide residue in the raw potato not only is translocated to the

dried potato flakes but also is present in the potato peel which is a byproduct of processing dried potato flakes and is used as an animal feed. The level of residue assumed for the peel is based, like the level for the flakes, on the level of residue in the raw potato multiplied by the appropriate default processing factor. Obviously, it is physically impossible for all of the pesticide in the raw potato to be translocated to both the dried flakes and the peel but in the absence of more specific data on how the pesticide is distributed in the raw potato, EPA's approach is a reasonable, health-protective measure. Similar methodology is employed with other commodities that have a peel that itself is an edible commodity for animals or humans, such as citrus.

A slightly different approach is used for deriving the default processing factor for pome fruit, such as apples. For these commodities, the default processing factor is calculated by dividing the mass of the commodity that constitutes the processed commodity in question into the mass of the entire commodity. For example, USDA data indicates that the mass of a typical apple consists of 12.5 percent solids and 87.5 percent intrinsic (biological) water. To calculate the processing factor for apple juice, thus, the mass of the water (juice) portion of the apple is divided into the mass of the entire apple yielding a processing factor of 1.14X. Performing the same operation for dried apple commodities, yields a processing factor of 8X. Like with other raw commodities, to estimate residues in the processed commodities derived from apples (apple juice, dried apple pomace), EPA assumes all residue in the raw apple is translocated to each processed commodity and estimates residue levels by multiplying the appropriate default processing factor times the level of residue found in the fresh apples.

Thus, NRDC is mistaken in its conclusion that EPA uses default processing factors to reduce exposure estimates. To the contrary, EPA's derivation and use of default processing factors will generally overstate residue levels in processed commodities. NRDC's objection here is not well taken.

EPA concluded that no significant residential exposure would occur to the homeowner and family members as a result of the landscape ornamental use because (1) application of the pesticide at this site is restricted to commercial applicators; and (2) post-application exposure is unlikely where the application is limited to ornamentals (e.g., bushes, shrubs). EPA routinely assumes post-application exposure may occur with residential uses in such areas

as on lawns or in vegetable gardens where there is the potential for homeowners and family members (other than young children as concerns vegetable gardens) to have significant contact with the treated plant. Although in the past EPA has occasionally conducted post-application exposure assessments for ornamental uses, EPA's current view is that any post-application exposure from such a use is likely to be minimal.

c. *Zeta-cypermethrin*. As to zeta-cypermethrin, NRDC claims that EPA "wrongly ignores indoor and outdoor residential uses of cypermethrin (which the agency states is toxicologically identical to zeta-cypermethrin for the purposes of these tolerances)." (Ref. 7 at 17). NRDC, however, is mistaken in this allegation. EPA made clear in the **Federal Register** notice associated with the challenged zeta-cypermethrin tolerances that EPA combines residential exposures from these two pesticides. As EPA explained:

The analytical method does not distinguish cypermethrin from zeta-cypermethrin, and the toxicological endpoints are the same. Therefore, dietary and non-dietary residential aggregate risk assessment is conducted by adding the uses of the two chemicals. (67 FR at 6426, 6427, February 12, 2002).

d. *Diiflubenzuron*. NRDC asserts that EPA has underestimated aggregate exposure to diiflubenzuron because EPA concluded that application of diiflubenzuron to tree canopies would result in negligible residential exposure to diiflubenzuron. After review, however, EPA reaffirms that these potential exposures are expected to be limited. The label states that "applications should be made during periods of minimal use" and requires users to "Notify persons using recreational facilities or living in the area to be sprayed before application." Diiflubenzuron is only applied by commercial applicators to the tree canopy for control of gypsy moths and mosquitoes. Generally applied by helicopter, these sprays are not aerosols or ultra low volume sprays designed as space sprays, but are rather directed to the tree canopy and designed to impinge on the tree tops where they would be effective in pest control. The sprays designed for application to tree canopies utilize much larger droplet sizes which are essentially nonrespirable; therefore, minimal inhalation exposure to bystanders is expected. Additionally, due to a low dermal absorption rate (0.5 percent), the potential for dermal exposure to bystanders is expected to be minimal.

In any event, EPA would note that the results of the chronic dietary analysis indicated that the estimated chronic dietary risk associated with the proposed use of diflufenuron was well below the Agency's level of concern for the general U.S. population. In fact, the highest exposed population subgroup (all infants <1 year of age) using a very conservative (health-protective) estimate of exposure is 5.5 percent of the safe dose. An acute dietary exposure risk assessment was not conducted since no hazard was identified for any population, including infants and children, following a single exposure to diflufenuron (i.e., no hazard was identified, therefore, quantification of risk is not appropriate).

e. *2,4-D*. NRDC claims that "EPA deliberately ignores known residential uses in establishing new tolerances for 2,4-D . . . [by] fail[ing] to assess and incorporate those residential uses as a source of aggregate exposure, in violation of the FQPA." (Ref. 8 at 18). NRDC cites to several studies allegedly demonstrating that when 2,4-D is applied to turf, residues are tracked indoors and can lead to "significant" exposures. Citing a rat study, NRDC also claims that children can be exposed to 2,4-D through mother's milk.

Contrary to NRDC's assertions, however, EPA did aggregate residential exposures with food and water exposures to 2,4-D in assessing its safety. EPA's quantitative aggregate assessment of the short-term risk from residential uses appears at page 10629 of the **Federal Register** notice establishing the challenged tolerance. (67 FR at 10629, March 29, 2002). EPA did not aggregate residential exposures in conducting an intermediate-term residential risk assessment because data showed that intermediate-term exposure as a result of residential uses was very low. (ID. at 10626.)

As to the study cited by NRDC on track-in exposures, EPA concludes that, at most, these data indicated some degree of elevated seasonal exposure but such exposure was minimal. (Ref. 33). The cited study noted that its estimate of the combined exposure for all routes for a 10 kg child, whether looking at the maximum (8.871 micrograms/day ($\mu\text{g}/\text{day}$)) or median values (2.421 $\mu\text{g}/\text{day}$), was well below safe levels. By comparison, the exposure assessment for 2,4-D described in Unit VII.B.2.a. estimates a 10 kg child would be exposed to 503 $\mu\text{g}/\text{day}$ (excluding drift) and 756 $\mu\text{g}/\text{day}$ (including drift). EPA's estimated exposure for a 10 kg child due to residential uses alone is 473 $\mu\text{g}/\text{day}$. (Ref. 33 at 9). Thus, the cited study does not suggest EPA is underestimating

exposure. To the contrary, it demonstrates that EPA's assessment approach is very conservative (health-protective).

NRDC also expressed concern that nursing infants could be exposed to 2,4-D in breast milk. (Ref. 8 at 7) NRDC cites to a study in rats that showed 2,4-D in breast-fed neonates. (Ref. 84). EPA is aware, as a result of animal feeding studies using exaggerated doses, that 2,4-D may be present in milk. It is not surprising that the study relied upon by NRDC suggests that 2,4-D is transmitted in breast milk given the massive doses of 2,4-D in that study of 50, 70, 700 milligrams/kilogram of body weight/day (mg/kg/day). By comparison, EPA estimates that the maximum dietary exposure from food to human females ages 13-50 is 0.01018 mg/kg/day and the average exposure is 0.000642 mg/kg/day. (Ref. 61). These values range from 4,900 to 1 million times lower than the values in the cited rat study.

Further, EPA's manner of doing risk assessment for infants is protective of any pesticide exposure to infants from human breast milk because the exposure values EPA assumes for pesticides in cow's milk greatly exceed the values that could be present in breast milk. The diet of non-nursing infants less than 1 year old still contains milk as a primary component. Importantly, dairy cows exposure to pesticides tend to be significantly higher than humans because residues in grass forage are generally higher than in human foods. For example, the tolerance for pastureland grass for 2,4-D is 1,000 ppm while the 2,4-D tolerances for various human foods are all in the single digits. (See 40 CFR 180.142). Additionally, EPA tends to use very conservative methods for calculating tolerance values and exposure levels in meat and milk in cattle (e.g., relying on exaggerated feeding studies, use of worst case diets) which overstate exposure.

For the 2,4-D risk assessment, EPA assumed that 2,4-D would be present in milk at 0.004 ppm for both acute and chronic exposure. (Ref. 85). This value represents half of the level of detection from the analytical method used in studies monitoring milk for 2,4-D residues. No 2,4-D residues were detected in these studies, and in that circumstance it is common practice to estimate exposure at half of the level of detection. (Refs. 80 and 86). The conservative (health-protective) nature of this exposure value can be seen by considering data from a 2,4-D feeding study in cattle and what those data suggest regarding the levels of 2,4-D present in rat milk in the cited study and in human breast milk. What the

cattle study showed was that cattle fed a diet of 1,500 ppm 2,4-D had residues of 2,4-D in their milk at the level of 0.07 ppm. (Ref. 87). Extrapolating from these figures, 2,4-D levels in rat milk in the cited study would have ranged from 0.05 ppm to 0.65 ppm. Taking into account that the dose levels in the rat study were approximately 4,900 to 70,000-fold higher (50 mg/kg/day), and 69,000 to one million-fold higher (700 mg/kg/day) than the estimated maximum and average female 13-50 dietary exposure (0.01018 mg/kg/day and 0.000642 mg/kg/day), it is striking that the estimated milk residue used to estimate dietary exposure to infants (0.004 ppm) is only approximately 12-fold lower than the rat milk residue estimated for the 4,900 - 78,000X exaggerated dose, and 162-fold less than the rat milk residue estimated for the 69,000 - 1,000,000X exaggerated dose. As to human breast milk, what the cattle study shows is that given the maximum and average exposure levels of females ages 13-50 to 2,4-D, the expected maximum and average levels in breast milk are roughly 200 and 4,000 times lower, respectively, than the exposure value used for cow's milk. (Ref. 88). Thus, EPA concludes that its aggregate exposure assessment was protective for all children, including nursing infants.

f. *Isxadifen-ethyl, acetamiprid, fluazinam*. Repeating the allegations made as to bifenazate, NRDC argues that EPA relied upon "unsupported and apparently arbitrary processing factors to reduce estimates of dietary exposure" for isoxadifen-ethyl, acetamiprid, and fluazinam. (Ref. 9 at 16). For the reasons described above in Unit VII.D.7.b., EPA denies these objections.

E. Human Testing

NRDC claims that EPA used a human study to assess exposure to turf use of 2,4-D in violation of EPA's policy on use of human studies as announced in a press release on December, 14, 2001, and in violation of "the Nuremberg Code, the Helsinki Declaration, and EPA's common rule." (Ref. 8 at 21-22). NRDC states that EPA has not clarified whether the human study in question was an epidemiology study or involved third-party human testing. If the study falls in the latter category, according to NRDC, EPA's consideration of it would violate its own policy as well as the other cited authorities.

EPA disagrees with NRDC's claim that it was improper for EPA to consider the study in question in assessing the risk posed by 2,4-D. To clarify, the study is not an epidemiology study; rather it is a biomonitoring study conducted by the

Canadian Centre for Toxicology. (Ref. 89). Because it was not conducted or supported by a department or agency of the U.S. Government, EPA refers to it as a "third-party" study. In this biomonitoring study, adult male and female volunteers were selected from the faculty, staff, and students of the University of Guelph. The study participants "were supplied with written information outlining the possible risks they would be taking to participate in the study. . . . Consent forms were signed before the initiation of the study." (Ref. 89 at 12). In addition, "[t]he protocol was appraised and approved by the University of Guelph Ethical Review Board." (Id.) Volunteers were exposed to 2,4-D while performing activities specified by the researchers (walking, sitting, and lying) for one hour on turf previously treated (consistent with product's label instructions) with 0.88 lb acid equivalent/acre 2,4-D. The product did not specify any restricted entry interval or require that people entering treated areas wear any special personal protective equipment. The researchers measured the amount of 2,4-D detectable in urine collected from the human participants for a period of 96 hours following this exposure.

NRDC's objection appears to be based on their belief that the 2,4-D biomonitoring study was unethical and that the decision to rely on the data violated existing international standards (the Nuremberg Code and the Helsinki Declaration), as well as Agency regulations (the Common Rule) and policy (presumably the position announced in a December 14, 2001 press release). Each of these is discussed below.

The Nuremberg Code contains basic, broad ethical precepts to guide all types of scientific research with human subjects. The text of the Code was developed in 1949 and is available at: <http://ohsr.od.nih.gov/guidelines/nuremberg.html>. The Code indicates that for a human study to be considered ethical the subjects must participate voluntarily, they should be informed of the nature and purpose of the research, and they should be allowed to withdraw at any time. Also, the study should be designed to produce scientifically useful information and be conducted by appropriately qualified researchers. The Code also indicates researchers should take measures to protect the subjects and must terminate the research if continuation of the study would result in injury to a participant.

The Agency has reviewed the ethical conduct of the 2,4-D biomonitoring study using the principles in the

Nuremberg Code. While the available information on the biomonitoring study does not address each of the paragraphs in the Code, the information does indicate that the study complied with the broad principles of the Code. EPA is aware of no information to indicate that any of the Code's principles was not followed.

The international medical research community has developed and maintains ethical standards documented in the Declaration of Helsinki, first issued by the World Medical Association in 1964 and revised several times since then. The latest version of the Declaration is available at: <http://www.wma.net/e/policy/b3.htm>. These standards are available to guide research on matters relating to the diagnosis and treatment of human disease, and to research that adds to understanding of the causes of disease and the biological mechanisms that explain the relationships between human exposures to environmental agents and disease. Because the 2,4-D biomonitoring study did not involve research on matters relating to the relationship between human exposure to environmental agents and human disease, or otherwise fall within the scope of the Declaration of Helsinki, the Declaration does not apply to this research.

The Agency's rules for "Protection of Human Subjects," generally referred to as the "Common Rule," apply to "all research involving human subjects conducted [or] supported . . . by any Federal department or agency." (40 CFR 26.101). Because the 2,4-D biomonitoring study was not conducted or supported by an agency or department of the U.S. Government, it was not subject to the Common Rule.

At the time EPA prepared its risk assessment for the 2,4-D soybean tolerance, the Agency had a general practice of using "third-party" human studies, unless the studies involved intentional dosing of human subjects for the purpose of identifying or quantifying a toxic effect. (Ref. 90). This policy or practice (as described in the December, 2001 Press release) applied only to intentional dosing studies conducted to identify or quantify a toxic effect and the 2,4-D biomonitoring study was not such a study.

It should be noted that the approach described in the 2001 press release has been set aside. In early 2002 various parties from the pesticide industry filed a petition with the U. S. Court of Appeals for the District of Columbia for review of EPA's December 2001 press release. These parties argued that the Agency's interim approach constituted a "rule" promulgated in violation of the

procedural requirements of the Administrative Procedure Act and the Federal Food, Drug, and Cosmetic Act. On June 3, 2003, the Court of Appeals concluded that:

For the reasons enumerated above, we vacate the directive articulated in EPA's December 14, 2001 Press Release for a failure to engage in the requisite notice and comment rulemaking. The consequence is that the agency's previous practice of considering third-party human studies on a case-by-case basis, applying statutory requirements, the Common Rule, and high ethical standards as a guide, is reinstated and remains in effect unless and until it is replaced by a lawfully promulgated regulation.

Crop Life America v. EPA, 329 F.3d 876, 884 – 85 (D.C. Cir. 2003)).

In sum, the information available to EPA does not suggest that the 2,4-D human biomonitoring study was performed in an unethical manner and therefore should not have been considered by the Agency. Rather, the researchers in the 2,4-D study informed the participants of potential risks from participating in the study and obtained their written consent. In addition, the researchers obtained an assessment by an independent ethical review board of the proposed study design prior to conducting the study. While the Journal article describing the 2,4-D biomonitoring study does not reference any applicable ethical framework as governing its conduct, these measures - a prior ethics review by an independent board and informed consent - are the principal protections required by the Common Rule adopted in the United States in 1991. Accordingly, EPA has determined that the 2,4-D biomonitoring study is not significantly deficient relative to the ethical standards prevailing when the study was conducted, some time prior to 1992. EPA has also determined that the study is not fundamentally unethical. Moreover, EPA notes that this study is not subject to the Helsinki Declaration, EPA's Common Rule, or EPA's now overturned December 2001 policy on third-party human testing. Finally, NRDC provided no specific information or argument to support its objection. Therefore, EPA concludes that it properly considered the data from the 2,4-D biomonitoring study.

F. Conclusion on Objections

For the reasons stated above, all of the NRDC's objections are hereby denied.

VIII. Response to Comments on NRDC's Objections

EPA has responded to many of the comments that pertained specifically to

the individual pesticides and pesticide tolerances in Unit VII. The more general comments filed by the IWG, IR-4, and the public were responded to in the Imidacloprid Order. That response is adopted herein. (69 FR at 30072–30074, May 26, 2004). Other comments are addressed below.

ISK Biosciences noted that the challenged fluazinam tolerance applied to wine grapes and children do not usually consume wine. Although this is true, section 408(b) requires EPA to consider aggregate exposure to a pesticide and not just exposure under the specific tolerance at issue. Further, ISK Biosciences argues that EPA's assessment of exposure to fluazinam in wine is very conservative. EPA generally agrees with this comment.

FMC Corporation argues that because a data call-in has not been issued for a DNT study on zeta-cypermethrin there can be no data gap and the database must be complete. In response, EPA would note that the "completeness" inquiry in the children's safety factor provision is not a formalistic exercise turning on whether mandatory data call-ins have been issued. As EPA stated in its Children's Safety Policy:

the "completeness" inquiry should be a broad one that takes into account all data deficiencies. In other words, the risk assessor should consider the need for traditional uncertainty factors not only when there are inadequacies or gaps in currently required studies on pesticides, but also when other important data needed to evaluate potential risks to children are missing or are inadequate.

(Ref. 2 at 20).

Bayer CropScience states that historical control information relating to effects seen in a rat teratology study submitted to EPA demonstrates that the young do not have increased sensitivity to isoxadifen-ethyl. After reviewing this historical control data, EPA has again concluded that the developmental effects seen at the mid- and high-doses in the rat teratology study were statistically significant and treatment-related. (Ref. 9)

IX. Regulatory Assessment Requirements

As indicated previously, this action announces the Agency's final order regarding objections filed under section 408 of FFDC. As such, this action is an adjudication and not a rule. The regulatory assessment requirements imposed on rulemaking do not, therefore, apply to this action.

X. 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, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

XI. Time and Date of Issuance of This Order

The time and date of the issuance of this Order shall, for purposes of 28 U.S.C. 2112, be at 1 p.m. eastern time (daylight savings time) on the date that is 2 weeks after the date when the document is published in the **Federal Register**.

XII. References

1. Office of Pesticide Programs, U.S. EPA, *Available Information on Assessing Pesticide Exposure From Food: A User's Guide* (June 21, 2000) (available at <http://www.epa.gov/fedrgstr/EPA-PEST/2000/July/Day-12/6061.pdf>).
2. Office of Pesticide Programs, US EPA, *Determination of the Appropriate FQPA Safety Factor(s) in Tolerance Assessment* [hereinafter cited and referred to in the text as the "Children's Safety Factor Policy"] (January 31, 2002) (available at <http://www.epa.gov/oppead1/trac/science/determ.pdf>).
3. Office of Pesticide Programs, US EPA, *General Principles for Performing Aggregate Exposure and Risk Assessments* (November 28, 2001) (available at <http://www.epa.gov/pesticides/trac/science/aggregate.pdf>).
4. Office of Pesticide Programs, US EPA, *Choosing a Percentile of Acute Dietary Exposure as a Threshold of Regulatory Concern* [hereinafter referred to and cited as "Percentile Policy"] (March 16, 2000) (available at <http://www.epa.gov/pesticides/trac/science/trac2b054.pdf>).
5. *Petition For A Directive That the Agency Designate Farm Children as a Major Identifiable Subgroup and Population at Special Risk to Be Protected under the Food Quality Protection Act 2* (October 22, 1998).
6. *Objections to the Establishment of Tolerances for Pesticide Chemical Residues: Halosulfuron-methyl and Pymetrozine Tolerances* (filed February 25, 2002).
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8. *Objections to the Establishment of Tolerances for Pesticide Chemical*

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List of Subjects

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James Jones,

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at http://www.archives.gov/federal_register/public_laws/public_laws.html.

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To direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County,

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H.R. 794/P.L. 109-47

Colorado River Indian Reservation Boundary Correction Act (Aug. 2, 2005; 119 Stat. 451)

H.R. 1046/P.L. 109-48

To authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming. (Aug. 2, 2005; 119 Stat. 455)

H.J. Res. 59/P.L. 109-49

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S. 571/P.L. 109-50

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S. 775/P.L. 109-51

To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the "Boone Pickens Post Office". (Aug. 2, 2005; 119 Stat. 460)

S. 904/P.L. 109-52

To designate the facility of the United States Postal Service located at 1560 Union Valley Road in West Milford, New Jersey, as the "Brian P. Parrello Post Office Building". (Aug. 2, 2005; 119 Stat. 461)

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H.R. 2985/P.L. 109-55

Legislative Branch Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 565)

S. 45/P.L. 109-56

To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes. (Aug. 2, 2005; 119 Stat. 591)

S. 1395/P.L. 109-57

Controlled Substances Export Reform Act of 2005 (Aug. 2, 2005; 119 Stat. 592)

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