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Federal Register

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 724

RIN 3206–AJ93

Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002

AGENCY: Office of Personnel Management.

ACTION: Interim final rule; extension of comment period.

SUMMARY: On January 22, 2004, the Office of Personnel Management (OPM) issued implementing rules regarding the reimbursement provisions of Title II of the No FEAR Act (69 FR 2997). The interim final rule contained a 60-day comment period. Upon further consideration, OPM has decided to extend the initial comment period until April 26, 2004.

DATES: The interim final rule is effective October 1, 2003. Comments must be received on or before April 26, 2004.

ADDRESSES: Send or deliver written comments to Jeffrey E. Sumberg, Deputy Associate Director for Workforce Relations and Accountability Policy, Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC 20415; by fax at (202) 606–0967; or by e-mail at *NoFEAR@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert by telephone at (202) 606–2920; by fax at (202) 606–0967; or by e-mail at *NoFEAR@opm.gov.*

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–7197 Filed 3–26–04; 1:50 pm]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH25

List of Approved Spent Fuel Storage Casks: NAC–UMS Revision, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of March 31, 2004, for the direct final rule that was published in the **Federal Register** on January 16, 2004 (69 FR 2497). This direct final rule amended the NRC's regulations to revise the NAC International, Inc., NAC–UMS cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 3 to Certificate of Compliance Number 1015.

EFFECTIVE DATE: The effective date of March 31, 2004, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

SUPPLEMENTARY INFORMATION: On January 16, 2004 (69 FR 2497), the NRC published a direct final rule amending its regulations in 10 CFR part 72 to revise the NAC International, Inc., NAC–UMS cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 3 to Certificate of Compliance Number 1015. This amendment adds an alternate poison material, revises fuel assembly dimensions, revises thermal analyses, increases Boiling Water Reactor fuel assembly weight, and incorporates Interim Staff Guidance-11 revision provisions. The amendment also reorganizes Section 6.5 of the Safety Evaluation Report, revises Technical Specification A.5.5, and requests several editorial and administrative changes. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on March 31, 2004. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 25th day of March, 2004.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 04–7163 Filed 3–30–04; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1167]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing revisions to Regulation Z, which implements the Truth in Lending Act, and to the staff commentary to the regulation. Regulation Z is revised to add an interpretative rule of construction providing that where the word ''amount'' is used in the regulation to describe disclosure requirements, it refers to a numerical amount. The staff commentary is revised to provide guidance on consumers' exercise of the right to rescind certain home-secured loans. In addition, several technical revisions to the staff commentary are being published.

DATES: The rule is effective April 1, 2004. Compliance is mandatory beginning October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Eurgubian, Attorney, and Krista P. DeLargy, Senior Attorney, Division of Consumer and Community

Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors.

TILA is implemented by the Board's Regulation Z (12 CFR part 226). An official staff commentary interprets the requirements of Regulation Z (12 CFR part 226 (Supp. I)), and is updated annually.

In December 2003, the Board published for comment proposed revisions to Regulation Z and to the staff commentary. 68 FR 68793, December 10, 2003. The revisions sought to add a rule of construction to clarify that the word ''amount'' represents a numerical amount throughout Regulation Z and the staff commentary; and to provide guidance on consumers' exercise of rescission rights for certain home-secured loans. Several technical revisions to the staff commentary were proposed. In addition, the staff requested information regarding debt cancellation and debt suspension products. Finally, as part of a rulemaking under several of the Board's consumer financial services and fair lending regulations, the Board sought to establish a more uniform standard for providing clear and conspicuous disclosures and provide guidance on how to meet that standard.

The Board received approximately 150 comment letters; about 140 letters were from financial institutions, other creditors and their representatives, and insurance providers. Eight letters were received from consumer representatives, and two letters from government officials. Most comment letters focused on the proposed definition of ''clear and conspicuous'' and related guidance. About 30 comment letters discussed the other proposed revisions to Regulation Z and the staff commentary.

The proposed amendment to Regulation Z defining ''clear and conspicuous'' and the related guidance in the proposed staff commentary are not being adopted in this rulemaking, as discussed below. With respect to the other proposed revisions to Regulation Z and the staff commentary, commenters generally supported the proposed revisions. Accordingly, the final rule and remaining staff interpretations are being adopted substantially as proposed, although some changes have been made for clarity in response to the commenters' suggestions, as discussed below.

Comments on the ''Clear and Conspicuous'' Standard

Under the consumer financial services and fair lending laws administered by the Board, consumer disclosures generally must be ''clear and conspicuous.'' Assuming that most institutions already provide consumer disclosures that satisfy the clear and conspicuous standard, the Board's proposals were intended to articulate a more precise standard that could be used as a baseline to determine when an institution may not be meeting the legal standard. Currently, there is little guidance on what that standard means. Moreover, the laws and regulations contain standards that are similar but not identical. Regulation P, which implements the financial privacy provisions of the Gramm-Leach-Bliley Act, articulates more precisely than the other consumer regulations the standard for providing clear and conspicuous disclosures that consumers will notice and understand. Accordingly, the standard and the compliance guidance in Regulation P was used as the model for the December 2003 proposal, which also included compliance guidance in the form of examples of how institutions could satisfy the standard.

Although the Board's effort to establish a more uniform ''clear and conspicuous'' standard is supported by many commenters, almost all industry commenters strongly oppose the Board's proposal based on Regulation P. They assert that the revisions would establish more burdensome standards that would be costly to implement and expose them to litigation. For example, industry commenters stated that providing ''conspicuous'' disclosures that are ''designed to call attention to the nature and significance of the information in the disclosure'' would not be workable for disclosures contained in credit card or deposit account agreements. These commenters asserted that the proposal could mandate fundamental changes in how institutions comply with the ''clear and conspicuous'' standard.

Consumer advocates generally support the proposals' goals, but they believe the proposals do not set a high enough standard. For example, some consumer advocates said that disclosures in a type size less than 10-point should be deemed too small. Some believe that the proposed guidance is too broad and could be interpreted to allow institutions to include unrelated information amid disclosures that are currently required to be segregated.

The proposed amendment to Regulation Z defining ''clear and conspicuous'' and the related guidance in the proposed staff commentary are not being adopted in final form in this rulemaking. Board staff is continuing to review the issues raised by the comment letters concerning the clear and conspicuous standard and is considering options to address the commenters' concerns.

Comments on Debt Cancellation and Debt Suspension Agreements

In the December 2003 proposal, the Board requested information regarding debt cancellation and debt suspension agreements. Under a debt cancellation agreement or debt suspension agreement, a creditor agrees to cancel, or temporarily suspend, all or part of the borrower's repayment obligation upon the occurrence of a specified event, such as death, disability, or unemployment. About 25 commenters, mostly creditors, insurance companies, consultants, and trade associations, responded to the Board's request for information and views about those products. They generally confirmed that the products are being made available by an increasing number of creditors in connection with many types of credit, on a wide and growing variety of terms.

The Board expressly solicited comment on the need, if any, for additional guidance about the application of TILA and Regulation Z to the sale of debt cancellation and debt suspension products. Most industry commenters generally favored expanding the current rule that allows charges for certain types of optional coverage to be excluded from TILA's finance charge and APR, if certain disclosures are provided. These commenters stated that the exclusion in the current rule should encompass all types of debt cancellation and debt suspension agreements. In contrast, a consumer group favored repeal of the current rule.

Most industry commenters requested that the Board adopt procedures for

creditors to follow when seeking to convert borrowers' credit insurance coverage to a debt cancellation or debt suspension agreement. Most commenters stated that creditors should be permitted to use the same procedures used by credit card issuers when notifying consumers of a change in the provider of credit insurance pursuant to § 226.9(f). A few commenters asserted that other applicable laws make the adoption of additional conversion rules or guidance under TILA unnecessary for debt cancellation and debt suspension products.

The Board solicited comment but did not propose any specific revisions to the regulation or commentary concerning debt cancellation or debt suspension agreements. Accordingly, today's final rule does not address these issues. Board staff will continue to gather information about debt cancellation and debt suspension products before determining whether to recommend proposing new rules or guidance.

II. Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(b) Rules of Construction

The Board proposed adding an interpretative rule of construction in § 226.2(b)(5) stating that, wherever the word ''amount'' is used in Regulation Z and the staff commentary to describe a disclosure requirement, it refers to a numerical amount. Examples illustrating how the interpretative rule of construction for ''amount'' applies to certain required disclosures were proposed in the staff commentary. The proposed interpretation addresses a recent court decision permitting narrative descriptions of amounts rather than numerical amounts to disclose the payments scheduled to repay a closed-end credit transaction. *See Carmichael* v. *The Payment Center, Inc.,* 336 F. 3d 636 (7th Cir. 2003); 5 U.S.C. 1638(a)(6); 12 CFR 226.18(g).

A broad interpretation of the term ''amount,'' suggesting that narrative descriptions may replace numerical amounts, is contrary to TILA's mandate to provide consumers with clear and conspicuous credit disclosures. The *Carmichael* court's decision could lead to confusing disclosures that are not uniform.

Commenters uniformly supported the proposed rule of construction. Consumer groups expressed concern, however, that the proposed guidance in the staff commentary did not state with sufficient precision when creditors are permitted to disclose a numerical amount other than a dollar amount.

The Board's rule of construction is being adopted as proposed. To address commenters' concerns, comment 2(b)–2 has been revised for clarity. As adopted, comment 2(b)–2 provides that the numerical amount required to be disclosed must be expressed as a dollar amount unless the text of the regulation or commentary indicates otherwise. It also provides examples of when dollar amounts must be disclosed, and when percentages may be disclosed.

Subpart B—Open-End Credit

Section 226.15—Right of Rescission

15(a) Consumer's Right To Rescind

15(a)(2)

Section 125(a) of TILA provides that, in certain credit transactions in which the consumer's principal dwelling secures an extension of credit, the consumer may rescind the transaction within three business days after becoming obligated on the debt (and for open-end plans, after opening or increasing the credit limit on the plan), and in some cases has the right to rescind for up to three years. *See* 15 U.S.C. 1635(a); 12 CFR 226.15(a)(1). The right of rescission allows consumers time to reexamine their credit contracts and cost disclosures and to reconsider whether to place a lien on their homes. A consumer exercises the right to rescind by notifying the creditor of the rescission by mail, telegram, or other written communication. Creditors must provide consumers with a form to use to exercise the right to rescind, which must include the name and address of the creditor or agent of the creditor to receive the written communication. *See* § 226.15(b). A consumer's notice is considered given when mailed, when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business. *See* § 226.15(a)(2).

Comment 15(a)(2)–1 states that creditors may designate an agent to receive the notification so long as the agent's name and address appear on the rescission form provided to the consumer. The Board proposed to revise the comment to address situations where a creditor fails to provide the required form or to designate an address for sending the notice. The proposal provided that, in such cases, if a consumer sent the notice to someone other than the creditor or assignee—such as a third-party loan servicer acting as the creditor's agent—the consumer's notice of rescission is effective if applicable law deems delivery to that person to be delivery to the creditor or assignee. The comment is being adopted with revisions in response to the public comments.

Commenters generally favored guidance about delivery of a notice of rescission when a creditor has not provided the required form or an address for sending the notice. Consumer groups and industry representatives, including major trade associations, generally agreed that, in such cases, delivering the rescission notice to the loan servicer (the person to whom, or the address to which, payments are sent) should be deemed delivery to the creditor or assignee. In their view, in this circumstance reliance on state law is unnecessary to determine that the loan servicer is the creditor's or assignee's agent. Some industry commenters expressed concern about relying on state law to determine whether delivery to some entity other than the loan servicer might also constitute delivery to the creditor or assignee.

In response to commenters' suggestions, comment 15(a)(2)–1 is being revised to state expressly that where the creditor fails to provide the consumer an address for sending the notification of rescission, the consumer's delivery of notification to the person or address to which the consumer has been directed to send payments constitutes delivery to the creditor or assignee. This bright-line guidance provides clarity for creditors and a practical outcome for consumers. As proposed, however, the comment recognizes the possibility that the creditor or assignee also may have allowed some other entity to serve as its agent for this purpose, which must be determined by the particular circumstances under the applicable state law. Reliance on state law is appropriate to avoid penalizing consumers who were not instructed to send the rescission notice to the loan servicer and who may send the notice to another party acting on behalf of the creditor (for example, an attorney representing the creditor).

Some consumer representatives suggested that the comment be revised to clarify that rescission is effective if the creditor or assignee receives actual notice from any source, for example from legal pleadings. The suggested revision is beyond the scope of the proposal.

15(d) Effects of Rescission

When a consumer exercises the right to rescind a mortgage transaction, the consumer is not liable for any finance charges or other charges, and any security interest in the consumer's home

becomes void. *See* 15 U.S.C. 1635(b); § 226.15(d)(1). After the transaction is rescinded, the creditor must tender any money or property given to anyone in connection with the transaction within a specified time frame. The creditor's tender triggers the consumer's duty to return any money or property that the creditor delivered to the consumer. A court may modify these tender procedures. *See* § 226.15(d)(2)–(4).

Under the proposal, comment 15(d)(4)–1 was revised to state expressly that the sequence of procedures under § 226.15(d)(2) and (3), or a modification of those procedures by a court, does not affect consumers substantive right to rescind. Thus, where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property.

Commenters generally supported the proposed revision. Nevertheless, a few industry representatives and consumer groups asked Board staff to address an issue not raised in the proposal. These industry representatives requested revisions to the commentary to support court decisions that affirmed the court's authority to impose equitable conditions to ensure that consumers meet their financial obligations before the creditor's security interest is declared void. Consumer groups requested revisions that would support other court decisions holding that the voiding of the security interest under TILA's rescission provision is automatic and independent of the consumer's ability to tender money or property.

Comment 15(d)(4)–1 is adopted as proposed, with some modifications for clarity, and does not address the additional issue raised by the commenters. The comment clarifies only that the sequence of procedures under § 226.15(d)(2) and (3), or a court's modification of those procedures under § 226.15(d)(4), does not affect consumers' substantive right to rescind and to have the loan amount reduced, which may be necessary before the consumer is able to establish how the consumer will refinance or otherwise repay the loan.

Subpart C—Closed-End Credit

Section 226.18—Content of Disclosures

18(c) Itemization of Amount Financed.

A technical revision is made to comment 18(c)(1)(iii)–1, to conform a citation to footnote 41 of Regulation Z. No substantive change is intended.

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

19(b) Certain Variable-Rate Transactions.

Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. Guidance about the applicability of § 226.19 to construction loans was published in comment 19(b)–1. 54 FR 9422, March 7, 1989. That guidance has been inadvertently appended to comment 19(b)(1)–1 in the Code of Federal Regulations. The two comments are restated in their correct form for reprinting in the Code of Federal Regulations. No substantive change is intended.

Section 226.23—Right of Rescission

23(a) Consumer's Right to Rescind.

For the reasons discussed above, comment 23(a)(2)–1 is revised to state the rule for effective delivery of a rescission notice when the creditor fails to provide the required form or designate an address for sending the notice. (*See* **SUPPLEMENTARY INFORMATION** to comment 15(a)(2)–1.)

Section 226.23—Right of Rescission

23(d) Effects of Rescission.

For the reasons discussed above, comment 23(d)(4)–1 is revised to state expressly that the sequence of procedures under § 226.23(d)(2) and (3), or a modification of those procedures by a court under § 226.23(d)(4), does not affect consumers' substantive right to rescind and to have the loan amount adjusted accordingly, which may be necessary before consumers are able to establish how they will refinance or otherwise repay the loan. (*See* supplementary information to comment 15(d)(4)–1.)

Subpart D—Miscellaneous

Section 226.27—Language of Disclosures

In March 2001, the Board revised § 226.27 to permit creditors to provide disclosures in languages other than English as long as disclosures in English are available to consumers who request them. 66 FR 1739, March 30, 2001. Technical revisions are made to comment 27–1, and comment 27–2 is deleted to conform the commentary to § 226.27, as amended. No substantive change is intended.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

Rules for certain closed-end mortgage loans in § 226.32 are triggered, in part, by the amount of ''points and fees'' payable by the consumer at or before loan closing and by the ''total loan amount.'' *See* § 226.32(a)(1)(ii). Comment 32(a)(1)(ii)–1, which was added in 1996, provides examples for calculating the ''total loan amount.'' 61 FR 14952, April 4, 1996. A technical revision is made to comment 32(a)(1)(ii)–1, to correct a dollar amount given in one of the examples. No substantive change is intended.

III. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the amendment to Regulation Z. The amendment adds an interpretative rule of construction to state that the word ''amount'' represents a numerical amount throughout Regulation Z. In addition, revisions to the staff commentary provide guidance on consumers' exercise of the right to rescind certain home-secured loans. The amendment does not have any significant impact on small entities.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226. This collection is mandatory (15 U.S.C. 1601 *et seq.*) to evidence compliance with the requirements of TILA and Regulation Z. The respondents and recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their

respective constituencies under this regulation.

The revisions provide that the term ''amount'' represents a numerical amount throughout Regulation Z. The revisions to the staff commentary also provide guidance on consumers' exercise of rescission for certain home-secured loans. These revisions are not expected to increase the paperwork burden of creditors.

With respect to state member banks, there are 1,312 respondents and recordkeepers. Current annual burden under Regulation Z is estimated to be 618,398 hours.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

The Board has a continuing interest in the public's opinion of the Federal Reserve's collections of information. At any time, comments regarding the burden estimated, or any other aspect of this collection of information, including suggestions for reducing the burden estimate, may be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

■ 2. Section 226.2 is revised by adding a new paragraph (b)(5) to read as follows:

Subpart A—General

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§ 226.2 Definitions and rules of construction.

* * * * *

(b) *Rules of construction.* For purposes of this regulation, the following rules of construction apply:

* * * * *

(5) Where the word ''amount'' is used in this regulation to describe disclosure requirements, it refers to a numerical amount.

* * * * *

■ 3. In Supplement I to part 226:

■ a. Under *Section 226.2 Definitions and Rules of Construction,* under *2(b) Rules of Construction,* a new paragraph 2. is added.

■ b. Under *Section 226.15 Right of Rescission,* under *Paragraph 15(a)(2)*, paragraph 1. is revised, and under *Paragraph 15(d)(4)*, paragraph 1. is revised.

■ c. Under *Section 226.18 Content of Disclosures*, under *Paragraph 18(c)(1)(iii)*, paragraph 1. is revised.

■ d. Under *Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions*, under *19(b) Certain variable-rate transactions*, paragraph 1. is revised, and under *Paragraph 19(b)(1)*, paragraph 1. is revised.

■ e. Under *Section 226.23 Right of Rescission*, under *Paragraph 23(a)(2)*, paragraph 1. is revised, and under *Paragraph 23(d)(4)*, paragraph 1. is revised.

■ f. Under *Section 226.27*, the section title is revised, paragraph 1. is revised, and paragraph 2. is removed and reserved.

■ g. Under *Section 226.32 Requirements for Certain Closed-End Home Mortgages,* under *Paragraph 32(a)(1)(ii)*, paragraph 1.ii. is revised.

Supplement I To Part 226—Official Staff Interpretations

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Subpart A—General

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Section 226.2—Definitions and Rules of Construction

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2(b) Rules of Construction.

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2. *Amount.* The numerical amount must be a dollar amount unless otherwise indicated. For example, in a closed-end transaction (Subpart C), the amount financed and the amount of any payment must be expressed as a dollar amount. In some cases, an amount should be expressed as a percentage. For example, in disclosures provided before the first transaction under an open-end plan (Subpart B), creditors are permitted to explain how the amount of any finance charge will be determined; where a cash advance fee (which is a finance charge) is a percentage of each cash advance, the amount of the finance charge for that fee is expressed as a percentage.

* * * * *

Section 226.15—Right of Rescission

15(a) Consumer's right to rescind.

* * * * *

Paragraph 15(a)(2).

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.15(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under § 226.15(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.15(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission, delivery of the notification to the person or address to which the consumer has been directed to send payments constitutes delivery to the creditor or assignee. State law determines whether delivery of the notification to a third party other than the person to whom payments are made is delivery to the creditor or assignee, in the case where the creditor fails to designate an address for sending the notification of rescission.

* * * * *

15(d) Effects of rescission.

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Paragraph 15(d)(4).

1. *Modifications.* The procedures outlined in § 226.15(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The sequence of procedures under § 226.15(d)(2) and (3), or a court's modification of those procedures under § 226.15(d)(4), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property.

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Subpart C—Closed-End Credit

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Section 226.18—Content of Disclosures

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18(c) Itemization of amount financed.

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Paragraph 18(c)(1)(iii).

1. *Amounts paid to others.* This includes, for example, tag and title fees; amounts paid to insurance companies for insurance premiums; security interest fees, and amounts paid to credit bureaus, appraisers or public officials. When several types of insurance premiums are financed, they may, at the creditor's option, be combined and listed in one sum, labeled ''insurance'' or similar term. This includes, but is not limited to, different types of insurance premiums paid to one company and different types of insurance premiums paid to different companies. Except for insurance companies and other categories noted in footnote 41, third parties must be identified by name.

* * * * *

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain variable-rate transactions.

1. *Coverage.* Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. The requirements of this section apply not only to transactions financing the initial acquisition of the consumer's principal dwelling, but also to any other closed-end variable-rate transaction secured by the principal dwelling. Closed-end variable-rate transactions that are not secured by the principal dwelling, or are secured by the principal dwelling but have a term of one year or less, are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b). (Furthermore, ''shared-equity'' or ''shared-appreciation'' mortgages are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b) regardless of the general coverage of those sections.) For purposes of this section, the term of a variable-rate demand loan is determined in accordance with the commentary to § 226.17(c)(5). In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).

* * * * *

Paragraph 19(b)(1).

1. *Substitute.* Creditors who wish to use publications other than the *Consumer Handbook on Adjustable Rate Mortgages* must make a good faith determination that their brochures are suitable substitutes to the *Consumer Handbook.* A substitute is suitable if it is, at a minimum, comparable to the Consumer Handbook in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the *Consumer Handbook.*

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Section 226.23—Right of Rescission

23(a) Consumer's right to rescind.

* * * * *

Paragraph 23(a)(2).

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.23(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under § 226.23(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.23(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission, delivering notification to the person or address to which the consumer has been directed to send, payments constitutes delivery to the creditor or assignee. State law determines whether delivery of the notification to a third party other than the person to whom payments are made is delivery to the creditor or assignee, in the case where the creditor fails to designate an address for sending the notification of rescission.

* * * * *

23(d) Effects of rescission.

* * * * *

Paragraph 23(d)(4).

1. *Modifications.* The procedures outlined in § 226.23(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The sequence of procedures under § 226.23(d)(2) and (3), or a court's modification of those procedures under § 226.23(d)(4), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property.

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Subpart D—Miscellaneous

* * * * *

Section 226.27—Language of Disclosures

1. *Subsequent disclosures.* If a creditor provides initial disclosures in a language other than English, subsequent disclosures need not be in that other language. For example, if the creditor gave Spanish-language initial disclosures, periodic statements and change-in-terms notices may be made in English.

2. [Removed and reserved.]

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Subpart E—Special Rules for Certain Home Mortgage Transactions

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Section 226.32—Requirements for Certain Closed-end Home Mortgage

* * * * *

Paragraph 32(a)(1)(ii).

1. *Total loan amount.* For purposes of the ''points and fees'' test, the total loan amount is calculated by taking the amount financed, as determined according to § 226.18(b), and deducting any cost listed in § 226.32(b)(1)(iii) and § 226.32(b)(1)(iv) that is both included as points and fees under § 226.32(b)(1) and financed by the creditor. Some examples follow, each using a $10,000 amount borrowed, a $300 appraisal fee, and $400 in points. A $500 premium for optional credit life insurance is used in one example.

* * * * *

ii. If the consumer pays the $300 fee for the creditor-conducted appraisal in cash at closing, the $300 is included in

the points and fees calculation because it is paid to the creditor. However, because the $300 is not financed by the creditor, the fee is not part of the amount financed under § 226.18(b). In this case, the amount financed is the same as the total loan amount: $9,600 ($10,000, less $400 in prepaid finance charges).

* * * * *

By order of the Board of Governors of the Federal Reserve System regarding the rule of construction, and acting through the Director of the Division of Consumer and Community Affairs under delegated authority regarding the official staff interpretations, March 25, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–7150 Filed 3–30–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–43–AD; Amendment 39–13536; AD 2004–06–10]

RIN 2120–AA64

Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all AeroSpace Technologies of Australia Pty Ltd Model N22B, N22S, and N24A airplanes. This AD requires you to inspect the forward and aft face of the rear fuselage frame for cracks and to repair or modify accordingly. This AD is the result of mandatory continuing airworthiness information issued by the airworthiness authority for Australia. We are issuing this AD to detect and correct cracks in the rear fuselage frame, which could result in failure of the fuselage rear bulkhead and consequent loss of structural integrity.

DATES: This AD becomes effective on April 28, 2004.

As of April 28, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from AeroSpace Technologies of Australia Pty Ltd; 226 Lorimer Street, Port Melbourne Victoria 3207, Australia.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–43–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Senior Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone: (562) 627–5224; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified FAA that an unsafe condition may exist on all AeroSpace Technologies of Australia Pty Ltd N22 and N24 series airplanes. The CASA received a number of reports of airplanes with cracks around the rivet heads on the rear bulkhead frame. The cracks could result in failure of the fuselage rear bulkhead and consequent loss of airplane control.

What Is the Potential Impact If FAA Took No Action?

If not detected and corrected, cracks in the rear fuselage frame could cause the fuselage rear bulkhead to fail. This failure could result in loss of airplane control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all AeroSpace Technologies of Australia Pty Ltd Model N22B, N22S, and N24A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 29, 2003 (68 FR 74874). The NPRM proposed to require you to inspect the rear fuselage bulkhead of aircraft for cracks and make required repairs and/or modifications.

Comments

Was the Public Invited To Comment?

We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What Is FAA's Final Determination on This Issue?

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the 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 Airplanes Does This AD Impact?

We estimate that this AD affects 14 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
General Visual Inspection—0.5 work hours × $60 per hour = $30.	No parts needed for inspection	$30	$420

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
Detailed Visual Inspection—5 work hours × $60 per hour = $300.	No parts needed for inspection	300	4,200

We estimate the following costs to accomplish any necessary repairs that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need these repairs:

Labor cost	Parts cost	Total cost per airplane
Repair—20 work hours × $60 per hour = $1,200	$1,000	$2,200

We estimate the following costs to accomplish the modification.

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
Modification—24 work hours × $60 per hour = $1,440	$500	$1,940	$27,160

Regulatory Findings

Will This AD Impact Various Entities?

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

Will This AD Involve a Significant Rule or Regulatory Action?

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

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

2. Is not a ''significant rule'' under 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 AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2000–CE–43–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2004–06–10—Aerospace Technologies of Australia Pty Ltd: Amendment 39–13536; Docket No. 2000–CE–43–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on April 28, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and line sequence numbers (serial numbers) that are certificated in any category:

Models	Line sequence No.
(1) N22B and N22S	1 through 9, 11 through 29, 31, 33, 35, 37, 39 through 41, 43, 45, 47 through 59, 61, 63, 65 through 70, 82 through 88, 90 through 95, 97, 100, 102 through 114, 116, 118, 125, 126, 131 through 134, 136 through 138, 141, and 143 through 170.
(2) N24A	10, 30, 32, 34, 36, 38, 42, 44, 46, 60, 62, 64, 71 through 81, 89, 96, 98, 99, 101, 115, 117, 119 through 124, 127 through 130, 135, 139, 140, and 142.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of cracks around the rivet heads on the rear bulkhead frame. The actions specified in this AD are intended to detect and correct cracks in the rear fuselage bulkhead. The cracks could result in failure of the fuselage rear bulkhead and consequent loss of structural integrity.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Perform a general visual inspection of the forward face of the rear fuselage frame for cracks.	*For airplanes that have not been repaired as described in the service bulletin:* Inspect within 50 hours time in service (TIS) after April 28, 2004 (the effective date of this AD), if not already inspected. Repetitively inspect every 100 hours TIS thereafter until the modification in paragraph (e)(4) of this AD is done. *For airplanes that have been repaired as described in the service bulletin:* Inspect within 500 hours TIS after repair or next 100 hours TIS after April 28, 2004 (the effective date of this AD), whichever occurs later. Repetitively inspect every 100 hours TIS thereafter until the modification in paragraph (e)(4) of this AD is done.	Do the inspection following Section 2.A of Nomad Service Bulletin ANMD–53–15. (See paragraph (f) of this AD for a list of effective pages.)
(2) Perform a detailed visual inspection of the aft face of the rear fuselage frame for cracks.	*For airplanes that have been repaired as described in the service bulletin:* Inspect within 500 hours TIS after repair or 100 hours TIS after April 28, 2004 (the effective date of this AD), whichever occurs later. Repetitively inspect every 300 hours TIS thereafter or until the modification in paragraph (e)(4) of this AD is done.	Do the inspection following Section 2.A of Nomad Service Bulletin ANMD–53–15. (See paragraph (f) of this AD for a list of effective pages.)
(3) Repair any cracks found during any general or detailed inspection required by this AD.	If any cracks are found during a general or detailed inspection, the airplane must be repaired before further flight. See compliance for modification below.	Do repairs following Section 2.B of Nomad Service Bulletin ANMD–53–15. (See paragraph (f) of this AD for a list of effective pages.)
(4) Modify the airplane by installing AeroSpace Technologies of Australia Modification N806.	*For airplanes that have not been repaired before the effective date of this AD:* Modification is mandatory within 100 hours TIS or 12 months after April 28, 2004 (the effective date of this AD), whichever occurs first. Modification terminates the inspection requirements of this AD. *For aircraft that have been repaired before the effective date of t his AD:* Modification is mandatory within 3,000 hours TIS after incorporation of the repair or 18 months after April 28, 2004 (the effective date of this AD), whichever occurs later. Modification terminates the inspection requirements of this AD.	Do modification following Section 2.C of Nomad Service Bulletin ANMD–53–15. (See paragraph (f) of this AD for a list of effective pages.)

(f) The Aerospace Technologies of Australia Pty Ltd has issued the Nomad Alert Service Bulletin ANMD–53–15, which incorporates the pages as specified in paragraph (h) of this AD.

May I Request an Alternative Method of Compliance?

(g) 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, Los Angeles Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Ron Atmur, Senior Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone: (562) 627–5224; facsimile: (562) 627–5210.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Nomad Alert Service Bulletin ANMD–53–15, effective pages as follows:

Effective pages	Revision level	Date
1–31 (reprint of entire service bulletin)	2	October 6, 1997.
1 through 4, 13 through 19, and 23 and 24	3	June 1, 1999.

The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from AeroSpace Technologies of Australia Pty Ltd, 226 Lorimer Street, Port Melbourne Victoria 3207, Australia. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Is There Other Information That Relates to This Subject?

(i) Australian Airworthiness Directive AD/GAF–N22/65 Amdt 3, dated May 5, 2000, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on March 17, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6417 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–45–AD; Amendment 39–13530; AD 2004–06–04]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76 A, B, and C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–76 A, B, and C helicopters with dual channel autopilot and dual inverters installed. This action requires a test to determine if the No. 1 inverter is wired to the DC essential bus, and if so, it requires modifying the wiring so that the No. 1 inverter is wired to the No. 2 DC primary bus and the No. 2 inverter is wired to the DC essential bus. If the wiring modification is required and is not performed before further flight, then revising the Rotorcraft Flight Manual (RFM) before further flight to limit the maximum instrument meteorological conditions (IMC) airspeed and installing a placard near the airspeed indicator is also required. The wiring modification is required within 30 days. This amendment is prompted by three incidents in which a No. 2 generator intermittent malfunction occurred and both autopilots disengaged. The actions specified in this AD are intended to prevent both autopilots from disengaging following a No. 2 DC generator failure, and subsequent loss of control of the helicopter during IMC operations.

DATES: Effective April 15, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 15, 2004.

Comments for inclusion in the Rules Docket must be received on or before June 1, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–45–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The service information referenced in this AD may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Solomon Hecht, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7159, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for Sikorsky Model S–76 A, B, and C helicopters with dual channel autopilot and dual inverters installed. This action requires, before further flight, determining if the No. 1 inverter is wired to the DC essential bus, and if it is, modifying the wiring or installing a placard that limits the maximum IMC airspeed to 120 knots indicated airspeed (KIAS) as well as annotating the Operating Limitations section of the RFM to reflect this limit. Also, this action requires, within 30 days, for those helicopters with the No. 1 inverter wired to the DC essential bus, modifying the electrical wiring so that the No. 1 inverter, which powers the co-pilot's Automatic Flight Control System (AFCS) computer, is wired to the No. 2 DC primary bus and also modifying the electrical wiring so that the No. 2 inverter, which powers the pilot's AFCS computer, is wired to the DC essential bus. If installed, removing the placard and the RFM annotation is allowed after modifying the electrical wiring. This amendment is prompted by three incidents in which a No. 2 generator had an intermittent malfunction and both autopilots disengaged. The actions specified in this AD are intended to prevent both autopilots from disengaging following a No. 2 DC generator failure, and subsequent loss of control of the helicopter during IMC operations.

The FAA has reviewed Sikorsky Alert Service Bulletin (ASB) No. 76–24–14A, Revision A, dated October 9, 2003, which describes procedures for performing a test to determine if the No. 1 inverter is wired to the DC essential bus, and provides the required wiring modification to relocate the source for the No. 2 Inverter to the DC essential bus and to relocate the No. 1 Inverter to the No. 2 DC bus, if required. The ASB also provides for a temporary airspeed limitation of 120 knots indicated airspeed during IMC operations until the required wiring modification is completed.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to prevent both autopilots from disengaging following a No. 2 DC generator failure, and subsequent loss of control of the helicopter during IMC operations. This action requires, before further flight, determining if the No. 1 inverter is wired to the DC essential bus, and if it is, modifying the wiring or installing a placard that limits the maximum IMC airspeed to 120 KIAS as well as annotating the Operating Limitations section of the RFM to reflect this limit. Also, this action requires, within 30 days, for those helicopters with the No. 1 inverter wired to the DC essential bus, modifying the electrical wiring so that the No. 1 inverter, which powers the co-pilot's AFCS computer, is wired to the No. 2 DC primary bus and also modifying the electrical wiring so that the No. 2 inverter, which powers the pilot's AFCS computer, is wired to the DC essential bus. If installed, removing the placard and the RFM annotation is allowed after modifying the electrical wiring. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the previously described airspeed limitation reduction is required before further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that this AD will affect 105 helicopters. The operational test will take approximately 1 work hour to accomplish and the wiring modification will take approximately 2 work hours to accomplish at an average labor rate of $65 per work hour. The

materials required to perform the modification consists of 2 wire sleeve markers whose cost is negligible. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $18,525 assuming that all 105 helicopters will be tested and about 90 helicopters will need the modification.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–45–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2004–06–04 Sikorsky Aircraft Corporation: Amendment 39–13530. Docket No. 2003–SW–45–AD.

Applicability: Model S–76 A, B, and C helicopters, with a dual channel autopilot and with dual inverters installed, certificated in any category.

Note: The following serial-numbered helicopters were manufactured with the dual channel autopilots and dual inverters installed:

S–76 A Serial Numbers: 760267, 760268, 760270 through 760298, 760300 through 760302, 760304 through 760309, 760364, 760366, 760369 through 760371, 760373 through 760378;

S–76 B Serial Numbers: 760262, 760269, 760299, 760303, 760310 through 760363, 760365, 760367, 760368, 760372, 760379 through 760382, 760387, 760391, 760393, 760395, 760399, 760403, 760404, 760409, 760410, 760413, 760414, 760416, 760425, 760427 through 760430, 762976 (760433), 760437, 760439, 760441 through 760445, 760447 through 760452, 760454, 760455, 760458, 760462, 760465, and 760507; and

S–76 C Serial Numbers: 760383 through 760386, 760388 through 760390, 760392, 760394, 760396 through 760398, 760400 through 760402, 760405 through 760408, 760411, 760412, 760415, 760417 through 760424, 760426, 760431, 760432, 760434 through 760436, 760438, 760440, 760446, 760453, 760456, 760457, 760459 through 760461, 760463, 760464, 760466 through 760506, and 760508 through 760526.

Compliance: Required as indicated, unless accomplished previously.

To prevent both autopilots from disengaging following a No. 2 DC generator failure, and subsequent loss of control of the helicopter during instrument meteorological conditions (IMC) flight, do the following:

(a) Before further flight:

(1) Determine if the No. 1 inverter is wired to the DC essential bus by following the Accomplishment Instructions, paragraph 3.B. of Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–24–14A, Revision A, dated October 9, 2003 (ASB).

(2) If the No. 1 inverter is wired to the DC essential bus, and the wiring modification is not accomplished as described in paragraph (b) of this AD, then before further flight, install a placard near the airspeed indicator that contains the limitation ''Maximum IMC Airspeed 120 KIAS'' and annotate this airspeed limitation in the Operating Limitation section of the Rotorcraft Flight Manual (RFM).

(b) Within 30 days, for those helicopters with the No.1 inverter wired to the DC essential bus, modify the electrical wiring so that the No.1 inverter, which powers the co-pilot's Automatic Flight Control System (AFCS) computer, is wired to the No. 2 DC primary bus and the No. 2 inverter, which powers the pilot's AFCS computer, is wired to the DC essential bus by following the Accomplishment Instructions, paragraph 3.C. of the ASB.

(c) After modifying the electrical wiring as required in paragraph (b) of this AD, remove the placard and RFM annotation.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, for information about previously approved alternative methods of compliance.

(e) The test, modification, revision and placard installation shall be done in accordance with Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–24–14A, Revision A, dated October 9, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 15, 2004.

Issued in Fort Worth, Texas, on March 10, 2004.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–6777 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–41–AD; Amendment 39–13545; AD 2004–07–01]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701), and CL–600–2D24 (Regional Jet Series 900) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) and CL–600–2D24 (Regional Jet Series 900) series airplanes. This action requires revising the airplane flight manual to advise the flightcrew to monitor the fuel quantity in the center fuel tank throughout the flight. This action also requires repetitive tests to detect a fuel leak between the wing fuel tanks and the center fuel tank; and further related investigative and corrective actions, if necessary. For certain airplanes, this AD also requires installation of flexible hoses and brackets in the fuel feed system. This action is necessary to detect and correct cracking in the primary fuel ejector. Cracking in the primary fuel ejector could cause fuel leakage into the center fuel tank, which could result in engine shutdown during flight. This action is intended to address the identified unsafe condition.

DATES: Effective April 15, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 15, 2004.

Comments for inclusion in the Rules Docket must be received on or before April 30, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–41–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via the Internet must contain ''Docket No. 2004–NM–41–AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7321; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) and CL–600–2D24 (Regional Jet Series 900) series airplanes. TCCA advises that there have been two instances of longitudinal cracks found in the primary fuel ejector on affected airplanes. This condition, if not corrected, could result in fuel leakage from the wing tanks into the center tank, which could cause engine shutdown during flight.

Explanation of Relevant Service Information

Bombardier has issued the following Temporary Revisions (TRs) to the Airplane Flight Manuals (AFM), Document CSP B–012 (for Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes) and CSP C–012 (for Model CL–600–2D24 (Regional Jet Series 900) series airplanes):

- CRJ Regional Jet (Bombardier) TR RJ 700/52–2, dated December 19, 2003, to the Bombardier Model CL–600–2C10 AFM, Document CSP B–012.
- CRJ Regional Jet (Bombardier) TR RJ 900/10–1, dated December 19, 2003, to the Bombardier Model CL–600–2D24 AFM, Document CSP C–012.

These TRs describe revisions to the Abnormal Procedures section of the AFM to advise the flightcrew to monitor the fuel quantity in the center fuel tank throughout the flight.

Bombardier has also issued CRJ 700/900 Regional Jet Alert Service Bulletin 670BA–28–025, Revision A, dated December 15, 2003. This service bulletin describes procedures for performing repetitive tests to detect fuel leaking between the wing tanks and the center tank. The leak test involves filling the wing fuel tanks with a specified quantity of fuel, and monitoring the amount of fuel increase in the center tank over time. The service bulletin describes procedures for sending the results of the leak test to the Bombardier Technical Help Desk.

If the amount of fuel increase in the center fuel tank is more than 150 pounds (68 Kgs), the service bulletin describes procedures for further related investigative and corrective actions. The related investigative action is performing a visual inspection of the center tank (including the ejectors and fuel system components) to determine the source of the leak. When the source of the leak is found, the corrective action is replacing any cracked or damaged part with a new part. The service bulletin also includes directions for faxing the results of inspections to Bombardier, and for sending all replaced parts to Bombardier.

TCCA classified these TRs, and this service bulletin as mandatory and issued Canadian airworthiness directive CF–2004–04, dated February 12, 2004, to ensure the continued airworthiness of these airplanes in Canada.

For airplanes having serial number 10005 through 10065 inclusive, the service bulletin states that, prior to the leak test, flexible hoses and brackets must be installed in the fuel feed system in accordance with Bombardier CRJ 700 Regional Jet Service Bulletin 670BA–28–008, Revision C, dated January 23, 2003. These installations are intended to address conditions that can result in fuel line and coupling damage, and leakage due to the combined effects of installation misalignment and vibration.

FAA's Conclusions

These airplane models are manufactured in Canada 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, TCCA has kept us informed of the situation described above. We have examined the findings of TCCA, 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.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to revise the AFM to advise the flightcrew to monitor the fuel quantity in the center fuel tank throughout the flight. This AD also requires repetitive leak tests of the center fuel tank; a detailed inspection if a leak is detected; and repair, if necessary. For certain airplanes, this AD also requires installation of flexible hoses and brackets in the fuel feed system. The actions are required to be accomplished in accordance with the service information described previously, except as discussed below.

Differences Among the Canadian Airworthiness Directive, Service Bulletin, and This AD

Although Service Bulletin 670BA–28–025, Revision A, and the Canadian airworthiness directive specify a ''visual inspection'' to determine the source of any leakage found during the leak test, this AD requires a ''detailed inspection.'' A definition of ''detailed inspection'' is included in Note 2 of this AD.

Where the Canadian airworthiness directive refers to airplanes that have accumulated a certain number of flight hours ''since new,'' this AD uses the words ''since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.'' This decision is based on our determination that the words ''since new'' may be interpreted differently by different operators. We find that the terminology included in this AD is generally understood within the industry and records will always exist that establish these dates with certainty.

The Canadian airworthiness directive allows for leak tests to be performed in accordance with CRJ 700/900 Regional Jet (Bombardier) Alert Service Bulletin 670BA–28–025, original issue, dated December 12, 2003; or CRJ 700/900 Regional Jet (Bombardier) Alert Service Bulletin 670BA–28–025, Revision A, dated December 15, 2003. However, this AD would require actions to be accomplished in accordance with Revision A. Revision A contains significant changes to procedures and compliance times.

Although Service Bulletin 670BA–28–025, Revision A, and the Canadian airworthiness directive include sending reports of certain findings to the manufacturer, this AD does not include those requirements.

Although Service Bulletin 670BA–28–025, Revision A includes instructions for sending all damaged parts to the manufacturer, this AD does not include that requirement.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2004–NM–41–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–07–01 Bombardier, Inc. (Formerly Canadair): Amendment 39–13545. Docket 2004–NM–41–AD.

Applicability: Model CL–600–2C10 (Regional Jet Series 700 & 701) and CL–600–2D24 (Regional Jet Series 900) series airplanes, as listed in CRJ 700/900 Regional Jet (Bombardier) Alert Service Bulletin 670BA–28–025, Revision A, dated December 15, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the primary fuel ejector, which could cause fuel leakage into the center fuel tank, and result in engine shutdown during flight, accomplish the following:

Airplane Flight Manual (AFM) Revisions

(a) Within 14 days after the effective date of this AD: Revise the Abnormal Procedures sections of the Bombardier Model CL–600–2C10 and Model CL–600–2D24 Airplane Flight Manuals (AFM), Documents CSP B–012 and CSP C–012, to include the applicable Temporary Revisions (TR) specified in paragraphs (a)(1) and (a)(2) of this AD. Thereafter, operate the airplane per the limitations specified in these AFM revisions.

(1) CRJ Regional Jet (Bombardier) TR RJ 700/52–2, dated December 19, 2003, to the Bombardier Model CL–600–2C10 AFM, Document CSP B–012.

(2) CRJ (Bombardier) TR RJ 900/10–1, dated December 19, 2003, to the Bombardier Model CL–600–2D24 AFM, Document CSP C–012.

Note 1: When information identical to that in the applicable TR specified in paragraphs (a)(1) and (a)(2) of this AD has been included in the general revisions of the applicable AFM, the general revisions may be inserted into the AFM, and the TR may be removed from the AFM.

Prior Requirement

(b) For airplanes having serial numbers (S/N) 10005 through 10065, inclusive; prior to accomplishing the leak test required by paragraph (c) of this AD, install flexible hoses and brackets in the fuel feed system in accordance with the Accomplishment Instructions of Bombardier CRJ 700 Regional Jet Service Bulletin, 670BA–28–008, Revision C, dated January 23, 2003.

Leak Tests

(c) At the applicable compliance time, for the applicable S/N in Table 1 of this AD, do a leak test between the wing tanks and the center fuel tank in accordance with the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) Alert Service Bulletin 670BA–28–025, Revision A, dated December 15, 2003. Thereafter, repeat the leak test at intervals not to exceed 450 flight hours.

TABLE 1.—LEAK TEST THRESHOLDS

Airplane S/N	Accumulated flight hours	Inspection threshold
10005 through 10065, inclusive	More than 2,500 flight hours since accomplishment of the service bulletin in paragraph (b) of this AD.	Within 100 flight hours after the effective date of this AD.
10005 through 10065, inclusive	2,500 flight hours or less since accomplishment of the service bulletin in paragraph (b) of this AD.	Within 250 flight hours after the effective date of this AD.
10003 and 10004; 10066 through 10999, inclusive; and 15001 through 15990, inclusive.	2,500 flight hours or more since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.	Within 100 flight hours after the effective date of this AD.
10003 and 10004; 10066 through 10999, inclusive; and 15001 through 15990, inclusive.	2,499 flight hours or less since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.	Within 450 flight hours after the effective date of this AD.

Detailed Inspection and Repair

(d) If, during the leak test required by paragraph (c) of this AD, the amount of fuel increase in the center fuel tank is 150 pounds (68 Kgs) or more: Before further flight, do the further investigative and corrective actions, in accordance with the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) Alert Service Bulletin 670BA–28–025, Revision A, dated December 15, 2003.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Actions Accomplished per Previous Releases of Service Bulletin 670BA–28–008

(e) Actions accomplished before the effective date of this AD in accordance with Bombardier CRJ 700 Regional Jet Service Bulletin 670BA–28–008, Revision A, dated September 16, 2002; or Revision B, dated October 2, 2002; are considered acceptable for compliance with the corresponding action in this AD.

Reporting and Part Return Requirements

(f) Although the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) Alert Service Bulletin 670BA–28–025, Revision A, dated December 15, 2003, specify to submit certain information to the manufacturer, and to return damaged parts to the manufacturer; this AD does not include such requirements.

Alternative Methods of Compliance

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

Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions shall be done in accordance with CRJ Regional Jet (Bombardier) Temporary Revision RJ 700/52–2 dated, December 19, 2003, to the Bombardier CL–600–2C10 Airplane Flight Manual, Document CSP B–012; CRJ Regional Jet (Bombardier) Temporary Revision RJ 900/10–1, dated December 19, 2003, to the Bombardier CL–600–2D24 Airplane Flight Manual, Document CSP C–012; CRJ 700/900 Regional Jet

(Bombardier) Alert Service Bulletin 670BA–28–025, Revision A, excluding Appendix A, dated December 15, 2003; and Bombardier CRJ 700 Regional Jet Service Bulletin 670BA–28–008, Revision C, dated January 23, 2003; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2004–04, dated February 12, 2004.

Effective Date

(i) This amendment becomes effective on April 15, 2004.

Issued in Renton, Washington, on March 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6774 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–58–AD; Amendment 39–13548; AD 2004–07–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, DC–9–15F, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, and DC–9–34F Airplanes; and Model DC–9–21, DC–9–41, and DC–9–51 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 series airplanes, that currently requires replacing the transformer ballast assembly in the pilot's console with a new, improved ballast assembly. This amendment expands the applicability of the existing AD to include additional airplanes and provides an optional method for accomplishing the requirements of the existing AD. The actions specified by this AD are intended to prevent overheating of the ballast transformers due to aging fluorescent tubes that cause a higher power demand on the ballast transformers, which could result in smoke in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Effective May 5, 2004.

The incorporation by reference of a certain publication, as listed in the regulations, is approved by the Director of the Federal Register as of May 5, 2004.

The incorporation by reference of a certain other publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of February 8, 2002 (67 FR 497, January 4, 2002).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–26–24, amendment 39–12590 (67 FR 497, January 4, 2002), which is applicable to certain McDonnell Douglas Model DC–9 series airplanes, was published in the **Federal Register** on December 8, 2003 (68 FR 68304). The action proposed to continue to require replacing the transformer ballast assembly in the pilot's console with a new, improved ballast assembly. The action also proposed to expand the applicability of the existing AD to include additional airplanes. In addition, the action proposed to provide an optional method for accomplishing the requirements of the existing AD.

Comments

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

Explanation of Change to Proposed AD

The FAA has revised the applicability of the proposed AD to specify certain model designations (Model DC–9–21, –41, and –51) as published in the most recent type certificate data sheet for the affected models. These model designations are identical to those specified in the referenced service bulletin.

We have also revised the applicability of the proposed AD to correct a typographical error that resulted in a duplicate reference to Model DC–9–33F instead of Model DC–9–32F. We intended the applicability of the proposed AD to include the same Model airplanes as those listed in Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003, which was cited in the applicability statement of the proposed AD for determining the specific affected airplanes. Therefore, we have revised references to the applicability throughout the final rule to include Model DC–9–32F airplanes.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 575 airplanes of the affected design in the worldwide fleet. The FAA estimates that 477 airplanes of U.S. registry will be affected by this AD.

The replacement that is currently required by AD 2001–26–24 and provided as an option in this AD takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts cost approximately between $1,379 and $1,860 per airplane. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be between $688,788 and $918,225, or between $1,444 and $1,925 per airplane.

The new optional modification that is provided by this AD will take approximately 2 work hours per airplane to accomplish, at an average

labor rate of $65 per work hour. Required parts will cost approximately $4,472 per airplane. Based on these figures, the cost impact of the new optional modification provided by this AD on U.S. operators is estimated to be $4,602 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12590 (67 FR 497, January 4, 2002), and by adding a new airworthiness directive (AD), amendment 39–13548, to read as follows:

2004–07–04 McDonnell Douglas: Amendment 39–13548. Docket 2003–NM–58–AD. Supersedes AD 2001–26–24, Amendment 39–12590.

Applicability: Model DC–9–14, DC–9–15, DC–9–15F, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, and DC–9–34F airplanes; and Model DC–9–21, DC–9–41, and DC–9–51 series airplanes; as listed in Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the ballast transformers due to aging fluorescent tubes that cause a higher power demand on the ballast transformers, which could result in smoke in the cockpit, accomplish the following:

Replacement or Modification

(a) Replace the transformer ballast assembly from the pilot's console with a new, improved ballast assembly per the Work Instructions in McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 01, dated February 15, 2000; or the Accomplishment Instructions in Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003; or modify the existing ballast transformer assembly per the Accomplishment Instructions in Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

Note 1: Boeing Alert Service Bulletin DC9–33A114, Revision 03, refers to Elektronika, Inc. Product Improvement Service Bulletin 33–EKA0199–BPC, Revision D, dated November 25, 2002, as an additional source of service information for accomplishment of the modification of the transformer ballast assembly for McDonnell Douglas Model DC–9 series airplanes.

(1) For airplanes listed in McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 01, dated February 15, 2000: Within 12 months after February 8, 2002 (the effective date of AD 2001–26–24, amendment 39–12590).

(2) For airplanes having fuselage numbers 1039 and 1046: Within 12 months after the effective date of this AD.

Parts Installation

(b) As of the effective date of this AD, no person shall install a transformer assembly, part number BA170–1, –11, –21, or –MOD.B, on any airplane.

Prior Replacements

(c) Replacements accomplished before the effective date of this AD per McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 02, dated March 19, 2002, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) Alternative methods of compliance, approved previously per AD 2001–26–24, amendment 39–12590, are approved as alternative methods of compliance with this AD.

Incorporation by Reference

(e) Unless otherwise provided in this AD, the actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 01, dated February 15, 2000; or Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 01, dated February 15, 2000, was approved previously by the Director of the Federal Register as of February 8, 2002 (67 FR 497, January 4, 2002).

(3) Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on May 5, 2004.

Issued in Renton, Washington, on March 22, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6956 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–31–AD; Amendment 39–13552; AD 2004–07–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–15 Airplane

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to a certain McDonnell Douglas Model DC–9–15 airplane, that requires an inspection to detect chafing or overheat damage of the electrical wires located at fuselage station Y=110.000 bulkhead of the lower nose left tunnel; and corrective actions, if necessary. This amendment also requires replacing the external power ground stud with a new ground stud using new attaching parts, torquing new attachments, and installing a nameplate. This action is necessary to prevent loose external power ground wires, which could cause arcing and overheated wire insulation and consequent smoke/fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Effective May 5, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 5, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to a certain McDonnell Douglas Model DC–9–15 airplane was published in the **Federal Register** on October 2, 2003 (68 FR 56794). That action proposed to require an inspection to detect chafing or overheat damage of the electrical wires located at fuselage station Y=110.000 bulkhead of the lower nose left tunnel; and corrective actions, if necessary. That action also proposed to require replacing the external power ground stud with a new ground stud using new attaching parts, torquing new attachments, and installing a nameplate.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 1 Model DC–9–15 airplane, having fuselage number 0097, of U.S. registry will be affected by this AD, that it will take approximately 2 work hours to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $35. Based on these figures, the cost impact of the AD on the U.S. operator is estimated to be $165.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–07–08 McDonnell Douglas: Amendment 39–13552. Docket 2003–NM–31–AD.

Applicability: Model DC–9–15 airplane, fuselage number 0097; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loose external power ground wires, which could cause arcing and overheated wire insulation and consequent smoke/fire in the cockpit, accomplish the following:

Inspection

(a) Within 18 months after the effective date of this AD, do a general visual inspection to detect chafing or overheat damage of the electrical wires located at fuselage station Y=110.000 bulkhead of the lower nose left tunnel, per Boeing Alert Service Bulletin DC9–24A135, Revision 02, dated January 7, 2003.

Note 1: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect

obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Condition 1 (No Chafing or Damage)

(b) If no chafing or overheat damage is detected during the inspection required by paragraph (a) of this AD, within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD per Boeing Alert Service Bulletin DC9–24A135, Revision 02, dated January 7, 2003.

(1) Replace the external power ground stud with a new ground stud using new attaching parts.

(2) Torque the new attachments.

(3) Install nameplate (includes applying silicone primer and adhesive/sealant).

Condition 2 (Chafing or Damage Within Limits)

(c) If, during the inspection required by paragraph (a) of this AD, any chafing or damage is detected within the limits referenced in Boeing Alert Service Bulletin DC9–24A135, Revision 02, dated January 7, 2003, before further flight, repair damage; perform a continuity test to check the integrity of the wiring, and repair as applicable; and do the actions required by paragraphs (b)(1), (b)(2), and (b)(3) of this AD; per the alert service bulletin.

Condition 3 (Chafing or Damage Beyond Limits)

(d) If, during the inspection required by paragraph (a) of this AD, any chafing or damage is detected beyond the limits referenced in Boeing Alert Service Bulletin DC9–24A135, Revision 02, dated January 7, 2003, before further flight, replace any damaged wire with a new wire; perform a continuity test to check the integrity of the wiring, and repair as applicable; and do the actions required by paragraphs (b)(1), (b)(2), and (b)(3) of this AD; per the alert service bulletin.

Accomplishment of the Actions

(e) Accomplishment of the actions specified in AD 2001–24–19, amendment 39–12536, is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin DC9–24A135, Revision 02, excluding Appendix, dated January 7, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on May 5, 2004.

Issued in Renton, Washington, on March 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6955 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–404–AD; Amendment 39–13551; AD 2004–07–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –200CB Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, that currently requires modifications to the attachment installation of the forward lavatory. This amendment adds airplanes to the applicability of the existing AD. The actions specified by this AD are intended to prevent failure of the attachment installation of the forward lavatory during an emergency landing, which could result in injury to the crew and passengers. This action is intended to address the identified unsafe condition.

DATES: Effective May 5, 2004.

The incorporation by reference of Boeing Special Attention Service Bulletin 757–25–0181, Revision 1, dated November 21, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of May 5, 2004.

The incorporation by reference of Boeing Service Bulletin 757–25–0181, dated June 26, 1997; and Boeing Alert Service Bulletin 757–25A0187, dated September 18, 1997; as listed in the regulations, was approved previously by the Director of the Federal Register as of June 1, 1999 (64 FR 20146, April 26, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Crotty, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6422; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–09–13, amendment 39–11146 (64 FR 20146, April 26, 1999), which is applicable to certain Boeing Model 757–200 series airplanes, was published in the **Federal Register** on December 22, 2003 (68 FR 71051). The action proposed to continue to require modifications to the attachment installation of the forward lavatory. The action also proposed to add airplanes to the applicability of the existing AD.

Comments

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

Conclusion

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

Cost Impact

There are approximately 694 airplanes of the affected design in the worldwide fleet. The FAA estimates that 355 airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per airplane to accomplish the required modification, at an average labor rate of $65 per work hour. Required parts will cost approximately $100 per airplane. Based on these figures, the cost impact of the required

modification on U.S. operators is estimated to be $127,800, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11146 (64 FR 20146, April 26, 1999), and by adding a new airworthiness directive (AD), amendment 39–13551, to read as follows:

2004–07–07 Boeing: Amendment 39–13551. Docket 2000–NM–404–AD. Supersedes AD 99–09–13, Amendment 39–11146.

Applicability: Model 757–200 and –200CB series airplanes; as listed in Boeing Special Attention Service Bulletin 757–25–0181, Revision 1, dated November 21, 2000; and as listed in Boeing Alert Service Bulletin 757–25A0187, dated September 18, 1997; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the attachment installation of the forward lavatory during an emergency landing, which could result in injury to the crew and passengers, accomplish the following:

Restatement of Requirements of AD 99–09–13

(a) For passenger airplanes identified in Boeing Service Bulletin 757–25–0181, dated June 26, 1997: Within 24 months or 3,000 flight cycles after June 1, 1999 (the effective date of AD 99–09–13, amendment 39–11146), whichever occurs first, install a doubler to the upper attachment installation of the forward lavatory, in accordance with Boeing Service Bulletin 757–25–0181, dated June 26, 1997.

(b) For freighter airplanes identified in Boeing Alert Service Bulletin 757–25A0187, dated September 18, 1997: Within 24 months or 3,000 flight cycles after June 1, 1999, whichever occurs first, install floor panel inserts, a retention fitting assembly, and a doubler assembly to the lower attachment installation of the forward lavatory, in accordance with Boeing Alert Service Bulletin 757–25A0187, dated September 18, 1997.

New Requirements of this AD

(c) For passenger airplanes identified in Boeing Special Attention Service Bulletin 757–25–0181, Revision 1, dated November 21, 2000, other than those identified in paragraph (a) of this AD: Within 24 months after the effective date of this AD, install a doubler to the upper attachment installation of the forward lavatory, in accordance with the Work Instructions of Boeing Special Attention Service Bulletin 757–25–0181, Revision 1, dated November 21, 2000.

Parts Installation

(d) As of the effective date of this AD, no person shall install a floor panel, part number 141N5410–12 or 141N5410–28, on any airplane.

Note 1: Floor panels having part numbers 141N5410–12 and 141N5410–28 are only installed on freighter airplanes and are not used on passenger airplanes.

Installations Accomplished Per Previous Issues of Service Bulletin

(e) Installations accomplished before the effective date of this AD per the original issue of Boeing Special Attention Service Bulletin 757–25–0181, dated June 26, 1997, are considered acceptable for compliance with the actions specified in paragraph (c) of this AD.

Alternative Methods of Compliance

(f)(1) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) AMOCs, approved previously per AD 99–09–13, amendment 39–11146, that provide for the installation of an oversize doubler to the upper attachment installation of the forward lavatory, are approved as AMOCs with this AD.

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 757–25–0181, dated June 26, 1997; Boeing Special Attention Service Bulletin 757–25–0181, Revision 1, dated November 21, 2000; and Boeing Alert Service Bulletin 757–25A0187, dated September 18, 1997; as applicable.

(1) This incorporation by reference of Boeing Special Attention Service Bulletin 757–25–0181, Revision 1, dated November 21, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 757–25–0181, dated June 26, 1997; and Boeing Alert Service Bulletin 757–25A0187, dated September 18, 1997; was approved previously by the Director of the Federal Register as of June 1, 1999 (64 FR 20146, April 26, 1999).

(3) Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on May 5, 2004.

Issued in Renton, Washington, on March 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6954 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–255–AD; Amendment 39–13549; AD 2004–07–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes, and C–9 (military) airplanes, that currently requires repetitive ultrasonic or magnetic particle inspections to detect cracking of the engine pylon aft upper spar straps (caps); and if necessary, replacement of the strap with a new strap, or modification of the engine pylon rear spar straps, which constitutes terminating action for the repetitive inspections. This amendment requires new, improved repetitive ultrasonic inspections, and corrective actions if necessary. This amendment also requires, among other items, a terminating action for the repetitive inspection requirements. The actions specified by this AD are intended to detect and correct fatigue cracking, which could result in major damage to the adjacent structure of the pylon aft upper spar cap, and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 5, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 5, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 78–01–16, amendment 39–3117 (43 FR 1300, January 9, 1978), which is applicable to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on December 22, 2003 (68 FR 71040). That action proposed to continue to require repetitive ultrasonic or magnetic particle inspections to detect cracking of the engine pylon aft upper spar straps (caps); and if necessary, replacement of the strap with a new strap, or modification of the engine pylon rear spar straps, which constitutes terminating action for the repetitive inspections. The action also proposed to require new, improved repetitive ultrasonic inspections, and corrective actions if necessary. The action also proposed to require, among other items, a terminating action for the repetitive inspection requirements and to add airplanes to the applicability.

Comments

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

Conclusion

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

Cost Impact

There are approximately 577 Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 350 airplanes of U.S. registry will be affected by this AD.

The ultrasonic inspection that is currently required by AD 78–01–16, and retained in this AD, takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this currently required action on U.S. operators is estimated to be $195 per airplane, per inspection cycle.

The new ultrasonic inspection that is required by this AD will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new ultrasonic inspection required by this AD on U.S. operators is estimated to be $260 per airplane, per inspection cycle.

The new modification of the rear spar upper strap (cap) that is required by this AD will take between approximately 349 and 412 work hours to accomplish (depending on the configuration of the affected airplane), at an average labor rate of $65 per work hour. The cost of required parts will be between approximately $1,865 and $7,947 per airplane. Based on these figures, the cost impact of the new modification required by this AD on U.S. operators is estimated to be between $24,550 and $34,727 per airplane.

For certain airplanes, the repetitive visual inspections of the upper rear spar (cap) for bearing migration and correct pin staking will take approximately 20 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of that inspection required by this AD on U.S. operators is estimated to be $1,300 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the optional magnetic particle inspection that will be provided by this AD action, it will take approximately 7 work hours to accomplish it, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this action on U.S. operators will be $455 per airplane, per inspection cycle.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States,

or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–3117 (43 FR 1300, January 9, 1978), and by adding a new airworthiness directive (AD), amendment 39–13549, to read as follows:

2004–07–05 McDonnell Douglas: Amendment 39–13549. Docket 99–NM–255–AD. Supersedes AD 78–01–16, Amendment 39–3117.

Applicability: Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes, as listed in Boeing Service Bulletin DC9–54–031, Revision 05, dated April 25, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking, which could result in major damage to the adjacent structure of the pylon aft spar upper cap, and consequent reduced structural integrity of the airplane; accomplish the following:

Restatement of Certain Requirements of AD 78–01–16, Amendment 39–3117

Compliance Times

(a) For airplanes that have accumulated 35,000 or more total landings as of February 13, 1978 (the effective date of AD 78–01–16): Within 600 landings after February 13, 1978, unless already accomplished within the last 1,800 landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

(b) For airplanes that have accumulated between 30,000 and 34,999 total landings inclusive, as of February 13, 1978: Within 900 landings after February 13, 1978, unless already accomplished within the last 1,500 landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

(c) For airplanes that have accumulated between 25,000 and 29,999 total landings inclusive, as of February 13, 1978: Within 1,200 landings after February 13, 1978, unless already accomplished within the last 1,200 landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

(d) For airplanes that have accumulated between 15,000 and 24,999 total landings inclusive, as of February 13, 1978: Within 2,000 landings after February 13, 1978, unless already accomplished within the last 400 landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

(e) For airplanes that have accumulated less than 15,000 total landings as of February 13, 1978: Within 2,000 landings after the accumulation of 15,000 total landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

Repetitive Inspections and Corrective Actions

(f) For airplanes having fuselage numbers 1 through 851 inclusive: At the times specified in paragraphs (a) through (e) of this AD, except as provided by paragraph (l) of this AD, perform an ultrasonic inspection of the engine pylon aft upper spar straps (caps), part number (P/N) 9958154–5/–6 or P/N 9958154–37/–38, to detect cracking; in accordance with paragraph 2.B of McDonnell Douglas DC–9 Alert Service Bulletin A54–31, Revision 1, dated December 22, 1976; or in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

(1) If there is evidence of cracking, the magnetic particle inspection specified in paragraph 2.C of the service bulletin may be used to confirm the evidence of cracking.

(2) If any cracking is detected, prior to further flight, accomplish either paragraph (f)(2)(i) or (f)(2)(ii) of this AD in accordance with the service bulletin.

(i) Replace the strap with a new strap, P/N 9958154–5/-6 or P/N 9958154–37/-38, and repeat the inspection thereafter at intervals not to exceed 15,000 landings. Or,

(ii) Modify the engine pylon rear spar straps (caps) in accordance with McDonnell Douglas DC–9 Service Bulletin 54–31, dated August 24, 1976. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements specified only in paragraph (f)(2)(i) of this AD.

Note 1: Modification of the engine pylon rear spar straps (caps) accomplished prior to the effective date of this AD in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A54–31, Revision 2, dated December 22, 1977; Revision 3, dated June 20, 1986; Revision 4, dated March 26, 1987; Revision 5, dated March 25, 1991; or Revision 6, dated November 23, 1992; is considered acceptable for compliance with the requirements of paragraph (f)(2)(ii) of this AD.

Note 2: Ultrasonic or magnetic particle inspection of the engine pylon aft upper spar straps (caps) accomplished prior to the effective date of this AD in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A54–31, Revision 2, dated December 22, 1977; Revision 3, dated June 20, 1986; Revision 4, dated March 26, 1987; Revision 5, dated March 25, 1991; or Revision 6, dated November 23, 1992; is considered acceptable for compliance with the inspection requirements of paragraph (f) of this AD, as applicable.

New Requirements of This AD

Ultrasonic Inspections

(g) For airplanes on which the modification/replacement specified in paragraph (n) of this AD has not been accomplished, and on which the spar strap replacement specified in paragraph (f)(2)(i) of this AD has not been accomplished: Except as provided by paragraph (m) of this AD, perform an ultrasonic inspection of the engine pylon aft upper spar straps (caps) to detect cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–54A031, Revision 09, September 3, 2002; at the time specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD, as applicable. Accomplishment of the ultrasonic inspection constitutes terminating action for the repetitive inspection requirements of paragraphs (a) through (f), including paragraph (f)(2)(i) of this AD.

(1) For airplanes that have accumulated less than 25,000 total landings as of the effective date of this AD: After the accumulation of 15,000 total landings but before the accumulation of 25,000 total landings, or within 2,000 landings or 6 months after the effective date of this AD, whichever occurs latest.

(2) For airplanes that have accumulated 25,000 to 29,999 total landings as of the effective date of this AD: Within 1,200 landings or 6 months after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated 30,000 to 34,999 total landings as of the effective date of this AD: Within 900 landings or 6 months after the effective date of this AD, whichever occurs later.

(4) For airplanes that have accumulated 35,000 or more total landings as of the effective date of this AD: Within 600 landings or 6 months after the effective date of this AD, whichever occurs later.

(h) For airplanes on which the modification/replacement specified in paragraph (n) of this AD has not been

accomplished, and on which the spar strap replacement specified in paragraph (f)(2)(i) of this AD has been accomplished: Except as provided by paragraph (m) of this AD, perform an ultrasonic inspection of the engine pylon aft upper spar straps (caps) to detect cracking, in accordance with Boeing Alert Service Bulletin DC9–54A031, Revision 09, dated September 3, 2003; at the time specified in paragraph (h)(1), (h)(2), (h)(3), or (h)(4) of this AD, as applicable. Accomplishment of the ultrasonic inspection constitutes terminating action for the repetitive inspection requirements of paragraphs (a) through (f) of this AD.

(1) For airplanes that have accumulated less than 25,000 total landings since installation of the new spar strap (cap): After the accumulation of 15,000 landings since installation of the new spar strap (cap) but before the accumulation of 25,000 landings since installation of the new spar strap (cap), or within 2,000 landings or 6 months after the effective date of this AD, whichever occurs latest.

(2) For airplanes that have accumulated between 25,000 and 29,999 landings since installation of the new spar strap (cap): Within 1,200 landings or 6 months after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated between 30,000 and 34,999 landings since installation of the new spar strap (cap): Within 900 landings or 6 months after the effective date of this AD, whichever occurs later.

(4) For airplanes that have accumulated 35,000 or more landings since installation of the new spar strap (cap): Within 600 landings or 6 months after the effective date of this AD, whichever occurs later.

Note 3: Ultrasonic or magnetic particle inspection of the engine pylon aft upper spar straps (caps) accomplished prior to the effective date of this AD per Boeing Alert Service Bulletin DC9–54A031, Revision 07, dated August 26, 1999; or Revision 08, dated January 31, 2000; is considered acceptable for compliance with the requirements of paragraph (g) or (h) of this AD, as applicable.

If No Cracking Is Detected—Repetitive Inspections

(i) If no cracking is detected during the ultrasonic inspection required by paragraph (g) or (h) of this AD, before further flight, reapply sealant that was removed to accomplish those inspections, per Boeing Alert Service Bulletin DC9–54A031, Revision 09, dated September 3, 2002. Thereafter, repeat the inspection specified in paragraph (g) or (h) of this AD, as applicable, at intervals not to exceed 2,400 landings until the modification of the rear spar upper strap (cap) specified in paragraph (n) of this AD has been accomplished.

If Cracking Is Suspected

(j) If any evidence of cracking is suspected during any inspection required by paragraph (g) or (h) of this AD, before further flight, confirm the existence of cracking by accomplishing the actions specified in paragraph (m) of this AD.

If Cracking Is Detected

(k) If any cracking is detected during any inspection required by paragraph (g) or (h) of this AD, before further flight, modify the rear spar upper strap (cap) in accordance with paragraph (n) of this AD. Accomplishment of the modification constitutes terminating action for the requirements of paragraphs (g) and (h) of this AD.

Inspection for Migration of Bearings

(l) For airplanes identified as Group 12 airplanes in Boeing Service Bulletin DC9–54–031, Revision 05, dated April 25, 2003, on which the modification specified in paragraph (n) of this AD has not been accomplished: Perform a general visual inspection for migration of the bearings and the correct pin staking, per the service bulletin at the time specified in paragraph (g) or (h) of this AD, as applicable.

Note 4: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If none of the bearings have migrated and the pin staking is correct, repeat the general visual inspection at intervals not to exceed 2,400 landings until the straps are modified per Boeing Service Bulletin DC9–54–031, Revision 05, dated April 25, 2003.

(2) If any bearing has migrated or the pin staking is incorrect, before further flight, accomplish the modification specified in paragraph (n) of this AD. Accomplishment of that modification constitutes terminating action for the repetitive inspection requirements of this AD.

Acceptable Method of Compliance

(m) At the times specified in the applicable paragraph of this AD, it is permissible to perform a magnetic particle inspection of the engine pylon aft upper spar strap (cap) for cracks in lieu of accomplishing the ultrasonic inspection required by paragraph (g) or (h) of this AD; in accordance with Boeing Alert Service Bulletin DC9–54A031, Revision 09, dated September 3, 2002.

(1) If no cracking is detected, before further flight, replace the bearing on the spar strap (cap) with a new annular groove bearing, in accordance with the service bulletin. Thereafter, repeat the inspection specified in paragraph (g) or (h) of this AD, as applicable, at intervals not to exceed 2,400 landings until the modification of the rear spar upper strap (cap) specified in paragraph (n) of this AD has been accomplished.

(2) If any cracking is detected, before further flight, accomplish the modification of the rear upper spar strap (cap) required by paragraph (n) of this AD.

Terminating Modification

(n) *For all airplanes:* Prior to the accumulation of 100,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the rear spar upper strap (cap) in accordance with Boeing Service Bulletin DC9–54–031, Revision 05, dated April 25, 2003. Accomplishment of the modification described in Revision 05 of that service bulletin constitutes terminating action for the repetitive inspection requirements of this AD.

Compliance With Certain Other Airworthiness Directives

(o) Accomplishment of the modification required by paragraph (n) of this AD constitutes compliance with the following:

(1) The actions specified in McDonnell Douglas DC–9 Service Bulletin 54–27, Revision 4, dated April 2, 1990, that are required by AD 96–10–11, amendment 39–9618 (which references ''DC–9/MD80 Aging Aircraft Service Action Requirements Document'' (SARD), McDonnell Douglas Report MDC K1572, Revision B, dated January 15, 1993, as the appropriate source of service information for accomplishment of the modification); and,

(2) The requirements of AD 72–09–01, amendment 39–2844 (which references McDonnell Douglas DC–9 Service Bulletin 54–31, dated August 24, 1976; and McDonnell Douglas DC–9 Service Bulletin 54–27, Revision 4, dated April 2, 1990; as appropriate sources of service information for accomplishment of the modification).

Alternative Methods of Compliance

(p)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 78–01–06, amendment 39–3117, are approved as alternative methods of compliance with the corresponding provisions of this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Incorporation by Reference

(q) Unless otherwise specified in this AD, the actions shall be done in accordance with the applicable service bulletins listed in the following table.

TABLE 1.—APPLICABLE SERVICE BULLETINS

Service bulletin	Revision level	Date
McDonnell Douglas DC–9 Service Bulletin 54–31	Original	August 24, 1976.
McDonnell Douglas DC–9 Alert Service Bulletin A54–31	Revision 1	December 22, 1976.
Boeing Alert Service Bulletin DC9–54A031	Revision 09	September 3, 2002.
Boeing Service Bulletin DC9–54–031	Revision 05	April 25, 2003.

McDonnell Douglas DC–9 Alert Service Bulletin A54–31, Revision 1, dated December 22, 1976, contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	December 22, 1976.
2–13	Original	March 15, 1976

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(r) This amendment becomes effective on May 5, 2004.

Issued in Renton, Washington, on March 22, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6953 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AC98

NASA Grant and Cooperative Agreement Handbook—Grant and Cooperative Agreement Announcement Numbering

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the NASA Grant and Cooperative Agreement Handbook by adding a format and numbering scheme to identify announcements for NASA's grants and cooperative agreements. The NASA FAR Supplement (NFS) was recently changed to incorporate a revised solicitation numbering scheme. This change was implemented to make solicitation numbers consistent with the data fields of NASA's IFM system. Although assistance agreements are not subject to the NFS, NASA has always used the same numbering schemes for assistance agreements and contracts, as a matter of simplicity and efficiency. The Grant and Cooperative Agreement Handbook will be amended to include a cross-reference to the NFS.

EFFECTIVE DATE: March 31, 2004.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700-AC98, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Suzan Moody, NASA, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments can also be submitted by e-mail to: *Suzan.P.Moody@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Suzan P. Moody, NASA Headquarters, Code HK, Washington, DC, (202) 358–0503, e-mail: *Suzan.P.Moody@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the NASA Grant and Cooperative Agreement Handbook to incorporate a format and numbering scheme to identify announcements for NASA's grants and cooperative agreements. This 12 character number consists of the following: Two alpha digits for the Agency (NN); one alpha digit for the Center; two numeric digits for the fiscal year; six alpha and numeric digits for either the purchase request or the issuing organization's code and action number; and one alpha digit for the type of announcement.

The NASA Grant and Cooperative Agreement Handbook does not currently include a format and numbering scheme for announcements of grants and cooperative agreements. Each NASA Center has its own procedures for numbering announcements. This change will bring consistency to the procedures for numbering announcements, and ensure these procedures are consistent with the data fields of NASA's Integrated Financial Management (IFM) system. The Grant and Cooperative Agreement Handbook will be amended to include a cross-reference to NFS 1804.7102, ''Numbering Scheme for Solicitations''.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the changes modify existing internal operational practices.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.*

List of Subjects in 14 CFR Part 1260

Grant Programs—Science and Technology.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 14 CFR Part 1260 is amended as follows:

■ 1. The authority citation for 14 CFR 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*)

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

■ 2. Add section 1260.8 to read as follows:

§ 1260.8 Announcements.

Announcements for grants and cooperative agreements shall use the solicitation numbering scheme stated in NFS 1804.7102, ''Numbering scheme for solicitations''.

[FR Doc. 04–7237 Filed 3–30–04; 8:45 am]

BILLING CODE 7510–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038–AB89

Registration of Intermediaries

AGENCY: Commodity Futures Trading Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations, which were published Thursday, June 6, 2002. The regulations relate to the registration of intermediaries in the futures industry.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, or R. Trabue Bland, Attorney-Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430. E-mail: *lpatent@cftc.gov* or *tbland@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 6, 2002 (67 FR 38869), the Commission published amendments to its rules governing the registration of intermediaries in the futures industry (''2002 Release''). Specifically, the rules facilitated changing the Commission's paper-based registration system to an online registration system and permitted floor brokers with temporary licenses to act in the capacity of a fully registered floor broker. After the incorporation of these changes to Rule 3.12 [1], the amended rule, as published, deleted two subsections of Rule 3.12.

II. Need for Correction

The final regulations as published in the Code of Federal Regulations omit two paragraphs that were in previous versions of Rule 3.12: 17 CFR 3.12(f)(3) and (4).[2] The Commission did not intend to delete these paragraphs, as evidenced by the fact that the 2002 Release contains five asterisks following paragraph (f)(2) of Rule 3.12 as printed therein. Nevertheless, the 2003 edition of the Code of Federal Regulations omits paragraphs 17 CFR 3.12(f)(3) and (4).

Section 3.12(f)(3) requires persons associated with more than one sponsor to file fingerprints on a fingerprint card with the National Futures Association. 17 CFR 3.12(f)(4) states that an associated person (''AP'') of a futures commission merchant or introducing broker (''IB'') that directs managed accounts to commodity trading advisors (''CTA''), which are carried by the AP's FCM or IB, are deemed to be APs of the FCM or IB, but not the CTA. Sections 3.12(f)(3) and 3.12(f)(4) were originally in Rule 3.12 before the Commission published the 2002 Release.[3]

As published, Rule 3.12 is missing two important subsections, which these corrections add.

List of Subjects in 17 CFR Part 3

Brokers, Commodity futures, Registration.

■ In consideration of the foregoing, the Commission hereby corrects chapter I of title 17 of the Code of Federal Regulations to read as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

■ 2. Section 3.12 is amended by adding paragraphs (f)(3) and (f)(4) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators, and leverage transaction merchants.

* * * * *

(f) * * *

(3) A person who is simultaneously associated with more than one sponsor in accordance with the provisions of paragraphs (f)(1) and (f)(2) of this section shall be required, upon receipt of notice from the National Futures Association, to file with the National Futures Association his fingerprints on a fingerprint card provided by the National Futures Association for that purpose as well as such other information as the National Futures Association may require. The National Futures Association may require such a filing every two years, or at such greater period of time as the National Futures Association may deem appropriate, after the associated person has become associated with a new sponsor in accordance with the requirements of paragraphs (f)(1) and (f)(2) of this section.

(4) If a person is associated with a futures commission merchant or with an introducing broker and he directs customers seeking a managed account to use the services of a commodity trading advisor(s) approved by the futures commission merchant or introducing broker and all such customers' accounts solicited or accepted by the associated person are carried by the futures commission merchant or introduced by the introducing broker with which the associated person is associated, such a person shall be deemed to be associated solely with the futures commission merchant or introducing broker and may not also register as an associated person of the commodity trading advisor(s).

* * * * *

Issued in Washington, DC, on March 25, 2004 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–7202 Filed 3–30–04; 8:45 am]

BILLING CODE 6351–01–M

[1] 17 CFR 3.12 (2003).

[2] *See, e.g.,* 17 CFR 3.12 (2002).

[3] *Id.*

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 970

[FHWA Docket No. FHWA–99–4967]

FHWA RIN 2125–AE52

Federal Lands Highway Program; Management Systems Pertaining to the National Park Service and the Park Roads and Parkways Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document corrects the final rule on the development and implementation of safety, bridge, pavement, and congestion management systems for transportation facilities under the jurisdiction of the National Park Service (NPS) as published in the **Federal Register** on February 27, 2004 (69 FR 9470). The FHWA is correcting a typographical error in the lettering sequence of a paragraph in § 970.208.

EFFECTIVE DATE: The final rule is effective March 29, 2004.

FOR FURTHER INFORMATION CONTACT: For technical information, Mr. Bob Bini, Federal Lands Highway, HFPD–2, (202) 366–6799, FHWA, 400 Seventh Street, SW., Washington, DC 20590; office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For legal questions, Ms. Vivian Philbin, HFL–16, (303) 716–2122, FHWA, 555 Zang Street, Lakewood, CO 80228. Office hours are from 7:45 a.m. to 4:15 p.m., m.t.,

Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FHWA published a document in the **Federal Register** of February 27, 2004 (69 FR 9470) with an incorrect paragraph designation in § 970.208. The FHWA is correcting this typographical error in the lettering sequence of the paragraph.

§ 970.208 [Amended]

■ In rule FR Doc. 04–4052 published on February 27, 2004 (69 FR 9470) make the following correction. On page 9475, in the second column of § 970.208, replace the paragraph designation ''(e)'' with ''(d)''.

Issued on: March 25, 2004.

D.J. Gribbin,

Chief Counsel, Federal Highway Administration.

[FR Doc. 04–7116 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–008]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway—Black Bayou, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued an extension of a temporary deviation from the regulation governing the operation of the Black Bayou Pontoon Bridge across the Gulf Intracoastal Waterway, mile 237.5 west of Harvey Lock, in Calcasieu Parish, LA. The extension allows the bridge to remain closed to navigation during daylight hours during weekdays only for an additional two weeks. The extension of the deviation is necessary to complete the repairs to the damaged portions of the fender system.

DATES: This extension of the deviation is effective from 7 a.m. on Thursday, April 15, 2004, through 5 p.m. on Wednesday, April 28, 2004.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On March 1, 2004, a temporary deviation for the operation of the Black Bayou Pontoon Bridge across the Gulf Intracoastal Waterway, mile 237.5 west of Harvey Lock, in Calcasieu Parish, LA was published in the **Federal Register** (69 FR 9549). The temporary deviation allowed the bridge to remain in the closed-to-navigation position from 7 a.m. until 11 a.m. and from 1 p.m. until 5 p.m. Monday through Friday from March 17, 2004, through April 14, 2004. The Louisiana Department of Transportation and Development (LDOTD) has now requested a two-week extension to the temporary deviation in order to complete the repairs. The extension of the temporary deviation is necessary to ensure the complete repair of the fender system for the safety of the bridge. The extension of the temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. until 11 a.m. and from 1 p.m. until 5 p.m. Monday through Friday until April 28, 2004.

As the bridge has no vertical clearance in the closed-to-navigation position, vessels will not be able to transit through the bridge sight when the bridge is closed. Navigation at the site of the bridge consists mainly of tows with barges and some recreational pleasure craft. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels. The bridge normally opens to pass navigation an average of 878 times per month. The bridge opens on signal as required by 33 CFR 117.5. The bridge will be able to open for emergencies during the closure period with proper notice. Alternate routes are not available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 23, 2004.

Marcus Redford,

Bridge Administrator.

[FR Doc. 04–7111 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–04–033]

RIN 1625–AA09

Drawbridge Operation Regulations; St. Johns River, Mile 24.7 at Jacksonville, Duval County, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the operation of the Main Street Bridge, mile 24.7, St. Johns River, Jacksonville, Florida. The Florida Department of Transportation's contractor for bridge repairs was unable to complete the scheduled repairs by January 31, 2004, the date provided in the temporary rule published on October 6, 2003. This temporary rule is required to allow the bridge owner to complete the project by May 31, 2004. Under this temporary rule, the bridge need not open from 6 p.m. to 6 a.m. each day from March 31, 2004 until May 31, 2004. Due to repair work, the vertical clearance of the bridge will be reduced by 5 feet.

DATES: This rule is effective from 6 p.m., on March 31, 2004, to 6 a.m., on May 31, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD07–04–033] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

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. Publishing an NPRM was impracticable and contrary to the public interest, because the rule was needed to allow the contractor to provide for worker safety while repairing the bridge. Also, since this rule provides for bridge openings during the majority of the day, during daytime hours, when the area is most heavily traveled, vessel traffic will not

be unduly disrupted during the repair process. Two temporary final rules were previously published (68 FR 47462 and 68 FR 57614), that requested a similar schedule though occurring on different dates. The contractor contacted the Coast Guard on January 27, 2004 and requested the date change due to various delays outside the contractor's control.

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 **Federal Register** publication. The contractor submitted a letter on January 27, 2004, requesting an extension and change to the bridge's operating schedule to effect repairs, due to delays beyond their control. Accordingly, there was insufficient time remaining to either publish an NPRM or delay the effective date of the rule. This temporary rule provides for a reduction in bridge openings to allow the contractor to safely repair the bridge while providing for the reasonable needs of navigation during daylight hours.

Background and Purpose

The Main Street Bridge, mile 24.7, St. Johns River at Jacksonville, Duval County, Florida, has a vertical clearance of 40 feet at mean high water and a horizontal clearance of 350 feet between the fender systems. The existing operating regulation in 33 CFR 117.325(a) requires the bridge to open on signal except that, from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m., Monday through Saturday, except Federal holidays, the draw need not open for the passage of vessels. The draw opens at any time for vessels in an emergency involving life or property.

Royal Bridge, Inc., contractors, notified the Coast Guard on January 27, 2004, that work on the vertical lift bridge was delayed by events outside their control and that an additional temporary schedule change was needed to complete the project. They also requested an extra 2 hours per day for the closure period (6 p.m. to 6 a.m.). Finally, due to worker safety issues, there will be a 5-foot reduction in vertical clearance for scaffolding. This rule is necessary to provide for worker safety during repairs to the bridge and does not significantly hinder navigation, as openings will be provided throughout the remainder of the day when the transit area is most heavily traveled.

Discussion of Rule

Under this temporary rule, the bridge need not open from 6 p.m. until 6 a.m., March 31, 2004, to May 31, 2004. This action is necessary for worker safety during repairs to the bridge and does not significantly hinder navigation.

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). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This rule will impact vessels greater than 35 feet in height because of the reduction in vertical clearance. This rule, however, will only affect a small percentage of vessel traffic through the bridge, because of limited nighttime navigation at this location, and openings are available during daylight hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 would not have a significant economic impact on a substantial number of small entities, because the regulations will affect only a limited amount of marine traffic and will still provide for navigation needs by opening on signal from 6:01 a.m. to 5:59 p.m.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this temporary 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 temporary rule so that they can better evaluate its effects on them and comment if necessary. If this temporary rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule will not 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 would not create an environmental risk to health or risk to safety that might 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

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 (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Checklist'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 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 authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 6 p.m. on March 31, 2004, until 6 a.m. on May 31, 2004, in § 117.325, paragraph (a) is suspended and a new paragraph (d) is added to read as follows:

§ 117.325 St. Johns River.

* * * * *

(d) The draw of the Main Street (US 17) Bridge, mile 24.7 at Jacksonville, shall open on signal, except that from 6 p.m. until 6 a.m., the draw need not open for the passage of vessels. The draw shall open at any time for vessels in an emergency involving life or property.

Dated: March 15, 2004.

Harvey E. Johnson, Jr.,

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

[FR Doc. 04–7110 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–04–008]

RIN 1625–AA00

Safety Zone; Fireworks Displays in the Captain of the Port Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: Between May 7, 2004, October 17, 2004, the Coast Guard will enforce permanent safety zones for Annual Fireworks displays on the Willamette River, the Columbia River and the Coos River in the Captain of the Port Portland zone. The Coast Guard is taking this action to safeguard watercraft and their occupants from safety hazards associated with these fireworks displays. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: The safety zones in 33 CFR 165.1315 will be enforced from May 7, 2004, October 17, 2004.

ADDRESSES: Documents referred to in this notice are available for inspection or copying at COTP Portland, 6767 N. Basin Ave, Portland, OR 97217.

FOR FURTHER INFORMATION CONTACT: LTJG Ryan Wagner, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217, (503) 240–9370.

SUPPLEMENTARY INFORMATION: The safety zones in 33 CFR 165.1315 were established to provide for the safety of vessels in the vicinity of annual fireworks displays on the Willamette River, the Columbia River and the Coos River. Entry into these zones is prohibited during the following enforcement periods unless authorized by the Captain of the Port or his designee:

- The safety zone for the Cinco de Mayo Fireworks Display will be enforced May 7, 2004, from 9:30 p.m. until 10 p.m.
- The safety zone for the Portland Rose Festival Fireworks Display will be enforced June 30, 2004, from 9:50 p.m. until 10:30 p.m.
- The safety zone for the Tri-City Chamber of Commerce Fireworks Display will be enforced July 4, 2004, from 10 p.m. until 10:30 p.m.
- The safety zone for the Cedco Inc. Fireworks Display will be enforced July 3, 2004, from 10 p.m. until 10:30 p.m.
- The safety zone for the Astoria 4th of July Fireworks Display will be enforced July 4, 2004, from 10 p.m. until 10:30 p.m.
- The safety zone for the Oregon Food Bank Blues Festival will be enforced July 4, 2004, from 10 p.m. until 10:30 p.m.
- The safety zone for the Oregon Symphony Concert Fireworks Display will be enforced September 2, 2004, from 9 p.m. until 9:30 p.m.
- The safety zone for the Vancouver Celebrate America Fireworks Display will be enforced October 17, 2004, from 9 p.m. until 9:20 p.m.

The Captain of the Port may be assisted by other Federal, State, or local agencies in enforcing these security zones.

Dated: March 16, 2004.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 04–7112 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0281; FRL–7347–7]

Rhamnolipid Biosurfactant; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the biochemical, rhamnolipid biosurfactant, on all food commodities when applied/used as a fungicide. Jeneil Biosurfactant Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of rhamnolipid biosurfactant.

DATES: This regulation is effective March 31, 2004. Objections and requests for hearings, identified by docket ID number OPP–2003–0281, must be received on or before June 1, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit X. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0281. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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/*. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at *http://gpoaccess.gov/ecfr/*.

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.

II. Background and Statutory Findings

In the **Federal Register** of May 9, 2003 (68 FR 25026) (FRL–7306–3), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e), as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 1F6288) by Jeneil Biosurfactant Company, 400 N. Dekora Woods Boulevard, Saukville, Wisconsin 53080. This notice included a summary of the petition prepared by the petitioner Jeneil Biosurfactant Company. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of rhamnolipid biosurfactant.

III. Risk Assessment

New 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. In determining whether an exemption is safe, the Administrator is directed to take into account the same factors set forth in section 408(b)(2)(C) and (D) for determining whether a tolerance is safe. Section 408(b)(2)(C) of the 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. . . .'' 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.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this

action and considered its validity, completeness, and reliability and the relationship of this information 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.

Rhamnolipid biosurfactant (pc code 110029, CAS number 147858–26–2) has the CAS name decanoic acid, 3-[[6-deoxy-2-O-(6-deoxy-[alpha]-L-mannopyranosyl)-[alpha]-L-mannopyranosyl]oxy]-, 1-(carboxymethyl)octyl ester, mixture with 1-(carboxymethyl)octyl 3-[(6-deoxy-[alpha]-L-mannopyranosyl)oxy]decanoate. The basic composition of the active ingredient consists of a well-known carbohydrate (rhamnose sugar) and fatty acid (hydroxydecanoic acid). The active ingredient is a mixture of two types of rhamnolipid molecules, R1 (RLL) and R2 (RRLL) at a ratio of R2:R1 = 0.7 - 2.0. Chemical name of the rhamnolipid molecules is as follows: Molecule 1 (defined as R1 or RLL): Decanoic acid, 3-[(6-deoxy-[alpha]-L-mannopyranosyl) oxy]-, 1-(carboxymethyl) octyl ester; and molecule 2 (defined as R2 or RRLL): Decanoic acid, 3-[[6-deoxy-2-O-(6-deoxy-[alpha]-L-mannopyranosyl)-[alpha]-L-mannopyranosyl] oxy]-, 1-(carboxymethyl) octyl ester.

Adequate mammalian toxicology data are available and support registration of the product containing the active ingredient rhamnolipid biosurfactant. Rhamnolipid molecules are simple glycolipids consisting of a carbohydrate (rhamnose) ring and a fatty acid (hydroxydecanoic acid) tail. Individually, these molecules are not toxic. Rhamnose is a comparatively rare sugar approved by FDA as a food additive, and fatty acids are ubiquitous in animals and plants and are a major energy source in the body. Consequently, the breakdown products of rhamnolipids are of little toxicological concern. The mode of action of rhamnolipid biosurfactants is a physical action on the plant pathogen, rather than a toxic action. Rhamnolipid biosurfactant products are currently in use as emulsifiers, dispersants, wetting agents, and agricultural adjuvants. There have been no reports of adverse effects from any uses of rhamnolipid biosurfactants to date. The information submitted indicates there is already widespread exposure to rhamnose sugar, fatty acids, and rhamolipid biosurfactants without any reported adverse effects to human health. The acute toxicity studies, in conjunction with data or other information obtained from the open literature and the expected low exposure to humans, demonstrate that no risks to human health are expected from the pesticidal use of rhamnolipid biosurfactant.

A. Acute Toxicology

1. Acute oral toxicity (OPPTS Harmonized Guidline 870.1100; 152-10; MRID 45376702). Male and female rats (5 per sex) were dosed once with 5,000 milligrams/kilograms (mg/kg) and observed for 14 days. The acute oral lethal dose $(LD)_{50}$ was >5,000 mg/kg. The study was acceptable and placed the test material in Toxicity Category IV.

2. Acute dermal toxicity (OPPTS Harmonized Guidline 870.1200; 152-11; MRID 45376703). Male and female rats (5 per sex) were dosed with 5,000 mg/kg for 24 hours and observed for 14 days The acute dermal LD_{50} was >5,000 mg/kg. The study was acceptable and placed the test material in Toxicity Category IV.

3. Acute inhalation toxicity (OPPTS Harmonized Guidline 870.1300; 152-12, MRID 45376704). Male and female rats (5 per sex) were exposed whole-body to a gravimetric concentration of 2.05 mg/liter (L) 9.5% rhamnolipid biosurfactant in water for 4 hours, and observed for 14 days. The lethal concentration $(LC)_{50}$ was >2.05 mg product/L (0.20 mg active ingredient (a.i.)/L). The study was acceptable and placed the test material in Toxicity Category IV.

Other acute toxicology data also reviewed in support of the rhamnolipd biosurfactant registration include the following.

1. Primary eye irritation (OPPTS Harmonized Guidline 870.2400; 152-13; MRID 45376705).

2. Primary eye irritation (OPPTS Harmonized Guidline 870.2400; 152-13; MRID 45376706).

3. Primary eye irritation (OPPTS Harmonized Guidline 870.2400; 152-13; MRID 45376707).

4. Primary dermal irritation (OPPTS Harmonized Guidline 870.2500; 152-14; MRID 45376708).

A data waiver was requested for the following study, and granted by the Agency. Although no study was conducted by the registrant, acceptable information/data was submitted to support the data waiver request.

Dermal sensitization (OPPTS Harmonized Guidline 870.2600; 152-15).

B. Mutagenicity and Developmental Toxicity

The requested waiver was granted by the Agency based on the fact that rhamnolipid biosurfactant is not related to any known mutagens and does not belong to a chemical class of compounds containing known mutagens. Rhamnolipid biosurfactant consists of rhamnose sugar and hydroxydecanoic acid, both of which have food-related uses.

C. Subchronic Toxicity, Immunotoxicity

Requested waivers for 90–day oral toxicity and immunotoxicity were granted by the Agency based on the physical mode of action of the active ingredient; the lack of acute oral, dermal, and inhalation toxicity; and the innocuous nature of the potential breakdown products of rhamnolipid biosurfactants.

D. Chronic Exposure and Oncogenicity Assessment

Repeated-dose studies are conditionally required if the potential for adverse chronic effects are indicated based on: (1) The subchronic effect levels established in Tier I subchronic oral, inhalation, or dermal studies, (2) the pesticide use pattern, or (3) the frequency and the level of repeated human exposure that is expected. Oncogenicity studies are required only if the active ingredient or any of its metabolites, degradation products, or impurities produce in Tier I studies any morphologic effects in any organ that potentially could lead to neoplastic changes. None of the results of the submitted studies triggered the need for chronic exposure or oncogenicity testing.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food*. There is a great likelihood of exposure in the normal human diet to rhamnolipid biosurfactant's components for most, if not all individuals, including infants and children. Rhamnolipid biosurfactant constituents, rhamnose sugar and fatty acid, are normal parts of the human diet. To date, there have been no known reports of any hypersensitivity incidents from users of the surfactant. Even if exposure increased due to pesticidal use of rhamnolipid biosurfactant, given the low toxicity of the components (or of the surfactant) and the widespread dietary exposure to the components, the

Agency believes the risk associated with dietary exposure to the biosurfactant by the oral route would be low to non-existent.

2. *Drinking water exposure*. Because rhamnolipid biosurfactant has low acute mammalian toxicity, the constituent rhamnose sugar is a food additive, and constituent fatty acids are ubiquitous in plant and animals, no risk is anticipated should exposure occur through drinking water.

B. Other Non-Occupational Exposure

The potential for non-dietary exposure to rhamnolipid biosurfactnt residues for the general population, including infants and children, is unlikely because potential use sites are horticultural and agricultural crops. Rhamnolipid biosurfactant's constituent carbohydrate (rhamnose sugar) and fatty acid (hydroxydecanoic acid) are not considered toxic; rhamnose sugar is a food additive and fatty acids, ubiquitous in plants and animals, are a major energy source in the body. Rhamnolipid biosurfactant's toxicity has been determined to be very low through the oral, dermal and inhalation routes. Therefore, while there exists a great likelihood of prior exposure to rhamnolipid biosurfactant's components, any risk from increased exposure due to the proposed product would be negligible.

VI. 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.''

EPA does not have, at this time, available data to determine whether rhamnolipid biosurfactant has a common mechanism of toxicity with other substances. 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 rhamnolipid biosurfactant and any other substances and rhamnolipid biosurfactant does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that rhamnolipid biosurfactant 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/*.

VII. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population*. The Agency has determined that there is reasonable certainty that no harm will result from aggregate exposure to residues of rhamnolipid biosurfactant to the U.S. population. This includes all anticipated dietary exposures and other non-occupational exposures for which there is reliable information. The Agency arrived at this conclusion based on the anticipated low exposure estimates from its pesticidal use; the low mammalian toxicity of rhamnolipid biosurfactant; and the already widespread human exposure to rhamolipid biosurfactant constituents, rhamnose sugar and hexadecanoic acid, without any reported adverse effects to human health.

2. *Infants and children*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure for infants and children in the case of threshold effects unless the Agency determines, based on reliable data, that a different margin is safe. Margins of exposure are referred to as uncertainty or safety factors, and are used to account for potential prenatal and postnatal toxicity and any lack of completeness of the data base. Based on all the reliable available information the Agency reviewed on rhamnolipid biosurfactant, including that showing a lack of threshold effects, the Agency concluded that the additional margin of safety is not necessary to protect infants and children and that not adding any additional margin of safety will be safe for infants and children.

VIII. Other Considerations

A. Analytical Method(s)

The Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation for the reasons stated above, including low toxicity and low exposure from the pesticidal use of rhamnolipid biosurfactant. For the same reasons, the Agency concludes that an analytical method is not required for enforcement purposes for rhamnolipid biosurfactant.

B. Codex Maximum Residue Level

There are no CODEX maximum residue levels for rhamnolipid biosurfactant.

IX. Conclusions

Based on the toxicology information/data submitted and other information available to the Agency, there is a reasonable certainty that no harm will result from aggregate exposure of residues of rhamnolipid biosurfactant to the U.S. population, including infants and children, under reasonably foreseeable circumstances, when the biochemical pesticide is used in accordance with good agricultural practices. This includes all anticipated dietary exposures and all other non-occupational exposures for which there is reliable information. The Agency has arrived at this conclusion based on the information/data submitted (and publically available) demonstrating no toxicity. As a result, EPA is establishing an exemption from the tolerance requirements pursuant to FFDCA 408(c) and (d) for residues of rhamnolipid biosurfactant in or on all food commodities.

X. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the 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, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the 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 the FFDCA, as was provided in the old sections 408 and 409 of the 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–2003–0281 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 June 1, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. 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 (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit X.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0281, 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 Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

XI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the 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 the FFDCA, 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. 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 the 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.

XII. 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: March 22, 2004.

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), 346(a) and 371.

■ 2. Section 180.1245 is added to subpart D to read as follows:

§ 180.1245 Rhamnolipid biosurfactant; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of rhamnolipid biosurfactant when used in accordance with good agricultural practices as a fungicide in or on all food commodities.

[FR Doc. 04–6933 Filed 3–30–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0052; FRL–7349–3]

Zoxamide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of zoxamide in or on ginseng. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on ginseng. This regulation establishes a maximum permissible level for residues of zoxamide in this food commodity. The tolerance will expire and is revoked on December 31, 2006.

DATES: This regulation is effective March 31, 2004. Objections and requests for hearings, identified by docket ID number OPP–2004–0052, must be received on or before June 1, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address:*Madden.Barbara@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 Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0052. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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/*. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at *http://ecfr.gpoaccess.gov/ecfr/*.

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. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the fungicide zoxamide (3,5-dichloro-N-(3-chloro-1-ethyl-1-methyl-2-oxopropyl)-4-methylbenzamide), in or on ginseng at 0.06 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2006. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18-related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the 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 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. Section 408(b)(2)(C) of the 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. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Zoxamide on Ginseng and FFDCA Tolerances

Leaf and stem blight are diseases caused by pathogens for *Alternaria* and *Phytophthora*. If left unchecked, their damage to growing ginseng is seen in root rot, premature defoliation, and loss in root yields (ginseng is a root crop). Total yield loss is likely. The ginseng industry maintains that the alternative pesticide and cultural control means are insufficient. Although there are, in fact, pesticides that are labeled for these problems on ginseng, the alternatives are not effective or have a resistance issue in regards to the pathogens. Azoxystrobin was also labeled under section 3 for ginseng in 2000, however, its use is limited to six treatments per season, in order to preserve its efficacy. EPA has authorized under FIFRA section 18 the use of zoxamide on ginseng for control of *Alternaria* and *Phytophthora* in Michigan and Wisconsin. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of zoxamide in or on ginseng. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2006, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on ginseng after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether zoxamide meets EPA's registration requirements for use on ginseng or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of zoxamide by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Michigan and Wisconsin to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for zoxamide, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

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 the 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).

Consistent with section 408(b)(2)(D) of the 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 zoxamide and to make a determination on aggregate exposure,

consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for residues of zoxamide in or on ginseng at 0.06 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

Tolerances have been established for residues of zoxamide in or on grapes, potatoes, tomatoes and the cucurbit vegetable group 9 (40 CFR 180.567). 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. A summary of the toxicological dose and endpoints for zoxamide for use in human risk assessment is discussed in Unit III.A. of the **Federal Register** of April 11, 2001 (66 FR 18725) (FRL–6774–8).

Briefly, an endpoint for acute dietary exposures was not identified since no effects were observed in oral toxicity studies that could be attributable to a single dose. For chronic dietary exposures, the chronic reference dose (cRfD) is 0.48 milligrams/kilogram/day (mg/kg/day). The FQPA safety factor was removed (i.e., reduced to 1x) for zoxamide, because there is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure; a developmental neurotoxicity study conducted with zoxamide is not required. Therefore, the chronic population adjusted dose (cPAD) is 0.48 mg/kg/day. Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Zoxamide is not registered for use on any sites that would result in residential exposure. Therefore, short-term and intermediate-term aggregate risks were not assessed. Zoxamide has been classified as not likely to be carcinogenic to humans. Therefore, the only exposure scenario the Agency assessed is for chronic (non-cancer) exposures to zoxamide.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.567) for the combined residues of zoxamide and its metabolites 3,5-dichloro-1,4-benzenedicarboxylic acid (RH-1455 and RH-141455) and 3,5-dichloro-4-hydroxymethylbenzoic acid (RH-1452 and RH-141452) in or on potatoes, tomatoes and the cucurbit vegetable group 9 and for only residues of zoxamide on grapes. Risk assessments were conducted by EPA to assess dietary exposures from zoxamide 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. No acute dietary endpoint was identified since no effects were observed in oral toxicity studies that could be attributable to a single dose. Therefore, acute dietary risk assessments were not performed.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment, the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCIDT, Version 1.3) analysis evaluated the individual food consumption 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: Published and proposed tolerances level residues were used. Default processing factors and 100% crop treated were assumed for all commodities.

iii. *Cancer.* Zoxamide has been classified as not likely to be carcinogenic to humans. Therefore, risk assessments to estimate risk from cancer were not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for zoxamide 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 zoxamide.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and screening concentration in ground water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier I model) before using PRZM/EXAMS (a Tier II 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 coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever 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) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to zoxamide, they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of zoxamide for chronic exposures are estimated to be 21.8 parts per billion (ppb) for surface water and 2.1 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). Zoxamide is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to 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.''

EPA does not have, at this time, available data to determine whether zoxamide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, zoxamide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that zoxamide 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 final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general*. Section 408 of the 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 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 margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Conclusion*. There is a complete toxicity data base for zoxamide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10x safety factor to protect infants and children should be removed. The FQPA factor is removed because:

i. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure;

ii. A developmental neurotoxicity study conducted with zoxamide is not required;

iii. The dietary (food and drinking water) exposure assessments will not underestimate the potential exposures for infants and children. Additionally, there are currently no residential uses.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational 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 USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

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

1. *Acute risk*. No acute dietary endpoint was identified since no effects were observed in oral toxicity studies that could be attributable to a single dose. Therefore, acute dietary risk assessments were not performed.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to zoxamide from food will utilize 1% of the cPAD for the U.S. population, 1% of the cPAD for all infants (<1 year old), and 4% of the cPAD for children 1–2 years old, the subpopulation at greatest exposure. There are no residential uses for zoxamide. In addition, despite the potential for chronic dietary exposure to zoxamide in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of zoxamide in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 1 of this unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ZOXAMIDE

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.48	1%	21.8	2.1	16,600
All Infants (<1 year old)	0.48	1%	21.8	2.1	4,600
Children (1–6 years old)	0.48	4%	21.8	2.1	4,600

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

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Zoxamide 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 were previously addressed.

5. *Aggregate cancer risk for U.S. population*. Zoxamide has been classified as not likely to be carcinogenic to humans. Therefore, risk assessments to estimate risk from cancer were not performed.

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 zoxamide residues.

V. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of zoxamide in/on ginseng. Therefore, no compatibility issues exist with regard to the proposed U.S. ginseng time-limited tolerance.

VI. Conclusion

Therefore, the tolerance is established for residues of zoxamide (3,5-dichloro-N-(3-chloro-1-ethyl-1-methyl-2-oxopropyl)-4-methylbenzamide), in or on ginseng at 0.06 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the 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, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the 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 the FFDCA, as was provided in the old sections 408 and 409 of the 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–2004–0052 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 June 1, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. 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 (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2004–0052, 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 Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of

the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. 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 FIFRA section 18 exemption under section 408 of the 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 the 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.

IX. 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: March 19, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.567 is amended by adding text to paragraph (b) to read as follows:

§ 180.567 Zoxamide.

* * * * *

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for residues of the fungicide zoxamide (3,5-dichloro-N-(3-chloro-1-ethyl-1-methyl-2-oxopropyl)-4-methylbenzamide) in connection with use of the pesticide under a section 18 emergency exemption granted by EPA. The tolerance will expire and is revoked on the date specified in the following table.

Commodity	Parts per million	Revocation date
Ginseng	0.06	12/31/06

* * * * *

[FR Doc. 04–6932 Filed 3–30–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0035; FRL–7350–8]

Time-Limited Exemption from Requirement of a Tolerance; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* VIP3A insect control protein as expressed in event COT102 and the genetic material necessary for its production on cotton when applied/used as a plant-incorporated protectant. Syngenta Seeds submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* VIP3A insect control protein as expressed in event COT102 and the genetic material necessary for its production.

DATES: This regulation is effective March 31, 2004. Objections and requests for hearings, identified by docket ID number OPP–2004–0035, must be received on or before June 1, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@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 catergories and entities may include, but are not limited to:

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0035. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through 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/*.

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.

II. Background and Statutory Findings

In the **Federal Register** of November 26, 2003 (68 FR 66422) (FRL–7332–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e), as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide tolerance petition (3F6756) by Syngenta Seeds, Incorporated, P.O. Box 12257, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257. This notice included a summary of the petition prepared by the petitioner Syngenta Seeds, Incorporated. Comments were received from grower groups, and the National Cotton Council supporting this petition.

The petition requested that 40 CFR 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* VIP3A Insect Control Protein as Expressed in Event COT102 and the genetic material necessary for its production.

III. Risk Assessment

New 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 tolerance 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. Section 408 of the FFDCA (b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' 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.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information 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.

Data have been submitted demonstrating the lack of mammalian toxicity at high levels of exposure to the pure VIP3A proteins. This is similar to the Agency position regarding toxicity of *Bacillus thuringiensis* products from which this vegetative-insecticidal protein is derived. The requirement for residue data for the derivative protein is consistent with residue data requirements in 40 CFR 158.740(b)(2)(i). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (Tiers II and III). The acute oral toxicity data submitted support the prediction that the VIP3A protein would be non-toxic to humans. Male and female mice (11 of each) were dosed with the test material 5,050 milligrams/kilogram/body weight (mg/kg/bwt). Outward clinical signs were observed and body weights recorded throughout the 14–day study. No mortality or clinical signs attributed to the test substance were noted during the study. When proteins are toxic, they are known to act via acute mechanisms and at very low doses (Sjoblad, R.D., J.T. McClintock and R. Engler (1992)). Therefore, since no effects were shown to be caused by the vegetative-insecticidal protein, even at relatively high does levels, vegetative-insecticidal proteins are not considered toxic. The amino acid sequence of VIP3A is not homologous to that of any known or putative allergens described in public data bases. Since VIP3A is a protein, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, may be glycosylated and present at high concentrations in the food.

Data have been submitted that demonstrate that the VIP3A protein appears to be present in multiple commercial formulations of *Bt* microbial insecticides at concentrations estimated to be ca. 0.4, 32 parts per million (ppm). This conclusion is based on the presence of proteins of the appropriate molecular weight and immunoreactivity (by SDS-PAGE and western blot), and quantitation by ELISA. Therefore, it is conceivable that small quantities of VIP3A protein are present in the food supply because VIP3A (or a very similar protein, based on size and immunoreactivity) appears to be present in currently registered insecticide products used on food crops, including fresh market produce. These commercial *Bt* products are all exempt from food and feed tolerances.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the vegetative-insecticidal protein chemical residue, and exposure from non-occupational sources.

1. *Food*. Oral exposure, at very low levels, may occur from ingestion of processed cotton seed by products. However, a lack of mammalian toxicity and the digestibility of the vegetative-insecticidal protein have been demonstrated. The use sites of the VIP3A proteins are all agricultural for control of insects.

2. *Drinking water exposure*. Oral exposure, at very low levels, may occur from drinking water. However, a lack of mammalian toxicity and the digestibility of the vegetative-insecticidal protein have been demonstrated. The use sites for the VIP3A proteins are all agricultural for control of insects.

B. Other Non-Occupational Exposure

1. *Dermal exposure*. Exposure via the skin is not likely since the vegetative-insecticidal protein is contained within plant cells, which essentially eliminates this exposure route or reduces these exposure routes to negligible.

2. *Inhalation exposure*. Exposure via inhalation is not likely since the vegetative-insecticidal protein is contained within plant cells, which essentially eliminates this exposure route or reduces this exposure route to negligible.

VI. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to the VIP3A protein, it is reasonable to conclude that there are no cumulative effects for this vegetative-insecticidal protein.

VII. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(B)(2)(C) also 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 unless EPA determines that a different margin of safety (MOS) will be safe for infants and children. In this instance, based on the available data, the Agency concludes that there is a finding of no toxicity for VIP3A proteins and the genetic material necessary for their production. Thus, there are no threshold effects of concern, and as a result, the provision requiring an additional MOS does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

VIII. Other Considerations

A. Endocrine Disruptors

The safety data submitted show no adverse effects in mammals, even at very high dose levels, and support the prediction that the VIP3A protein would be non-toxic to humans. Therefore no effects on the immune or endocrine systems are expected.

B. Analytical Method(s)

Validated methods for extraction and direct ELISA analysis of VIP3A in cotton seed have been submitted and found acceptable by the Agency.

C. Codex Maximum Residue Level

No Codex maximum residue levels exist for the vegetative-insecticidal protein *Bacillus thuringiensis* VIP3A protein and genetic material necessary for its production in cotton.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. 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, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the 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 the FFDCA, as was provided in the old sections 408 and 409 of the 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–2004–0035 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 June 1, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. 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 (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2004–0035, 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 Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

X. Statutory and Executive Order Reviews

This final rule establishes a time-limited exemption from the tolerance requirement under section 408(d) of the 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 the FFDCA, 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. 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 the 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. This time-limited exemption from the requirement of a tolerance expires May 1, 2005.

XI. 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: March 18, 2004.

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 180.1247 is added to subpart D to read as follows:

§ 180.1247 Bacillus thuringiensis VIP3A protein and the genetic material necessary for its production in cotton is exempt from the requirement of a tolerance.

Bacillus thuringiensis VIP3A protein and the genetic material necessary for its production in cotton is exempt from the requirement of a tolerance when used as a vegetative-insecticidal protein in the food and feed commodities, cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts. Genetic material necessary for its production means the genetic material which comprise genetic encoding the VIP3A protein and its regulatory regions. Regulatory regions are the genetic material, such as promoters, terminators, and enhancers, that control expression of the genetic material encoding the VIP3A protein. This time-limited exemption from the requirement of a tolerance expires May 1, 2005.

[FR Doc. 04–6931 Filed 3–30–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0415; FRL–7350–5]

Bacillus Thuringiensis Cry3Bb1; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production in corn on field corn, sweet corn, and popcorn when applied/used as a plant-incorporated protectant. Monsanto Company, 800 North Lindberg Blvd., St. Louis, Missouri 63167 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production in corn.

DATES: This regulation is effective March 31, 2004. Objections and requests

for hearings, identified by docket ID number OPP–2003–0415, must be received on or before June 1, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0415. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.gpoaccess.gov/ecfr/*, a beta site currently under development.

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.

II. Background and Statutory Findings

In the **Federal Register** of October 22, 2003 (68 FR 60371) (FRL–7328–4), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7F4888) by Monsanto Company, 800 North Lindberg Blvd., St. Louis, Missouri 63167. This notice included a summary of the petition prepared by the petitioner Monsanto. There were two comments received in response to the notice of filing. One comment was from a private citizen who opposed the granting of the tolerance exemption and felt the EPA was not fulfilling its duty of protecting public health and the environment.

The second comment was from Valent BioSciences Corporation, a producer of microbial *Bacillus thuringiensis* pesticide products. Valent maintained that the basis of the safety assessment for the Cry3Bb1 protein is the expression of Cry proteins in *Bacillus thuringiensis* microbial pesticides that have been safely used for over 40 years. The commenter contends that the strain of *B. thuringiensis* subspecies *kumamotoensis* has never been registered as a microbial pesticide and therefore Cry3Bb1 does not deserve to benefit from the implied 40 years of safe use argument.

The commenter also states that any new strain of *B.thuringiensis*, such as *B. thuringiensis* subspecies *kumamotoensis*, would be required to demonstrate safety through new data on mammalian toxicology and pathogenicity for non-target organisms.

The commenter also raised questions concerning whether the fact that the Cry3Bb1 protein subject to the tolerance determination is a variant of the natural Cry3Bb1 endotoxin that has been engineered specifically to enhance activity against the corn rootworm larvae means that the binding characteristics have been altered.

The results of toxicity tests indicate a toxicity category III designation. The commenter is concerned about these toxicity results reflecting negatively on the currently registered microbial Bt use.

Finally, the commenter is concerned whether the validated ELISA method for detecting Cry3Bb1 protein would distinguish the variant from the natural toxins.

In response to the first commentor, EPA takes seriously its duty to protect human health and the environment. Specifically, under the FFDCA, EPA must make a finding that there is a reasonable certainty of no harm from the granting of the proposed tolerance exemption. EPA is making such a finding and herein sets forth the bases for this finding.

Regarding the comments from Valent BioScience, the basis of the Cry3Bb1 tolerance determination is toxicology data that has been generated separately from any registered microbial *B. thuringiensis*. While EPA acknowledges that it has made reference to the safe use of microbial formulations in both the 2000 reassessment of the *B. thuringiensis*-based PIPs and several registered PIPs, all of these PIP proteins have had extensive mammalian safety data generated for the expressed protein itself. Therefore, Monsanto's reference in the notice of filing to the safe use of microbial *B. thuringiensis*, while cogent to the safety assessment as useful generic information on previous exposure to the Cry proteins, is not the basis of the safety finding to support a tolerance exemption.

The fact that all three variants of Cry3Bb1 protein [see Unit. III.] have been tested for toxicity and allergenicity indicate that the safety of these three variants at least, is similar for mammalian species. The indication of these test results is that minor modifications due to protein engineering for enhanced target activity does not necessarily alter non-target toxicity for mammalian species. This supposition does not mean that all protein engineering modifications would result in equally benign results for non-target species. No insecticidal

activity was seen in specific insect species, including six species of coleopteran and two species of lepidopteran pests with the variant Cry3Bb1 protein suggesting that the host range activity is limited. There are also results from bioassays with two of the variant Cry3Bb1 proteins against two sensitive coleopteran species (*Leptinotarsa decemlineata* and *Diabrotica virgifera*) that indicates that there are not significant changes in the activity between the two variants.

The category III designation for the results of the acute oral toxicity test using purified Cry3Bb1 toxin do not represent any change from the results that would be seen with microbial preparations. The category classification is due to the limitation of dose volume for the test animal rather than any sign of toxicity in the test or concern for possible exposure. The oral tests were done with purified protein doses that are orders of magnitude higher than would be seen in any microbial *B. thuringiensis* products. Actual exposure to Cry proteins in PIP products are not expected to represent any hazard of oral toxicity given the results seen in these tests.

Regarding the analytical method, there are features of the assay procedures that could lessen the likelihood of recognizing a microbial source of Cry3Bb1 δ-endotoxin. The microbial *B. thuringiensis* products are known to be rapidly weathered away by environmental conditions like rain and UV radiation lessening the possibility of a microbial product being present. In addition, if a positive result was obtained for the presence of Cry3Bb1 protein in an unexpected source, the test could be confirmed by washing the suspect crop then retesting. Any surface contamination by residues from treatment with a *B. thuringiensis* product would be removed. Any subsequent positive finding should be a true Cry3Bb1 detection since it would represent an internal tissue detection which could be reasonably assumed to result only from plant expression of the Cry3Bb1 gene.

The petition requested that 40 CFR part 180 be amended by establishing an temporary exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production in corn.

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.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information 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.

Data have been submitted demonstrating the lack of mammalian toxicity at high levels of exposure to the pure Cry3Bb1 proteins. These data demonstrate the safety of the products at levels well above maximum possible exposure levels that are reasonably anticipated in the crops. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived (See 40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (Tiers II and III).

Three acute oral studies were submitted for Cry3Bb1 proteins. These studies were done with three variants of the Cry3Bb1 protein engineered with either four or five internal amino acid sequence changes to enhance activity against the corn rootworm. The acute oral toxicity data submitted support the prediction that the Cry3Bb1 protein would be non-toxic to humans. Male and female mice (10 of each) were dosed with 36, 396, or 3,780 milligrams/kilograms bodyweight (mg/kg bwt) of Cry3Bb1 protein for one variant. The mice were dosed with 38.7, 419, or 2,980 mg/kg bwt of Cry3Bb1 protein for the second variant. The mice were dosed with 300, 900, or 2,700 mg/kg bwt of Cry3Bb1 protein for the third variant. In one study, two animals in the high dose group died within a day of dosing. These animals both had signs of trauma probably due to dose administration (i.e., lung perforation or severe discoloration of lung, stomach, brain and small intestine). No clinical signs were observed in the surviving animals and body weight gains were recorded throughout the 14-day study for the remaining animals. Gross necropsies performed at the end of the study indicated no findings of toxicity attributed to exposure to the test substance in any of the three studies. No other mortality or clinical signs attributed to the test substance were noted during either study.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' Regulatory Toxicology and Pharmacology 15, 3-9 (1992)). Therefore, since no effects were shown to be caused by the plant-incorporated protectants, even at relatively high dose levels, the Cry3Bb1 proteins are not considered toxic. Further, amino acid sequence comparisons showed no similarity between Cry3Bb1 proteins to known toxic proteins available in public protein data bases.

Since Cry3Bb1 are proteins, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, may be glycosylated and present at high concentrations in the food.

Data have been submitted that demonstrate that the Cry3Bb1 protein is

rapidly degraded by gastric fluid *in vitro*. In a solution of simulated gastric fluid (pH 1.2 - U.S. Pharmacopeia), complete degradation of detectable Cry3Bb1 protein occurred within 30 seconds. Insect bioassay data indicated that the protein loss insecticidal activity within 2 minutes of incubation in SGF. Incubation in simulated intestinal fluid resulted in a ~59 kDa protein digestion product. A comparison of amino acid sequences of known allergens uncovered no evidence of any homology with Cry3Bb1, even at the level of 8 contiguous amino acids residues.

The potential for the Cry3Bb1 proteins to be food allergens is minimal. Regarding toxicity to the immune system, the acute oral toxicity data submitted support the prediction that the Cry3Bb1 proteins would be non-toxic to humans. As noted above, toxic proteins typically act as acute toxins with low dose levels. Therefore, since no effects were shown to be caused by the plant-incorporated protectants, even at relatively high dose levels, the Cry3Bb1 proteins are not considered toxic.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-incorporated protectant chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, potentially, drinking water. However a lack of mammalian toxicity and the digestibility of the plant-incorporated protectants have been demonstrated. The use sites for the Cry3Bb1 proteins are all agricultural for control of insects. Therefore, exposure via residential or lawn use to infants and children is not expected. Even if negligible exposure should occur, the Agency concludes that such exposure would present no risk due to the lack of toxicity demonstrated for the Cry3Bb1 proteins.

V. Cumulative Effects

Pursuant to section 408(b)(2)(D)(v) of FFDCA, EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to these plant-incorporated protectants, we conclude that there are no cumulative effects for the Cry3Bb1 proteins.

VI. Determination of Safety for U.S. Population, Infants and Children

A. Toxicity and Allergenicity Conclusions

The data submitted and cited regarding potential health effects for the Cry3Bb1 proteins include the characterization of the expressed Cry3Bb1 protein in corn, as well as the acute oral toxicity, and *in vitro* digestibility of the proteins. The results of these studies were determined applicable to evaluate human risk and the validity, completeness, and reliability of the available data from the studies were considered.

Adequate information was submitted to show that the Cry3Bb1 test material derived from microbial cultures was biochemically and, functionally similar to the protein produced by the plant-incorporated protectant ingredients in corn. Production of microbially produced protein was chosen in order to obtain sufficient material for testing.

The acute oral toxicity data submitted supports the prediction that the Cry3Bb1 proteins would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' Regulatory Toxicology and Pharmacology 15, 3-9 (1992)). Since no effects were shown to be caused by Cry3Bb1, even at relatively high dose levels (3,780 mg Cry3Bb1/kg bwt), the Cry3Bb1 proteins are not considered toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived. See 40 CFR 158.740(b)(2)(i). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study to verify the observed effects and clarify the source of these effects (Tiers II and III).

Cry3Bb1 residue chemistry data were not required for a human health effects assessment of the subject plant-incorporated protectant ingredients because of the lack of mammalian toxicity.

Both available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children); and safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives, are generally recognized as appropriate for the use of animal experimentation data were not evaluated. The lack of mammalian toxicity at high levels of exposure to the Cry3Bb1 proteins demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

The genetic material necessary for the production of the plant-incorporated protectant active ingredients are the nucleic acids (DNA, RNA) which comprise genetic material encoding these proteins and their regulatory regions. The genetic material (DNA, RNA) necessary for the production of Cry3Bb1 proteins in corn have been exempted under the blanket exemption for all nucleic acids (40 CFR 174.175).

B. Infants and Children Risk Conclusions

Section 408(b)(2)(C) of FFDCA provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity.

In addition, section 408(b)(2)(C) of FFDCA also provides that EPA shall apply an additional ten-fold 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 unless EPA determines that a different margin of safety will be safe for infants and children.

In this instance, based on all the available information, the Agency concludes that there is a finding of no

toxicity for the Cry3Bb1 proteins and the genetic material necessary for their production. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

C. Overall Safety Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the Cry3Bb1 proteins and the genetic material necessary for their production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed for the plant-incorporated protectants.

VII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredients are proteins, derived from sources that are not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of these plant-incorporated protectants at this time.

B. Analytical Method(s)

Validated methods for extraction and direct ELISA analysis of Cry3Bb1 in corn grain have been submitted and found acceptable by the Agency.

C. Codex Maximum Residue Level

No Codex maximum residue levels exists for the plant-incorporated protectants *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production in corn.

VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the 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, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the 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 the FFDCA, as was provided in the old sections 408 and 409 of the 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–2003–0415 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 June 1, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. 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 (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0415, 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 Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the 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 the FFDCA, 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. 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 the 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.

X. 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: March 18, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention 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 180.1214 in subpart D is revised to read as follows:

§ 180.1214 Bacillus thuringiensis Cry3Bb1 protein and the genetic material necessary for its production in corn; exemption from the requirement of a tolerance.

Bacillus thuringiensis Cry3Bb1 protein and the genetic material necessary for its production in corn are exempt from the requirement of a tolerance when used as plant-incorporated protectants in the food and feed commodities of field corn, sweet corn and popcorn. Genetic material necessary for its production means the genetic material which comprise genetic material encoding the Cry3Bb1 protein and its regulatory regions. Regulatory regions are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the Cry3Bb1 protein.

[FR Doc. 04–6930 Filed 3–30–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0007; FRL–7242–3]

Bacillus Thuringiensis CryIF Protein in Cotton; Extension of Temporary Exemption From Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis var. Aizawai* strain PS811 CryIF insecticidal protein in cotton when applied/used as a plant incorporated protectant. Dow AgroSciences, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting the temporary/tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis var. Aizawai* strain PS811 CryIF insecticidal protein in cotton. The temporary tolerance exemption will expire on May 1, 2005.

DATES: This regulation is effective March 31, 2004. Objections and requests for hearings, identified by docket ID number OPP–2004–0007, must be received by EPA on or before June 1, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@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 manufacture. Potentially affected categories and entities may include, but are not limited to

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0007. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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/*. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

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. Background and Statutory Findings

In the **Federal Register** of October 9, 2002 (67 FR 62971) (FRL–7196–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 2G6494) by Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. This notice included a summary of the petition prepared by the petitioner Dow AgroSciences, LLC. Comments were received in response to the notice of filing. These comments were from grower groups, state agencies, and academia. All comments were in support of the registration of Dow AgroSciences' stacked gene plant-incorporated protectant.

A one year experimental use permit was issued on April 15, 2003 for CryIAc/CryIF in cotton. On April 30, 2003 (68 FR 23073) (FRL–7302–4), a temporary exemption from the requirement of a tolerance (40 CFR 180.1227) was granted for *Bacillus thuringiensis var. Aizawai* strain PS811 CryIF insecticidal protein in cotton. This tolerance exemption will expire on May 1, 2004. Dow AgroSciences, petitioned the Agency for an amended/extension for the CryIAc/CryIF EUP and the related temporary exemption from the requirement of a tolerance for the 2004–2005 planting season.

New 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. Section 408(b)(2)(C) of the 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 . . . .'' 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.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information 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.

Data were submitted, reviewed, and determined acceptable for product characterization of Cry1F expressed in cotton (construct pAGM281). Adequate product characterization data also were submitted to demonstrate that the Cry1F protein expressed in or on cotton and Cry1F protein expressed in or on corn were the same protein (Ref. 2). The registrant requested that the data submitted for corn (construct PHI 8999) be used to support the acute oral toxicity, *in vitro* digestibility, and heat stability studies for Cry1F protein expressed in or on cotton based on the substantial similarity to Cry1F protein expressed in corn which is already exempt from the requirement of a tolerance (40 CFR 180.1217). EPA reviewed the product characterization data for both Cry1F expressed in or on cotton and corn and determined that the Cry1F proteins are the same. Therefore, EPA has concluded that the data which supported the tolerance exemption for Cry1F and its genetic material necessary for its production in corn can also support Cry1F and its genetic material necessary for its production in or on cotton.

Adequate data also was submitted to demonstrate that the Cry1F test material derived from microbial cultures was biochemically and, functionally similar to the protein produced by the plant-incorporated protectant expressed in cotton (Ref. 2). Production of microbially-produced protein was chosen in order to obtain sufficient material for testing and because a diet of only cotton seed would not provide an adequate diet for test animals. The FIFRA Scientific Advisory Panel has supported this approach. See Mammalian Toxicity Assessment Guidelines for Protein Plant Pesticides (SAP Report No. 2000–03B, September 28, 2000) at *http://www.epa.gov/scipoly/sap/2000/June/finbtmamtox.pdf.*

Given that the Cry1F protein produced in corn and cotton have been determined to be the same protein, EPA has determined that the acute oral toxicity (MRID numbers 446911–01 and 450201–18), heat stability (MRID numbers 452748–01 and 449717–01), and *in vitro* digestibility (MRID number 447149–03) studies which support 40 CFR 180.1217 also support this exemption from the requirement of a tolerance. Although Cry1F expression level data were required for an environmental fate and effects assessment, residue chemistry data were not required for a human health effects assessment of the subject plant-incorporated protectant ingredients because of the lack of mammalian toxicity.

Data were submitted and reviewed which demonstrate the lack of mammalian toxicity at high levels of exposure to the pure Cry1F protein (Ref. 3). These data adequately demonstrate the safety of the Cry1F protein at levels well above maximum possible exposure levels that are reasonably anticipated in the cotton crops (Ref. 2). This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived. See 40 CFR 158.740(b)(2)(i).

For microbial products, further toxicity testing and residue data are riggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (Tiers II and III). Refer to the *Bacillus thuringiensis* Plant-Incorporated Protectants Reassessment Biopesticide Regulatory Action Document (BRAD) dated October 15, 2001 (Ref. 3).

The acute oral toxicity data (MRID numbers 446911–01 and 450201–18) submitted support the prediction that the Cry1F protein is non-toxic to humans. Male and female mice (5 of each) were dosed with 15% (w/v) of the test substance, which consisted of *Bacillus thuringiensis var. aizawai* Cry1F protein at a net concentration of 11.4%. Two doses were administered approximately an hour apart to achieve the dose totaling 33.7 milliliter/kilogram (mL/kg) body weight. Outward clinical signs and body weights were observed and recorded throughout the 14–day study. Gross necropsies performed at the end of the study indicated no findings of toxicity. No mortality or clinical signs were noted during the study. A lethal dose $(LD)_{50}$ was estimated at greater than 5,050 milligrams (mg)/kg body weight of this microbially produced test material. The actual dose administered contained 576 mg Cry1F protein/kg body weight. At this dose, no LD_{50} was demonstrated as no toxicity was observed. Cry1F cotton seeds contain 0.0017 to 0.0034 mg of Cry1F/gram of cotton tissue which is a much lower level than the highest no observable effect level.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Ref. 1). Therefore, since no effects were shown to be caused by the plant-incorporated protectant, even at relatively high dose levels, the Cry1F protein is not considered toxic. Further, amino acid sequence comparisons showed no similarity between Cry1F protein to known toxic proteins available in public protein data bases.

Since Cry1F is a protein, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases may be glycosylated and present at high concentrations in the food (Ref. 3). Data were submitted and reviewed, and these data demonstrate that the Cry1F protein is rapidly degraded by gastric fluid *in vitro* and is non-glycosylated. In a solution of Cry1F: Pepsin at a molar ratio of 1:100, complete degradation of Cry1F to amino acids and small peptides occurred in 5 minutes. A heat lability study demonstrated the loss of bioactivity of Cry1F protein to neonate tobacco budworm larvae after 30 minutes at 75°C. Studies submitted to EPA using laboratory animals have not indicated any potential for allergic reactions to *Bacillus thuringiensis* or its components, including the delta-endotoxin of the crystal protein. Additionally, a comparison of amino acid sequences of known allergens uncovered no evidence of any homology with Cry1F, even at the level of eight contiguous amino acids residues. The potential for the Cry1F protein to be a food allergen is minimal (Ref. 2).

Regarding toxicity to the immune system, the acute oral toxicity data submitted support the prediction that the Cry1F proteins are non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Ref. 1). Therefore, since no effects were shown to be caused by the plant-incorporated protectant, even at relatively high dose levels, the Cry1F protein is not considered toxic.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or

buildings (residential and other indoor uses).

Dietary exposure. The Agency has considered the product characterization data showing expression levels of Cry1F protein in cotton seed exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-incorporated protectants' chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. Oral exposure, at very low levels, may occur from ingestion of processed cottonseed oils and, potentially, drinking water. However, a lack of mammalian toxicity and the digestibility of the plant-incorporated protectants have been demonstrated. The use sites for the Cry1F protein are all agricultural for control of insects. Therefore, exposure via residential or lawn use to infants and children is not expected. Even if negligible exposure should occur, the Agency concludes that such exposure would present no risk due to the lack of toxicity demonstrated for the Cry1F protein. Refer to the *Bacillus thuringiensis* Reassessment BRAD dated October 15, 2001.

V. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to these plant-incorporated protectants, EPA concludes that there are no cumulative effects for the Cry1F protein.

VI. Determination of Safety for U.S. Population, Infants and Children

A. Toxicity and Allergenicity Conclusions

The product characterization data are acceptable for Cry1F protein expressed in cotton. The Agency was able to determine that the Cry1F protein expressed in cotton was the same protein as the Cry1F expressed in corn which is covered by an existing tolerance exemption (40 CFR 180.1217). Also the Cry1F protein produced by microbial culture was biochemically and functionally similar to the protein produced by the plant-incorporated protectant in cotton. Therefore, the Agency was able to bridge mammalian toxicity data from a previous submission for Cry1F protein expressed in corn to cover the mammalian toxicity studies required for Cry1F protein expressed in cotton. These studies are the acute oral toxicity (MRID numbers 446911–01 and 450201–18), heat stability, amino acid homology (MRID numbers 452749–01 and 449717–01) and *in vitro* digestibility (MRID number 447149–03) studies.

The data submitted and cited regarding potential health effects for the Cry1F protein include the characterization of the expressed Cry1F protein in corn, as well as the acute oral toxicity, heat stability, and *in vitro* digestibility of the proteins. The results of these studies were determined applicable to evaluate human risk and the validity, completeness, and reliability of the available data from the studies were considered.

The acute oral toxicity data submitted supports the prediction that the Cry1F protein would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Ref. 1). Since no effects were shown to be caused by Cry1F protein, even at relatively high dose levels (>5,050 mg test substance/kg body weight; 576 mg Cry1F/kg body weight), the Cry1F protein is not considered toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived. See 40 CFR 158.740(b)(2)(i). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study to verify the observed effects and clarify the source of these effects (Tiers II and III).

Although Cry1F expression level data were required for an environmental fate and effects assessment, residue chemistry data were not required for a human health effects assessment of the subject plant-incorporated protectant ingredients because of the lack of mammalian toxicity.

Available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children); and safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives, are generally recognized as appropriate for the use of animal experimentation data. The lack of mammalian toxicity at high levels of exposure to the Cry1F protein demonstrates the safety of the product at levels well above possible maximum exposure levels anticipated in the crop. Refer to the *Bacillus thuringiensis* Reassessment BRAD dated October 15, 2001. Its genetic material necessary for the production of the plant-incorporated protectant active ingredients are the nucleic acids (DNA, RNA) which comprise genetic material encoding these proteins and their regulatory regions.

The genetic material (DNA, RNA) necessary for the production of Cry1F protein in cotton has been exempted under the blanket exemption for all nucleic acids (40 CFR 174.175).

B. Infants and Children Risk Conclusions

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(B)(2)(C) also 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 unless EPA determines that a different margin of safety will be safe for infants and children.

In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the Cry1F protein and its genetic material necessary for its production in or on cotton. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

C. Overall Safety Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the Cry1F protein and its genetic material necessary for its production in or on cotton. This includes all anticipated

dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed for the plant-incorporated protectants.

VII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredients are proteins, derived from sources that are not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of these plant-protectants at this time.

B. Analytical Method

A method for extraction and direct enzyme linked immunosorbent assay analysis of Cry1F in cotton has been submitted (MRID number 458084–23). This method is adequate to support a temporary tolerance exemption.

C. Codex Maximum Residue Level

No Codex maximum residue levels exists for the plant-incorporated protectants *Bacillus thuringiensis* Cry1F protein and its genetic material necessary for its production in or on cotton.

VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the 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, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the 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), as was provided in the old sections 408 and 409 of the 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–2004–0007 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 June 1, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. 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 (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2004–0007, 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 Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IX. Statutory and Executive Order Reviews

This final rule establishes an amended/extension exemption from the tolerance requirement under section 408(d) of the 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 the FFDCA, such as the tolerance/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. 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 the 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.

X. 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: March 11, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division.

■ 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), 346(a) and 371.

■ 2. Section 180.1227 is revised to read as follows:

§ 180.1227 Bacillus thuringiensis Cry1F protein and it genetic material necessary for its production in or on cotton; temporary exemption from the requirement of a tolerance.

Bacillus thuringiensis Cry1F protein and its genetic material necessary for its production in cotton are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in the food and feed commodity of cotton. This temporary tolerance exemption expires on May 1, 2005.

[FR Doc. 04–7077 Filed 3–30–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0029; FRL–7345–4]

Bacillus thuringiensis Cry2Ab2; Amended Exemption From Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a permanent exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production in cotton when applied/used as a plant-incorporated protectant. Monsanto Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production in cotton.

DATES: This regulation is effective March 31, 2004. Objections and requests

for hearings, identified by docket ID number OPP–2004–0029, must be received on or before June 1, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address:*cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be 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 worker; 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, 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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0029. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

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.

II. Background and Statutory Findings

In the **Federal Register** of October 10, 1997 (62 FR 52998) (FRL–5748–5), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide tolerance petition, petition number 7F4888, by Monsanto Company, 700 Chesterfield Parkway, North, St. Louis, MO 63198. This notice included a summary of the petition prepared by the petitioner Monsanto Company. There were no comments received in response to the notice of filing. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production in cotton.

In the **Federal Register** of May 11, 2001 (66 FR 92) (FRL–6781–6, EPA issued a final rule pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(e), as amended by the FQPA, by establishing a temporary exemption from the requirement of a tolerance for *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production in cotton when applied/used as a plant-incorporated protectant. Since that time, EPA has completed the full commercial registration. Therefore, on its own initiative, EPA is amending the temporary exemption from the requirement of a tolerance for *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production in cotton when applied/used as a plant-incorporated protectant (§180.1215) to change the exemption from a temporary exemption to a permanent exemption.

III. Risk Assessment

New 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 tolerance 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. Section 408(b)(2)(C) of the 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....'' 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.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information 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.

Data have been submitted demonstrating the lack of mammalian toxicity at high levels of exposure to the pure Cry2Ab2 proteins. These data demonstrate the safety of the products at levels well above maximum possible exposure levels that are reasonably anticipated in the crops. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant is derived (See 40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (Tiers II and III).

The acute oral toxicity data submitted support the prediction that the Cry2Ab2 protein would be non-toxic to humans. Male and female mice (10 of each) were dosed with 67, 359, and 1,450 milligrams/kilogram of body weight (mg/kg bwt) of Cry2Ab2 protein. Outward clinical signs were observed and body weights recorded throughout the 14–day study. Gross necropsies performed at the end of the study indicated no findings of toxicity attributed to exposure to the test substance. No mortality or clinical signs attributed to the test substance were noted during the study. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., *et al.* ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology* 15, 3–9 (1992)). Therefore, since no effects were shown to be caused by the plant-incorporated protectant, even at relatively high dose levels, Cry2Ab2 proteins are not considered toxic. Further, amino acid sequence comparisons showed no similarity betweenCry2Ab2 proteins to known toxic proteins available in public protein data bases.

Since Cry2Ab2 is a protein, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat and acid, and, proteases may be glycosylated and present at high concentrations in the food.

Data have been submitted that demonstrate that the Cry2Ab2 delta-endotoxin is rapidly degraded by gastric fluid *in vitro*. In a solution of simulated gastric fluid (pH 1.2 – U.S. Pharmacopeia), complete degradation of detectable Cry2Ab2 protein occurred within 15 seconds. Incubation in simulated intestinal fluid resulted in a 50 kDa protein digestion product. A comparison of amino acid sequences of known allergens uncovered no evidence of any homology with Cry2Ab2, even at the level of 8 contiguous amino acids residues. The potential for the Cry2Ab2 proteins to be food allergens is minimal. Regarding toxicity to the immune system, the acute oral toxicity data submitted support the prediction that theCry2Ab2 proteins would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., *et al.* ''Toxicological Considerations for Protein Components of Biological Pesticide Products'', *Regulatory Toxicology and Pharmacology* 15, 3-9 (1992)). Therefore, since no effects were shown to be caused by the plant-incorporated protectant, even at relatively high dose levels, the Cry2Ab2 proteins are not considered toxic.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-incorporated protectant chemical residue, and exposure from non-occupational sources.

1. *Food*. Oral exposure, at very low levels, may occur fromingestion of processed cotton seed by products. However a lack of mammalian toxicity and the digestibility of the plant-incorporated protectants have been demonstrated. The use sites for the Cry2Ab2 proteins are all agricultural for control of insects.

2. *Drinking water exposure*. Oral exposure, at very low levels, may occur from drinking water. However a lack of mammalian toxicity and the digestibility of the plant-incorporated protectants have been demonstrated. The use sites for the Cry2Ab2 proteins are all agricultural for control of insects.

B. Other Non-Occupational Exposure

1. *Dermal exposure*. Exposure via the skin is not likelysince the plant-incorporated protectant is contained within plant cells, whichessentially eliminates this exposure route or reduces this exposure route to negligible

2. *Inhalation exposure*. Exposure via the inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates this exposure route or reduces this exposure route to negligible.

VI. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects of such residues and other substances with a common mechanism of toxicity on infants and children. Because there is no indication of mammalian toxicity to plant-incorporated protectants, we conclude that there are no cumulative effects for Cry2Ab2 proteins.

VII. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) also 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 unless EPA determines that a different margin

of safety will be safe for infants and children. In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the Cry2Ab2 proteins and the genetic material necessary for their production. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

VIII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredients are proteins, derived from sources that are not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of these plant-incorporated protectants at this time.

B. Analytical Method(s)

Validated methods for extraction and direct ELISA analysis of Cry2Ab2 in cotton seed have been submitted and found acceptable by the Agency.

C. Codex Maximum Residue Level

No Codex maximum residue levels exists for the plant-incorporated protectant *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production in cotton.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the 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, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the 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 the FFDCA, as was provided in the old sections 408 and 409 of the 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–2004–0029 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 June 1, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. 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 (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at: *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2004–0029, 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 Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the 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 the FFDCA, 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. 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 the 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.

XI. 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: March 18, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention 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 180.1215 is revised to read as follows:

§ 180.1215 Bacillus thuringiensis Cry2Ab2 protein and the genetic material necessary for its production in cotton; exemption from the requirement of a tolerance.

Bacillus thuringiensis Cry2Ab2 protein and the genetic material necessary for its production in cotton is exempt from the requirement of a tolerance when used as a plant-incorporated protectant in the food and feed commodities, cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts. Genetic material necessary for its production means the genetic material which comprise genetic material encoding the Cry2Ab2 protein and its regulatory regions. Regulatory regions are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the Cry2Ab2 protein.

[FR Doc. 04–7076 Filed 3–30–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0089; FRL–7351–2]

Flumioxazin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of flumioxazin (2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione) in or on cottonseed and cotton gin byproducts. Valent U.S.A. Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective March 31, 2004. Objections and requests

for hearings, identified by docket ID number OPP–2004–0089, must be received on or before June 1, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0089. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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/*. 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/*.

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. Background and Statutory Findings

In the **Federal Register** of December 31, 2002 (67 FR 79918) (FRL–7285–6), 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 1F6296) by Valent U.S.A. Corporation, 1333 North California Boulevard, Suite 600, Walnut Creek, California 94596–8025. That notice included a summary of the petition prepared by Valent U.S.A. Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.568 be amended by establishing a tolerance for residues of the herbicide, flumioxazin (2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione) in or on cotton at 0.02 parts per million (ppm) and cotton gin byproducts at 0.60 ppm.

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 flumioxazin on cottonseed at 0.02 ppm and cotton gin byproducts at 0.60 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by flumioxazin are discussed in 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.—ACUTE, SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.1000	Acute oral toxicity (rat)	LD_{50} > 5,000 milligrams/kilogram (mg/kg); no clinical signs
870.1100	Acute dermal (rat)	LD_{50} >2,000 mg/kg; no clinical signs
870.1200	Acute inhalation (rat)	LC_{50} = 3.93 mg/Liter (L)
870.2400	Primary eye irritation - rabbit	No corneal irritation; mild irritation of iris cleared by 24 hours; mild irritation of conjunctiva cleared by 48 hours
870.2500	Primary skin irritation - rabbit	No erythema or edema
870.2600	Dermal sensitization - guinea pig	Not a dermal sensitizer
870.3100	90–Day oral toxicity--rodents (rat)	NOAEL males = 69.7 mg/kg/day NOAEL females = 71.5 mg/kg/day LOAEL males = 243.5 mg/kg/day LOAEL females = 229.6 mg/kg/day based on a decrease in MCV both sexes; increase in platelets females only
870.3100	90–Day oral toxicity--rodents (rat)	NOAEL males = 65.0 mg/kg/day NOAEL females = 72.9 mg/kg/day LOAEL males = 196.7 mg/kg/day LOAEL females = 218.4 mg/kg/day based on hematology changes
870.3100	90–Day oral toxicity--rodents (mouse)	NOAEL = 429 mg/kg/day LOAEL = 1,429 mg/kg/day based on increased liver weight in males
870.3100	4–Week oral toxicity--rodents (mouse)	NOAEL males = 151.5 mg/kg/day NOAEL females = 164.5 mg/kg/day LOAEL males = 419.9 mg/kg/day LOAEL females = 481.6 mg/kg/day based on increased absolute and/or relative liver weights in males and females
870.3150	90–Day oral toxicity--nonrodents (dog)	NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on dose dependent increase in total cholesterol, phospholipid and alkalinephosphatase
870.3200	21–Day dermal toxicity (rat)	NOAEL = 1,000 mg/kg/day (limit dose) LOAEL = > 1,000 mg/kg/day based on no effects
870.3700	Prenatal developmental--rodents (rat oral)	Maternal NOAEL = 30 mg/kg/day highest dose tested (HDT) Maternal LOAEL > 30 mg/kg/day (HDT) Developmental NOAEL = 3 mg/kg/day Developmental LOAEL = 10 mg/kg/day based on cardiovascular effects (especially ventricular septal defects)
870.3700	Prenatal developmental--rodents (rat dermal)	Maternal NOAEL = 300 mg/kg/day highest dose tested (HDT) Maternal LOAEL > 300 mg/kg/day (HDT) Developmental NOAEL = 30 mg/kg/day Developmental LOAEL = 100 mg/kg/day based on cardiovascular effects (especially ventricular septal defects)
870.3700	Prenatal developmental--nonrodents (rabbit oral)	Maternal NOAEL = 1,000 mg/kg/day Maternal LOAEL = 3,000 mg/kg/day based on decrease in body weight and food consumption during dosing Developmental NOAEL = 3,000 mg/kg/day (HDT) Developmental LOAEL mg/kg/day > 3,000 (HDT)

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

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects (rat)	Parental/Systemic NOAEL males = 12.7 mg/kg/day Parental/Systemic NOAEL females = 15.1 mg/kg/day mg/kg/day Parental/Systemic LOAEL males = 18.9 mg/kg/day Parental/Systemic LOAEL females = 22.7 mg/kg/day based on increase in clinical signs (red substance in vagina) and increased female mortality as well as decreased body weight, body weight gain and food consumption Reproductive NOAEL males = 18.9 mg/kg/day (HDT) Reproductive NOAEL females = 22.7 mg/kg/day (HDT) Reproductive LOAEL males > 18.9 mg/kg/day (HDT) Reproductive LOAEL females > 22.7 mg/kg/day (HDT) Offspring NOAEL = 6.3 mg/kg/day Offspring LOAEL = 7.6 mg/kg/day based on a decrease in the number of live born and a decrease in pup body weight
870.4100	Chronic toxicity dogs (12-month capsule)	NOAEL = 100 mg/kg/day LOAEL = 1,000 mg/kg/day (limit dose) based on increased absolute and relative liver weights and 300% increase in alkaline phosphatase values
870.4300	Combined chronic toxicity carcinogenicity--rats	NOAEL males = 1.8 mg/kg/day NOAEL females = 2.2 mg/kg/day LOAEL males = 18.0 mg/kg/day based on increased chronic nephropathy LOAEL females = 21.8 mg/kg/day based on decreased hematological parameters (Hgb, MCV, MCH and MCHC) No evidence of carcinogenicity
870.4300	Carcinogenicity--mice	NOAEL males = 754.1 mg/kg/day NOAEL females = 859.1 mg/kg/day (limit dose) LOAEL = no systemic effects at limit dose No evidence of carcinogenicity
870.5100	Gene mutation in *S. typhimurium* and *E. coli*	Neither cytotoxic nor mutagenic up to 2,000 μg/plate. There were reproducible increases in revertant colonies of *S. typhimurium* strains TA1538 and TA98 in S9 activated phases of the preliminary cytotoxicity and both mutation assays. Results considered to be equivocal
870.5375	Gene mutation in chinese hamster ovary cells	Precipitation at ≥200 μM. Cytotoxicity at 500 μM. Positive +S9 ≥100 μM and negative at 30–500 μM -S9. Aberrations were chromatid breaks and exchanges
870.5395	*In vivo* rat bone marrow	Negative in male (up to 5,000 mg/kg) and female rats (up to 4,400 mg/kg) when tested orally
870.5550	UDS assay	Negative up to 5,000 mg/kg
870.7485	Metabolism and pharmacokinetics	Gastrointestinal tract absorption >90% at 1 mg/kg and up to 50% at 100 mg/kg. At least 97% recovery in feces and urine 7 days after dosing. Highest levels of residues (36–49 ppb) in blood cells at low dose and 2,800–3,000 ppm at high dose (RBC levels > plasma). In addition to untransformed parent, 7 metabolites identified in urine and feces (38–46% for low dose and about 71% at high dose)
870.7600	Dermal penetration - rat	Males dosed with suspension of 50 WDG formulation in water at 0.02, 0.20 or 1.0 mg/rat (0.002, 0.020 or 0.100 cm^2. At 0.02 mg/rat, absorption ranged from 0.48% at 0.5 hours to 5.46% at 24 hours. At 0.2 mg/rat, absorption ranged from 0.007% at 0.5 hours to 0.74% at 24 hours. At 1.0 mg/rat, absorption ranged from 0.004% at 0.5 hours to 10.47% at 24 hours
870.7600	Dermal penetration - rat	Females dosed with 200 or 800 mg/kg body weight (bw). Dermalabsorption for 200 and 800 mg/kg was 3.9 and 8.0% by 48 hours after initiation of treatment for 6 hours. Blood levels at 6–24 hours after dermal dosing with 200 mg/kg were similar to those obtained at 2–6 hours after oral dosing with 1 mg/kg. Blood levels at 6–24 hours after dermal dosing with 800 mg/kg were similar to those obtained at 2–6 hours after oral dosing with 30 mg/kg
	Special studies rat developmental: Critical time for defects	Pregnant females were administered 400 mg/kg by gavage on gestation day 11 or 12 or 13 or 14 or 15. Day 12 administration showed: Largest incidence of embryonic death, lowest fetal body weights and greatest incidence of ventricular spetal defect

B. Toxicological Endpoints

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

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

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

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

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

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

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

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

C. Exposure Assessment

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

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

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

ii. *Chronic exposure*. In conducting the chronic dietary risk assessment, EPA used the DEEM-FCID™ software, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For the chronic analyses, tolerance-level residues were assumed for all food commodities with current or proposed flumioxazin tolerances, and it was assumed that all of the crops included in the analysis were treated. PCT and/or anticipated residues were not used in the chronic risk assessment.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for flumioxazin and its degradates (482-HA and APF) in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of flumioxazin and its degradates (482-HA and APF).

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentrations in Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

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

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

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

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

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to flumioxazin and any other substances and flumioxazin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that flumioxazin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs (OPP) concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

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

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

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

ii. Offspring toxicity NOAEL/LOAEL are well characterized.

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

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

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

E. Aggregate Risks and Determination of Safety

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

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

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

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to flumioxazin will occupy < 1% of the aPAD for females 13 to 49 years old. In addition, there is potential for acute dietary exposure to flumioxazin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FLUMIOXAZIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females 13–49 years	0.03	<1	34	48	900

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to flumioxazin from food will utilize <1% of the cPAD for the U.S. population, <1% of the cPAD for all infant and children subpopulations. There are no residential uses for flumioxazin that result in chronic residential exposure to flumioxazin. In addition, there is potential for chronic dietary exposure to flumioxazin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

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

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

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

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

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure

plus chronic exposure to food and water (considered to be a background exposure level).

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

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 flumioxazin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established on cotton.

V. Conclusion

Therefore, the tolerance is established for residues of flumioxazin, (2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione) in or on cottonseed at 0.02 ppm and cotton gin byproducts at 0.60 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–2004–0089 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 June 1, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. 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 (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2004–0089, 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 Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: March 22, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

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

§ 180.568 Flumioxazin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Cotton, gin byproducts	0.60
Cottonseed	0.02
* * * * *	

* * * * *

[FR Doc. 04–7198 Filed 3–30–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–475; RM–7280, RM–7328]

Radio Broadcasting Services; Dawson, GA

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to Section 73.202(b), FM Table of Allotments, under Georgia for the community of Dawson.

DATES: Effective March 31, 2004.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau (202) 418–2180.

SUPPLEMENTARY INFORMATION: In 1993, the Commission substituted Channel 251A for Channel 221A at Dawson, Georgia. *See* 58 FR 36375 (July 7, 1993). Channel 251A is not currently listed in the FM Table of Allotments, Section 73.202(b) under Georgia for the community of Dawson.

Need for Correction

The Code of Federal Regulations must be corrected to add Channel 251A and remove Channel 221A at Dawson, Georgia.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Accordingly, 47 CFR part 73 is corrected by making the following correcting amendment:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 221A and by adding Channel 251A at Dawson.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–7230 Filed 3–30–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 02–146; RM–10288; FCC 03–248]

Allocations and Service Rules for the 71–76 GHz, 81–86 GHz and 92–95 GHz Bands; Loea Communications Corporation Petition for Rulemaking; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: In a rule published January 23, 2004, the Commission adopted service rules to promote the private sector development and use of the ''millimeter wave'' spectrum in certain bands pursuant to parts 15 and 101 or our rules. This document contains editorial corrections to the final rules document.

DATES: Effective on March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer Mock, Broadband Division, Wireless Telecommunications Bureau at (202) 418–1310.

SUPPLEMENTARY INFORMATION: On January 23, 2004 (69 FR 3257), the **Federal Register** published a final rule in the above captioned proceeding. On page 3266, instruction 14 of the rules amended § 101.63 by revising paragraphs (a) and (b). In revising paragraph (b), the instructions neglected to redesignate then existing paragraphs (b), (c), (d), and (e), as paragraphs (c), (d), (e), and (f), respectively. This document corrects § 101.63. Instruction 16 of the rules amended § 101.107(a) by revising the table. The instruction neglected to reflect revisions to the footnotes of the table that were published in the **Federal Register** on January 31, 2003 (68 FR 4956). This document corrects footnote 9 published on January 23, 2004 (69 FR 3266) and also renumbers it to read as footnote 8.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 47 CFR Part 101

Communications common carriers, Communications equipment, Radio.

■ For the reasons set forth above, part 101 is corrected as follows:

■ 1. The authority for part 101 continues to read as follows

Authority: 47 U.S.C. 154 and 303.

■ 2. In § 101.63, as amended at 69 FR 3266 (January 23, 2004), paragraphs (c) through (e) are redesignated as paragraph (d) through (f) and new paragraph (c) is added to read as follows:

§ 101.63 Period of construction certification of completion of construction.

* * * * *

(c) Failure to timely begin operation means the authorization cancels automatically.

* * * * *

■ 3. In the table in § 101.107(a), the footnote numbered as ''9'' is corrected to read as ''8'' wherever it appears, and the text of the footnote is revised to read as follows:

§ 101.107 Frequency tolerance.

* * * * *

[8] Equipment authorized to be operated in the 71,000–76,000 MHz, 81,000–86,000 MHz, 92,000–94,000 MHz and 94,100–95,000 MHz bands is exempt from the frequency tolerance requirement noted in the table of paragraph (a) of this section.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7231 Filed 3–30–04; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1845 and 1852

RIN 2700–AC73

Government Property—Instructions for Preparing NASA Form 1018

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This rule adopts as final, without change, the interim rule published in the **Federal Register** (68 FR 62023–62026) on October 31, 2003, which amended the NASA Federal Acquisition Regulation Supplement (NFS) to provide a definition of obsolete property, to address contractor validation of 1018 data, to clarify reporting of software to which NASA has title, to clarify other property classifications, and to revise the date for submission of annual property reports. NASA uses the data contained in contractor reports for annual financial statements and property management. This change will provide for consistent reporting of NASA property by contractors.

EFFECTIVE DATES: March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Lou Becker, NASA Headquarters, Office of

Procurement, Contract Management Division (Code HK), Washington, DC 20546, telephone: (202) 358–4593, e-mail to: lou.becker@nasa.gov.

SUPPLEMENTARY INFORMATION CONTACT:

A. Background

Each year, NASA's financial statements are audited in accordance with generally accepted government auditing standards. NASA must maintain adequate controls to reasonably assure that property, plant and equipment and materials are presented fairly in its financial statements. Since contractors maintain NASA's official records for its assets in their possession, NASA uses the data contained in contractor reports for annual financial statements and property management. This final rule provides policies and procedures related to obsolete property, contractor validation of 1018 data, and proper reporting of software to which NASA has title. This change will provide for consistent reporting of NASA property by contractors. It also reflects the need to change the date of submission for annual property reports from October 31st to October 15th. No public comments were received. The interim rule is converted to a final rule without change.

This final rule is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it clarifies existing property reporting policies and procedures contractors must follow when accounting for and reporting assets.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose new recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1845 and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Interim Rule Adopted as Final Without Change

■ Accordingly, NASA adopts the interim rule amending 48 CFR parts 1845 and 1852, which was published in the **Federal Register** on October 31, 2003 (68 FR 62023—62026), as a final rule without change.

Authority: 42 U.S.C. 2473(c)(1), 31 U.S.C. 6301 *et seq.*

[FR Doc. 04–7238 Filed 3–30–04; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 032504A]

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

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2004 total allowable catch (TAC) of Pacific cod allocated to catcher processor vessels using pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 27, 2004, through 1200 hrs, A.l.t., September 1, 2004.

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 the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 TAC of Pacific cod allocated to catcher processor vessels using pot gear in the BSAI was established as a directed fishing allowance of 2,003 metric tons by the 2004 final harvest specifications for groundfish in the BSAI (69 FR 9242, February 27, 2004), for the period 1200 hrs, A.l.t., January 1, 2004, through 1200 hrs, A.l.t., June 10, 2004. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season apportionment of the 2004 TAC of Pacific cod allocated as a directed fishing allowance to catcher processor vessels using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear in the BSAI.

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 a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod specified for catcher processor vessels using pot gear in the BSAI.

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

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

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

Dated: March 25, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–7227 Filed 3–26–04; 4:25 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 032404E]

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

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

ACTION: Modification of a closure.

SUMMARY: NMFS is reopening directed fishing for Pacific cod by catcher/processor vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to utilize the remaining amount of the A season allocation of the 2004 Pacific cod total allowable catch (TAC) specified for catcher/processor vessels using trawl gear.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 28, 2004, through 1200 hrs, A.l.t., April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

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

The 2004 final harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004), established the Pacific cod TAC allocated to catcher/processor vessels using trawl gear in the BSAI for the period 1200 hrs, A.l.t., January 1, 2004, through 1200 hrs, A.l.t., April 1, 2004, as 23,422 metric tons. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C). In accordance with § 679.20(d)(1)(iii), the directed fishery for Pacific cod by catcher/processor vessels using trawl gear was closed effective 1200 hrs, A.l.t., March 14, 2004 (69 FR 12569, March 17, 2004) because it was determined that the A season allocation of the 2004 Pacific cod TAC specified for catcher/processor vessels using trawl gear had been caught.

NMFS has determined that as of March 20, 2004, the remaining amount of the A season allocation of the 2004 Pacific cod TAC for catcher/processor vessels using trawl gear is 2,000 metric tons. Therefore, NMFS is terminating the previous closure and is reopening directed fishing for Pacific cod by catcher/processor vessels using trawl gear in the BSAI effective 1200 hrs, A.l.t., March 28, 2004.

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 the Agency from responding to the most recent fisheries data in a timely fashion and would delay the reopening of the fishery for the remaining A season allocation of Pacific cod TAC specified for catcher/processor vessels using trawl gear in the BSAI.

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

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

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

Dated: March 26, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–7228 Filed 3–26–04; 4:25 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 032404F]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2004 total allowable catch (TAC) of Atka mackerel specified for the Central Aleutian District.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 26, 2004, until 1200 hrs, A.l.t., September 1, 2004.

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

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

The 2004 final harvest specification for groundfish of the BSAI (69 FR 9242, February 27, 2004), allocated an Atka mackerel A season allowance in the Central Aleutian District of the BSAI of 14,384 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the 2004 TAC specified for Atka mackerel in the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 14,084 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the BSAI.

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 the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of the fisheries under the A season allowance of the 2004 TAC of Atka mackerel specified for the Central Aleutian District of the BSAI.

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

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

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

Dated: March 25, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–7229 Filed 3–26–04; 4:25 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 62
Wednesday, March 31, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–52–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Model PA–46–500TP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The New Piper Aircraft, Inc. (Piper) Model PA–46–500TP airplanes. This proposed AD would require you to inspect (one-time) for the existence of any protective cover over the percussion caps or silicon tube installed over the end of the trigger mechanism pin of the oxygen generators, and remove any protective cover or silicon tube found. This proposed AD is the result of reports of the above conditions found on the affected airplanes. We are issuing this proposed AD to detect and remove any protective cover over the percussion cap, or any silicon tube over the end of the trigger mechanism pin, which could result in failure of the emergency oxygen system. This failure could lead to the crew and passengers not being able to get oxygen in an emergency situation.

DATES: We must receive any comments on this proposed AD by June 1, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–52–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail:* 9–ACE–7–Docket@faa.gov. Comments sent electronically must contain ''Docket No. 2003–CE–52–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–52–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Hector Hernandez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6069; facsimile: (770) 703–6097.

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 ''AD Docket No. 2003–CE–52–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

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.

Discussion

What events have caused this proposed AD? The FAA has received several reports of the protective cover installed over the percussion cap on the oxygen generator on the Models PA–46–310P, PA–46–350P and PA–46–500TP airplanes. Also, a silicon tube may exist over the end of the trigger mechanism pin. Any protective cover installed over the percussion cap, or any silicon tube installed over the trigger, on the oxygen generator renders the emergency oxygen system inoperative.

What is the potential impact if FAA took no action? Any protective cover on the percussion cap or silicon tube installed over the end of the trigger mechanism pin could result in failure of the emergency oxygen system. This failure could lead to the crew or passengers not being able to get oxygen in an emergency situation.

Is there service information that applies to this subject? Piper has issued Service Bulletin No. 1140, dated September 16, 2003.

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

—Inspecting the oxygen generators for any protective cover of the percussion caps installed over the percussion cap or any silicon tube installed over the end of the trigger mechanism pin; and
—If any protective cover over the percussion cap or silicon tube installed over the end of the trigger mechanism pin is found, removing the protective cover or silicon tube.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing AD action.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin on the Model PA–46–500TP airplanes.

The affected models in the previously-referenced service bulletin include the Models PA–46–310P and PA–46–350P airplanes. However, these models are certificated at a lower service ceiling than the Model PA–46–500TP airplane. Since Piper has demonstrated an emergency descent to a lower altitude with no oxygen to the pilot, neither Model PA–46–310P nor PA–46–350P airplanes are affected by the identified condition.

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 airplanes would this proposed AD impact? We estimate that this proposed AD affects 135 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish this proposed inspection (and removal of any protective cover on the percussion cap or any silicon tube installed over the end of the trigger mechanism pin):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour= $65	No cost for parts	$65	135 × $65 = $8,775.

Compliance Time of This Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is within the next 50 hours time-in-service (TIS) or 30 calendar days after the effective date of the proposed AD.

Why is the compliance time of this proposed AD presented in both hours TIS and calendar time? Any protective cover on a percussion cap or silicon tube installed over the end of the trigger mechanism pin on the emergency oxygen generator of the affected airplanes is a result of a manufacturer quality control problem. The presence of any installed protective cover on a percussion cap or silicon tube installed over the end of the trigger mechanism pin can occur regardless of whether the airplane is in flight or on the ground. To ensure that any installed protective cover on a percussion cap or silicon tube installed over the end of the trigger mechanism pin does not go undetected, a compliance time of specific hours TIS and calendar time is utilized.

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 placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–52–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):

The New Piper Aircraft, Inc.: Docket No. 2003–CE–52–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 June 1, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model PA–46–500TP airplanes, serial numbers 4697001 through 4697163, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of a protective cover installed over the percussion cap or a silicon tube installed over the end of the trigger mechanism pin, on the oxygen generator, rendering the emergency oxygen system inoperative. The actions specified in this AD are intended to detect and remove any protective cover over the percussion cap or any silicon tube over the end of the trigger mechanism pin, which could result in failure of the emergency oxygen system. This failure could lead to the crew or passengers not being able to get oxygen in an emergency situation.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect: (i) The percussion cap of any oxygen generator (part number (P/N) 471–025) for the presence of any protective cover; and. (ii) The end of the trigger mechanism of any oxygen generator (P/N 471–025) for the presence of any silicon tube.	Within the next 50 hours time-in-service after the effective date of this AD or within the next 30 calendar days after the effective date of this AD, whichever occurs first, unless already done.	Follow the INSTRUCTIONS paragraph in The New Piper Aircraft, Inc. Service Bulletin No. 1140, dated September 16, 2003, and the applicable airplane maintenance manual.

Actions	Compliance	Procedures
(2) If during the inspections required by paragraphcs (e)(1)(i) and (e)(1)(ii) of this AD, you find any protective cover over the percussion cap or any silicon tube over the end of the trigger mechanism, remove any protective cover or silicon tube.	Before further flight after the inspection required in paragraph (e)(1) of this AD, unless already done.	Follow the INSTRUCTIONS paragraph in The New Piper Aircraft, Inc. Service Bulletin No. 1140, dated September 16, 2003, and the applicable airplane maintenance manual.
(3) Do not operate the airplane after installation of any oxygen generator (P/N 471–025) referenced in this AD unless any protective cover of the percussion cap or any silicon tube over the end of the trigger mechanism has been removed.	As of the effective date of this AD	Not applicable.

Note: Standard procedure is to remove the protective cover after installation. Refer to the applicable airplane maintenance manual for specific procedures for removing any protective cover of the percussion cap or any silicon tube over the end of the trigger mechanism.

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, Atlanta Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Hector Hernandez, Aerospace Engineer, FAA, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6069; facsimile: (770) 703–6097.

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

(g) You may get copies of the documents referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 23, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7128 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–252P]

Schedules of Controlled Substances: Placement of alpha-methyltryptamine and 5-methoxy-N,N-diisopropyltryptamine Into Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Acting Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of proposed rulemaking to place alpha-methyltryptamine (AMT) and 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT) into Schedule I of the Controlled Substances Act (CSA). This proposed action is based on data gathered and reviewed by the DEA. If finalized, this proposed action would continue to impose the criminal sanctions and regulatory controls of Schedule I substances under the CSA on the manufacture, distribution, and possession of AMT and 5-MeO-DIPT.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before April 30, 2004.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–252'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Acting Deputy Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCD. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/CCD, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept electronic comments containing MS word, WordPerfect, Adobe PDF, or Excel files only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: On April 4, 2003, the Deputy Administrator of the DEA published a final rule in the **Federal Register** amending § 1308.11(g) of title 21 of the Code of Federal Regulations to temporarily place AMT and 5-MeO-DIPT (68 FR 16427) into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). This final rule, which became effective on the date of publication, was based on findings by the Deputy Administrator that the temporary scheduling of AMT and 5-MeO-DIPT was necessary to avoid an imminent hazard to the public safety. The CSA (21 U.S.C. 811(h)(2)) requires that the temporary scheduling of a substance expire at the end of one year from the date of issuance of the order. However, if proceedings to schedule a substance pursuant to 21 U.S.C. 811(a)(1) are pending, the temporary scheduling of a substance may be extended for up to six months. Under this provision, the temporary scheduling of AMT and 5-MeO-DIPT, which would expire on April 3, 2004, may be extended to October 3, 2004. This extension is being ordered by the

DEA Acting Deputy Administrator in a separate action.

In accordance with 21 U.S.C. 811(b) of the CSA, DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse of AMT and 5-MeO-DIPT. The Acting Deputy Administrator has submitted these data to the Acting Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the Acting Deputy Administrator also requested a scientific and medical evaluation and a scheduling recommendation for AMT and 5-MeO-DIPT from the Acting Assistant Secretary for Health. The Food and Drug Administration (FDA) has notified the DEA that there are no exemptions or approvals in effect under 21 U.S.C. 355 of the Food, Drug and Cosmetic Act for AMT and 5-MeO-DIPT. A search of the scientific and medical literature revealed no indications of current medical use of AMT and 5-MeO-DIPT in the United States.

Explanation of Alpha-methyltryptamine and 5-methoxy-N, N-diisopropyltryptamine

Alpha-methyltryptamine (AMT) and 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT) are tryptamine (indoleethylamine) derivatives and share several similarities with the Schedule I tryptamine hallucinogens such as alpha-ethyltryptamine (AET) and N,N-dimethyltryptamine (DMT). Several other tryptamines also produce hallucinogenic/stimulant effects and are controlled as Schedule I substances under the CSA (bufotenine, diethyltryptamine, psilocybin and psilocyn). Although tryptamine itself appears to lack consistent hallucinogenic/stimulant effects, substitutions on the indole ring and the ethylamine side-chain of this molecule result in pharmacologically active substances (McKenna and Towers, J. Psychoactive Drugs, 16: 347–358, 1984). The chemical structures of AMT and 5-MeO-DIPT possess the critical features necessary for hallucinogenic/stimulant activity. In drug discrimination studies, both AMT and 5-MeO-DIPT substitute for 1-(2,5-dimethoxy-4-methylphenyl)-aminopropane (DOM), a phenethylamine-based hallucinogen in Schedule I of the CSA. The potencies of DOM-like discriminative stimulus effects of these and several other similar tryptamine derivatives correlate well with their hallucinogenic potencies in humans (Glennon *et al.*, Eur. J. Pharmacol. 86: 453–459, 1983).

AMT, besides its full generalization to DOM, also partially mimics amphetamine and 3,4-methylenedioxymethamphetamine (MDMA) in drug discrimination tests in experimental animals. AMT increases systolic and diastolic arterial blood pressures, dilates pupils and produces strong motor stimulant effects. The behavioral effects of orally administered AMT (20 mg) in humans are slow in onset, occurring after 3 to 4 hours, and gradually subsiding after 12 to 24 hours, but may last up to 2 days in some subjects. The majority of the subjects report euphoria, stimulation, muscle tension, muscle ache, nervous tension, irritability, restlessness, dizziness, impaired motor coordination, unsettled feeling in stomach, inability to relax and sleep, and visual effects such as blurry vision, apparent movement of objects, sharper outlines, brighter colors, longer after images, and visual hallucinations. The majority of the subjects equate the effects of a 20 mg dose of AMT to those of 50 micrograms of lysergic acid diethylamide (LSD). AMT also produces dextroamphetamine-like mood elevating effects in humans (Hollister *et al.*, J. Nervous Ment. Dis., 131: 428–434, 1960; Murphree *et al.*, Clin. Pharmacol. Ther. 2: 722–726, 1961).

Similar to other classical hallucinogens, AMT binds to serotonin receptors. It also inhibits 5-HT uptake, induces catecholamine release and inhibits monoamine oxidase activity. The available experimental evidence suggests that both serotonergic and dopaminergic systems mediate behavioral effects of AMT.

5-MeO-DIPT produces pharmacological effects similar to those of several Schedule I hallucinogens. The synthesis and preliminary human psychopharmacology study on 5-MeO-DIPT was first published in 1981 (Shulgin and Carter, Comm. Psychopharmacol. 4: 363–369, 1981). According to this report, subjective effects of 5-MeO-DIPT are substantially similar to those of MDMA, 3,4-methylenedioxyamphetamine (MDA) and 4-Bromo-2,5-dimethoxyphenethylamine (2C-B). 5-MeO-DIPT is an orally active hallucinogen. Following oral administration of 6–10 mg, 5-MeO-DIPT produces subjective effects with an onset of about 20–30 minutes, a peak at about 1–1.5 hours and duration of about 3–6 hours. Subjects who have been administered 5-MeO-DIPT are talkative and disinhibited. 5-MeO-DIPT dilates pupils. High doses of 5-MeO-DIPT produce nausea, jaw clenching, muscle tension and overt hallucinations with both auditory and visual distortions. As mentioned above, 5-MeO-DIPT fully mimics the discriminative stimulus effects of DOM, a Schedule I hallucinogen. According to the discriminative stimulus studies conducted by the Drug Evaluation Committee of the College on Problems of Drug Dependence, 5-MeO-DIPT dose-dependently (0.1–3 mg/kg, IP) generalizes to LSD with a maximal response of about 70% at doses (3 mg/kg) that severely disrupted responding.

Control of AMT and 5-MeO-DIPT

The abuse of stimulant/hallucinogenic substances in popular all night dance parties (raves) and in other venues has been a major problem in Europe since the 1990s. In the past several years, this activity has spread to the United States. The Schedule I controlled substance MDMA and its analogues, collectively known as Ecstasy, are the most popular drugs abused at these raves. Their abuse has been associated with both acute and long-term public health and safety problems. These raves have also become venues for the trafficking and abuse of other substances in place of or in addition to ''Ecstasy.'' AMT and 5-MeO-DIPT belong to such a group of substances.

The abuse of AMT and 5-MeO-DIPT began to spread in 1999. Since that time, these tryptamines have been encountered by law enforcement agencies in several states. These substances have been commonly encountered in tablet, capsule or powder forms. The tablet form often bears imprints commonly seen on MDMA tablets such as spider, alien head and ''?'' logos. These tablets also vary in colors such as pink, purple, red, and orange. The powder in capsule was also found to vary in colors such as white, off-white, gray, and burnt orange. Data from law enforcement officials indicate that 5-MeO-DIPT is often sold as ''Foxy'' or ''Foxy Methoxy'', while AMT has been sold as ''Spirals'' at least in one case. Data gathered from published studies indicate that these are administered orally at doses ranging from 15–40 mg for AMT and 6–20 mg for 5-MeO-DIPT.

According to the Florida Department of Law Enforcement (FDLE), the abuse by teens and young adults of AMT and 5-MeO-DIPT is an emerging problem. There have been reports of abuse of AMT and 5-MeO-DIPT at clubs and raves in Arizona, California, Florida, and New York. Many tryptamine-based substances are illicitly available from United States and foreign chemical companies and from individuals through the Internet. There is also

evidence of attempted clandestine production of AMT and 5-MeO-DIPT in Nevada, Virginia, and Washington, DC.

According to the data from System to Retrieve Information on Drug Evidence (STRIDE), Federal law enforcement authorities seized 31 drug exhibits and filed 13 cases pertaining to the trafficking, distribution and abuse of AMT during 1999 to 2003. The corresponding STRIDE data for 5-MeO-DIPT included 59 drug exhibits pertaining to 28 cases. AMT drug seizures included 21 capsules and 1,006 grams of powder, while 5-MeO-DIPT drug seizures included 11,373 tablets, 560 capsules, and 6,531.6 grams of powder. From 2001 to 2003, National Forensic Laboratory Information System (NFLIS) registered 10 and 12 cases of AMT and 5-MeO-DIPT, respectively. AMT drug exhibits included 17 dosage units and 7.53 grams of powder, while 5-MeO-DIPT drug exhibits included 24 capsules, 3 tablets and 14.42 grams of powder. In addition, there have been several local cases involving trafficking and abuse of AMT and 5-MeO-DIPT.

AMT and 5-MeO-DIPT share substantial chemical and pharmacological similarities with other Schedule I tryptamine-based hallucinogens in Schedule I of the CSA. AMT shares pharmacological effects of amphetamine, a stimulant, and DOM and LSD, the Schedule I hallucinogens. AMT acts as a stimulant, produces euphoria and increases heart rate and blood pressure. The evidence suggests that 5-MeO-DIPT mimics pharmacological effects of MDMA, MDA, and 2C-B, the Schedule I hallucinogens. It also partially mimics amphetamine effects. The risks to the public health associated with the above mentioned controlled substances are well known and documented. AMT and 5-MeO-DIPT, similar to other tryptamine-or phenethylamine-based hallucinogens, through the alteration of sensory perception and judgment can pose serious health risks to the user and the general public. Tryptamine, the parent molecule of AMT and 5-MeO-DIPT, is known to produce convulsions and death in animals (Tedeschi *et al.*, J. Pharmacol. Exp. Ther. 126: 223–232, 1959). Following extensive studies on AMT as a possible antidepressant drug in 1960s, the Upjohn Company concluded that AMT is a highly toxic substance and discontinued the clinical studies on this substance. In fact, there were two recent published case reports describing the instances of emergency department admissions resulting from abuse of AMT and 5-MeO-DIPT in 2003 (Long *et al.*, Vet. Human Toxicol., 45: 149, 2003; Meatherall and Sharma, J. Anal. Toxicol., 27: 313–317, 2003). There has been at least one confirmed death caused by the abuse of AMT in Florida in 2003. The above data show that the continued, uncontrolled tablet or capsule production, distribution and abuse of AMT and 5-MeO-DIPT pose hazards to the public health and safety. There are no recognized therapeutic uses of these substances in the United States.

The Acting Deputy Administrator, based on the information gathered and reviewed by her staff and after consideration of the factors in 21 U.S.C. 811(c), believes that sufficient data exist to support the placement of AMT and 5–MeO-DIPT into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). The specific findings required pursuant to 21 U.S.C. 811 and 812 for a substance to be placed into Schedule I are as follows:

(1) The drug or other substance has a high potential for abuse.

(2) The drug or other substance has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Before issuing a final rule in this matter, the DEA Acting Deputy Administrator will take into consideration the scientific and medical evaluation and scheduling recommendation of the Department of Health and Human Services in accordance with 21 U.S.C. 811(b). The Acting Deputy Administrator will also consider relevant comments from other concerned parties.

Interested persons are invited to submit their comments, objections, or requests for a hearing in writing, with regard to this proposal. Requests for a hearing should state with particularity the issues concerning which the person desires to be heard. All correspondence regarding this matter should be sent to the Drug Enforcement Administration according to the instructions found in the Addresses section of this proposed rule. In the event that comments, objections or requests for a hearing raise one or more questions that the Acting Deputy Administrator finds warrants a hearing, the Acting Deputy Administrator shall publish a hearing notice in the **Federal Register** summarizing the issues to be heard and setting the time for the hearing.

Regulatory Certifications

Regulatory Flexibility Act

The Acting Deputy Administrator hereby certifies that this proposed rule has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This proposed rule, if promulgated, would permanently place AMT and 5-MeO-DIPT into Schedule I of the Controlled Substances Act.

Executive Order 12866

This proposed rule is not a significant regulatory action for the purposes of Executive Order (E.O.) 12866 of September 30, 1993. Drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to provisions of E.O. 12866, § 3(d) (1).

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132 Federalism

This proposed rulemaking 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. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rulemaking will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

This proposed rulemaking will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rulemaking is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by Section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and re-delegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Acting Deputy Administrator proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.11 is amended by:

A. Redesignating existing paragraphs (d)(15) through (d)(32) as paragraphs (d)(16) through (d)(33),

B. Adding a new paragraph (d)(15),

C. Further redesignating paragraphs (d)(19) through (d)(33) as paragraphs (d)(20) through (d)(34),

D. Adding a new paragraph (d)(19),

E. Removing paragraphs (g)(3) and (g)(4) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(15) Alpha-methyltryptamine (other name: AMT)—7432.

* * *

(19) 5-methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT)—7439.

* * * * *

Dated: March 25, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–7218 Filed 3–30–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice 4653]

RIN 1400–AB85

Availability of Information to the Public

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to revise its regulations governing access by the public to information that is under the control of the Department in order to reflect changes in the provisions of basic underlying laws and executive orders pertaining to access to information (*i.e.*, the Freedom of Information Act, the Privacy Act, Executive Order 12958 on National Security Information, the Ethics in Government Act) and in the Department's procedures since the last revision of the Department's regulations on this subject.

DATES: The Department will consider any comments from the public that are received by June 29, 2004.

ADDRESSES: Submit comments to Margaret P. Grafeld, Director, Office of Information Programs and Services (202) 261–8300, U.S. Department of State, SA–2, 515 22nd St., NW., Washington, DC 20522–6001; FAX: (202) 261–8590. E-mail *GrafeldMP@state.gov*. You may view this rule online at *regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Margaret P. Grafeld, Director, Office of Information Programs and Services (202) 261–8300, U.S. Department of State, SA–2, 515 22nd St., NW., Washington, DC 20522–6001; FAX: (202) 261–8590.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (FOIA), the Privacy Act (PA), and certain portions of the Ethics in Government Act and Executive Order 12958, as amended, provide for access by the public to records of executive branch agencies, subject to certain restrictions and exemptions. 22 CFR part 171 sets forth the Department's regulations implementing the access provisions of those statutes and the Executive Order. Since the last publication of the regulations in the 1980's, there have been significant changes in the law governing access to government information by the public, particularly with respect to the FOIA and the Executive Order. In addition, certain court decisions have been rendered that affect such access provisions. A major revision of the Freedom of Information Act was enacted in 1996, the so-called Electronic Freedom of Information Act. The changes effected by the Electronic Freedom of Information Act amendments of 1996 included provisions with respect to the form in which agencies are required to provide requested information, circumstances that warrant exceptions to time limits on responding to requests, situations in which expedited processing of requests is warranted, and certain reporting requirements. In the case of the requests by the public for declassification of national security information, several executive orders have been promulgated since the Department regulations were last amended. Executive Order 12958, issued in 1995 and most recently and most substantially amended by Executive Order 13292 of March 28, 2003, effected changes in the provisions governing mandatory declassification review as well as access to agency records by historical researchers and certain former government personnel. The proposed regulations take account of these changes and other changes in the law, principally by way of court decisions, as well as changes in the Department's procedures designed to implement them.

Regulatory Findings

Administrative Procedure Act. In accordance with provisions of the Administrative Procedure Act governing rules promulgated by Federal agencies that affect the public (5 U.S.C. 552), the Department is publishing this proposed rule and inviting public comment.

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department has reviewed this proposed rule and certifies that this rule will not have significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995. This proposed rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $1 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfounded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996. This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866. The Department has considered the impact of this NPRM under Executive Order (E.O.) 12866 and the Department of State's regulatory policies and procedures and determined that it is ''significant.'' This document was reviewed by OMB under E.O. 12866.

Executive Order 13132. This regulation 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act. This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Confidential business information, Freedom of information, Privacy.

For the reasons set forth in the preamble, the Department of State proposes to revise 22 CFR part 171 to read as follows:

PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

Subpart A—General Policy and Procedure

Sec.
171.1 Availability of information.
171.2 Types of records maintained.
171.3 Public reading room.
171.4 Electronic reading room.
171.5 Requests for information—types and how made.
171.6 Archival records.

Subpart B—Freedom of Information Act Provisions

171.10 Purpose and scope.
171.11 Definitions.
171.12 Processing requests.
171.13 Business information.
171.14 Fees to be charged—General.
171.15 Fees to be charged—categories of requesters.
171.16 Miscellaneous fee provisions.
171.17 Waiver or reduction of fees.

Subpart C—Executive Order 12958 Provisions

171.20 Definitions.
171.21 Declassification review.
171.22 Appeals.
171.23 Declassification in the public interest.
171.24 Access by historical researchers and certain former government personnel.
171.25 Applicability of other laws.

Subpart D—Privacy Act Provisions

171.30 Purpose and scope.
171.31 Definitions.
171.32 Request for access to records.
171.33 Request to amend or correct records.
171.34 Request for an accounting of record disclosures.
171.35 Denials of requests; appeals.
171.36 Exemptions.

Subpart E—Ethics in Government Provisions

171.40 Purpose and scope.
171.41 Covered employees.
171.42 Requests and identifying information.
171.43 Time limits and fees.
171.44 Improper use of reports.

Subpart F—Appeals Procedures

171.50 Appeals of denials of expedited processing.
171.51 Appeals of denials of fee waivers or reductions.
171.52 Appeals of denials of access to, declassification of, amendment of, or accounting of disclosures of records.

Authority: 22 U.S.C. 552, 552a; Ethics in Government Act of 1978, Pub .L. 95–521, 92 Stat. 1824, as amended; E.O. 12958, as amended, 60 FR 19825, 3 CFR, 1995 Comp., p. 333; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Subpart A—General Policy and Procedures

§ 171.1 Availability of information.

Records of the Department of State shall be made available to the public upon request made in compliance with the access procedures established in this part, except for any records exempt by law from disclosure. Any request for records must describe the information sought in such a way (see § 171.5(c)) that an employee of the Department of State who is familiar with the subject area of the request can locate the records with a reasonable amount of effort. The sections that follow govern the response of the Department to requests for information under the Freedom of Information Act, the Privacy Act, Executive Order 12958, and the Ethics in Government Act. Regulations at 22 CFR 172.1–9 govern the response of the Department to subpoenas, court orders, and certain other requests for testimony of Department officials or disclosure of Department records in litigation to which the Department is not a party.

§ 171.2 Types of records maintained.

Most of the records maintained by the Department pertain to the formulation and execution of U.S. foreign policy. Certain records that pertain to individuals are also maintained such as applications for U.S. passports, applications for visas to enter the U.S., records on consular assistance given abroad by U.S. Foreign Service posts to U.S citizens, and records on Department employees. Further information on the types of records maintained by the Department may be obtained by reviewing the records disposition schedules which are available through the Department's Web site: *http://www.state.gov* or directly at the FOIA home page: *http://foia.state.gov*.

§ 171.3 Public reading room.

A reading room providing public access to certain Department of State material is located in the Department of State, SA–2, 515 22nd Street, NW., Washington, DC. The reading room contains material pertaining to access to information under the Freedom of Information Act, Privacy Act, E.O. 12958 and includes those statutes, regulations, guidelines, and other items required to be made available to the public under 5 U.S.C. 552(a)(2). Also available in the reading room are microfiches of records released by the Department pursuant to requests under the Freedom of Information Act and compilations of documents reviewed and released in certain special projects. The reading room is open during normal Department weekday working hours, 8:15 a.m. to 5 p.m. There are no fees for access by the public to this room or the material contained therein, but fees shall be assessed for the duplication of materials maintained in the reading room at the rate of 15 cents per page and $2.00 per microfiche card. Fees for copies made by other methods of reproduction or duplication, such as tapes, printouts, or CD–ROM, shall be the actual cost of producing the copies, including operator time. Persons wishing to use their own copying equipment must request approval in advance from the Department's Information and Privacy Coordinator, U.S. Department of State, SA–2, 515 22nd Street, NW., Washington, DC 20522–6001. The use of such equipment must be consistent with security regulations of the Department and is subject to the availability of personnel to monitor such copying.

§ 171.4 Electronic reading room.

The Department has established a site on the Internet with most of the same records and reference materials that are available in the public reading room. This site also contains information on accessing records under the FOIA and the Privacy Act. The site is a valuable source that is easily accessed by the public by clicking on ''FOIA'' at the Department's Web site at *http://www.state.gov* or directly at the FOIA home page at *http://foia.state.gov.* Included on the FOIA home page are links to other sites where Department information may be available. The Department's Privacy Act systems of records and the various records disposition schedules may be found on the Department's FOIA home page under ''Reference Materials.''

§ 171.5 Requests for information—types and how made.

(a) Requests for records in accordance with this chapter may be made by mail addressed to the Information and Privacy Coordinator, U.S. Department of State, SA–2, 515 22nd Street, NW., Washington, DC 20522–6001. Facsimile requests under the FOIA only may be sent to: (202) 261–8579. E-mail requests cannot be accepted at this time. Requesters are urged to indicate clearly on their requests the provision of law under which they are requesting information. This will facilitate the processing of the request by the Department. In any case, the Department will process the request under the provision of law that provides the greatest access to the requested records.

(b) Requests may also be made by the public in person from 8:15 a.m. to 5 p.m. at the Department of State, SA–2, 515 22nd Street, NW., Washington, DC.

(c) Although no particular request format is required, it is essential that a request reasonably describe the Department records that are sought. The burden of adequately identifying the record requested lies with the requester. Requests should be specific and include all pertinent details about the request. For FOIA requests, the request should include the subject, timeframe, any individuals involved, and reasons why the Department is believed to have records on the subject of the request. For Privacy Act requests, the request should state the type of records sought, the complete name and date and place of birth of the subject of the request, and the timeframe for the records. An original signature is required. See § 171.12(b) for guidance regarding third party requests. Individuals may seek assistance regarding any aspect of their requests from the Chief, Requester Liaison Division, (202) 261–8484.

(d) While every effort is made to guarantee the greatest possible access to all requesters regardless of the specific statute under which the information is requested, the following guidance is provided for individuals in requesting records:

(1) *Freedom of Information Act.* Requests for documents concerning the general activities of government and of the Department of State in particular (see subpart B of this part).

(2) *E.O. 12958.* Requests for mandatory review and declassification of specific Department records and requests for access to such records by historical researchers and certain former government officials (see subpart C of this part).

(3) *Privacy Act.* Requests from U.S. citizens or legal permanent resident aliens for records that pertain to them and that are maintained by the Department under the individual's name or personal identifier (see subpart D of this part).

(4) *Ethics in Government Act.* Requests for the financial Disclosure Statements of Department Employees covered by this Act (see subpart E of this part).

(e) *First-in/first-out processing.* As a general matter, information access requests are processed in the order in which they are received. However, if the request is specific and the search can be narrowed, it may be processed more quickly.

(f) *Cut-off date.* In determining which records are responsive to a request, the Department ordinarily will include only records in its possession as of the date the search for responsive documents is initiated, unless the requester has specified an earlier time frame

(g) *Records previously withheld or in litigation.* Requests shall not be processed for records that have been reviewed and withheld within the past two years or whose withholding is the subject of litigation.

§ 171.6 Archival records.

The Department ordinarily transfers records to the National Archives when they are 25 years old. Accordingly, requests for records 25 years old or older should be addressed to: Archives II, 8601 Adelphi Road, National Archives at College Park, MD 20470–6001.

Subpart B—Freedom of Information Act Provisions

§ 171.10 Purpose and scope.

This subpart contains the rules that the Department follows under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The rules should be read together with the FOIA which provides additional information about access to records and contains the specific exemptions that are applicable to withholding information. Privacy Act records determined to be exempt from disclosure under the Privacy Act are processed as well under the FOIA and are subject to this subpart.

§ 171.11 Definitions.

As used in this subpart, the following definitions shall apply:

(a) *Freedom of Information Act or FOIA* means the statute codified at 5 U.S.C. 552, as amended.

(b) *Department* means the United States Department of State, including its field offices and Foreign Service posts abroad;

(c) Agency means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency;

(d) *Information and Privacy Coordinator* means the Director of the Department's Office of Information Programs and Services (IPS) who is responsible for processing requests for access to information under the FOIA, the Privacy Act, E.O. 12958, and the Ethics in Government Act;

(e) *Record* means all information under the control of the Department, including information created, stored, and retrievable by electronic means, regardless of physical form or characteristics, made in or received by the Department and preserved as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Department or because of the informational value of the data contained therein. It includes records of other Government agencies that have been expressly placed under the control of the Department upon termination of those agencies. It does not include personal records created primarily for the personal convenience of an individual and not used to conduct Department business and not integrated into the Department's record keeping system or files. It does not include records that are not already in existence and that would have to be created specifically to meet a request. However, information available in electronic form shall be searched and compiled in response to a request unless such search and compilation would significantly interfere with the operation of the Department's automated information systems.

(f) *Control* means the Department's legal authority over a record, taking into account the ability of the Department to use and dispose of the record as it sees fit, to legally determine the disposition of a record, the intent of the record's creator to retain or relinquish control over the record, the extent to which Department personnel have read or relied upon the record, and the degree to which the record has been integrated into the Department's record keeping system or files.

(g) *Direct costs* means those costs the Department incurs in searching for, duplicating, and, in the case of commercial requests, reviewing documents in response to a FOIA

request. The term does not include overhead expenses.

(h) *Search costs* means those costs the Department incurs in looking for, identifying, and retrieving material, in paper or electronic form, that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Department shall attempt to ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the Department and the requester.

(i) *Duplication costs* means those costs the Department incurs in copying a requested record in a form appropriate for release in response to a FOIA request. Such copies may take the form of paper copy, microfiche, audio-visual materials, or machine-readable electronic documentation (*e.g.*, disk or CD–ROM), among others.

(j) *Review costs* means costs the Department incurs in examining a record to determine whether and to what extent the record is responsive to the FOIA request and the extent to which it may be disclosed to the requester. It does not include costs of resolving general legal or policy issues that may be raised by a request.

(k) *Unusual circumstances.* As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term ''unusual circumstances'' means:

(1) The need to search for and collect the requested records from Foreign Service posts or other separate and distinct Department offices;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(3) The need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the Department that have a substantial subject matter interest therein. Such consultation shall be conducted with all practicable speed.

(l) Commercial use request means a request from or on behalf of one who requests information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester belongs within this category, the Department will look at the use to which the requester will put the information requested.

(m) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program or programs of scholarly research.

(n) *Non-commercial scientific institution* means an institution that is not operated on a ''commercial'' basis, as that term is used in paragraph (l) of this section and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(o) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. News media include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate, such as by past publication, a likelihood of publication through a representative of the news media, even though not actually employed by it.

(p) *All other* means an individual or organization not covered by a definition in paragraphs (l), (m), (n), or (o) of this section.

§ 171.12 Processing requests.

The Information and Privacy Coordinator is responsible for acting on all initial requests except for requests for records coming under the jurisdiction of the Bureau of Consular Affairs, the Bureau of Diplomatic Security, the Bureau of Human Resources, the Office of Medical Services, and the Office of the Inspector General.

(a) *Third party requests.* Except for requests under the Privacy Act by a parent of a minor or by a legal guardian (§ 171.32(c)), requests for records pertaining to another individual shall be processed under the FOIA and must be accompanied by a written authorization for access by the individual, notarized or made under penalty of perjury, or by proof that the individual is deceased (*e.g.*, death certificate or obituary).

(b) *Expedited processing.* Requests and appeals shall be taken out of order and given expedited treatment whenever a requester has demonstrated that a ''compelling need'' for the information exists. A request for expedited processing may be made at the time of the initial request for records or at any later time. The request for expedited processing shall set forth with specificity the facts on which the request is based. A notice of the determination whether to grant expedited processing shall be provided to the requester within 10 days of the date of the receipt of the request. A ''compelling need'' is deemed to exist where the requester can demonstrate one of the following:

(1) Failure to obtain requested information on an expedited basis could reasonably be expected to: Pose an imminent threat to the life or physical safety of an individual; impair substantial due process rights; or harm substantial humanitarian interests.

(2) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. News media requesters would normally qualify; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just a particular segment or group.

(i) *Urgently needed.* The information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. Information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the breaking nature of the story.

(ii) *Actual or alleged Federal Government activity.* The information concerns some actions taken, contemplated, or alleged by or about the government of the United States, or one of its components or agencies, including the Congress.

(c) *Appeal of denial of expedited processing.* Any denial of a request for expedited processing may be appealed in accordance with the appeal procedure set forth in § 171.50.

(d) *Time limits.* The statutory time limit for responding to a FOIA request or to an appeal from a denial of a FOIA request is 20 days. In unusual circumstances, as defined in § 171.11(k), the time limits may be extended by the Information and Privacy Coordinator for not more than 10 days, excepting Saturdays, Sundays, or legal public holidays.

(e) *Multitrack processing.* The Department may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work

and/or time needed to process the request. The Department may provide requesters in a slower track an opportunity to limit the scope of their request in order to qualify for faster processing.

(f) *Form or format of response.* The Department shall provide requested records in any form or format sought by the requester if the record is readily reproducible in that form or format through reasonable efforts.

§ 171.13 Business information.

(a) Business information obtained by the Department from a submitter will be disclosed under the FOIA only in compliance with this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means information obtained by the Department from a submitter that arguably may be exempt from disclosure as privileged or confidential under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from which the Department obtains business information. The term includes corporations, partnerships, sole proprietorships; State, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers exempt from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The Department shall provide a submitter with prompt written notice of a FOIA request or administrative appeal of a denial of such a request that seeks its information whenever required under paragraph (e) of this section, except as provided in paragraph (f) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information. The notice shall either describe the information requested or include copies of the requested records or record portions containing the information.

(e) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The Department has reason to believe that the information may not be protected from disclosure under Exemption 4.

(f) *When notice is not required.* The notice requirements of paragraphs (d) and (e) of this section shall not apply if:

(1) The Department determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, the Department shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(g) *Opportunity to object to disclosure.* The Department will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period in the notice. If a submitter has any objection to disclosure, a detailed written statement in support of the objection must be submitted. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(h) *Notice of intent to disclose.* The Department shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever the Department decides to disclose business information over the objection of a submitter, it shall give the submitter written notice, which shall include:

(1) A statement of the reason why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(i) *Notice of lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of information, the Department shall promptly notify the submitter.

(j) *Notice to requester.* Whenever the Department provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the Department shall also notify the requester. Whenever the Department notifies a submitter of its intent to disclose requested information under paragraph (h) of this section, the Department shall also notify the requester. Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Department shall notify the requester.

§ 171.14 Fees to be charged—general.

The Department shall seek to charge fees that recoup the full allowable direct costs it incurs in processing a FOIA request. It shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The Department will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. With the exception of requesters seeking documents for a commercial use, the Department will provide the first two hours of search time and the first 100 pages of duplication without charge. By making a FOIA request, the requester shall be considered to have agreed to pay all applicable fees up to $25.00 unless a fee waiver has been granted.

(a) *Searches for responsive records.* If the Department estimates that the search costs will exceed $25.00, the requester shall be so notified. Such notice shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request to meet the requester's needs at a lower cost. The request shall not be processed further unless the requester agrees to pay the estimated fees.

(1) *Manual searches.* The Department will charge at the salary rate (*i.e.*, basic pay plus 16 percent of basic pay) of the employee making the search.

(2) *Computer searches.* The Department will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary attributable to the search.

(b) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time

spent reviewing records to determine whether they are releasable. Charges may be assessed for the initial review only; *i.e.*, the review undertaken the first time the Department analyzes the applicability of a specific exemption to a particular record or portion of a record.

(c) *Duplication of records.* Records shall be duplicated at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, the Department shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, the Department shall charge the actual direct costs of producing the document. If the Department estimates that the duplication costs will exceed $25.00, the requester shall be so informed. The request shall not be processed further unless the requester agrees to pay the estimated fees.

(d) *Other charges.* The Department shall recover the full costs of providing services such as those enumerated below:

(1) Certifying that records are true copies (see part 22 of this chapter);

(2) Sending records by special methods such as express mail, overnight courier, etc.

(f) *Payment* shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the Information and Privacy Coordinator.

(g) *A receipt for fees* paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

§ 171.15 Fees to be charged—categories of requesters.

Under the FOIA, there are four categories of requesters: Commercial use requesters, educational and non-commercial scientific institutions, representatives of the news media, and all other requesters. The fees for each of these categories are:

(a) *Commercial use requesters.* When the Department receives a request for documents for commercial use as defined in § 171.11(l), it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction of documents. The Department may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 171.16(b)).

(b) *Educational and non-commercial scientific institution requesters.* The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution, as defined in § 171.11(m) and (n), and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(c) *Representatives of the news media.* The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 171.11(o), and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a commercial use request.

(d) *All other requesters.* The Department shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

§ 171.16 Miscellaneous fee provisions.

(a) *Charging interest.* The Department shall begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. The fact that the fee has been received by the Department within the thirty-day grace period, even if not processed, shall stay the accrual of interest. Interest will be at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of the billing.

(b) *Charges for unsuccessful search or if records are withheld.* The Department may assess charges for time spent searching, even if it fails to locate the records or if the records located are determined to be exempt from disclosure.

(c) *Advance payment.* The Department may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) It estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. In such a case, the Department shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or shall require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay within 30 days of the date of the billing a fee charged. In such a case, the Department shall require the requester to pay the full amount previously owed plus any applicable interest and to make an advance payment of the full amount of the estimated fee before the Department begins to process a new or pending request from that requester. If a requester has failed to pay a fee charged by another U.S. Government agency in an information access case, the Department may require proof that such fee has been paid before processing a new or pending request from that requester.

(3) When the Department acts under paragraph (c)(1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (*i.e.*, 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits), will begin only after the Department has received fee payments described in paragraphs (c)(1) and (2) of this section.

(d) *Aggregating requests.* When the Department reasonably believes that a requester, or a group of requesters acting in concert, has submitted multiple requests involving related matters solely to avoid payment of fees, the Department may aggregate those requests for purposes of assessing processing fees.

(e) *Effect of the Debt Collection Act of 1982* (Pub. L. 97–365). The Department shall comply with provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to effect repayment.

§ 171.17 Waiver or reduction of fees.

(a) Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, the Department will consider the following four factors:

(i) The subject of the request, *i.e.*, whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed, *i.e.*, whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure, *i.e.*, whether disclosure of the requested information will contribute to public understanding, including whether the requester has expertise in the subject area as well as the intention and ability to disseminate the information to the public; and

(iv) The significance of the contribution to public understanding, *i.e.*, whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Department will consider the following two factors:

(i) The existence and magnitude of a commercial interest, *i.e.*, whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure, *i.e.*, whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) The Department may refuse to consider waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain owed to the Department for another information access request.

(c) Where only some of the records to be released satisfy the requirements for a waiver or reduction of fees, a waiver or reduction shall be granted for only those records.

(d) The Department's decision to refuse to waive or reduce fees may be appealed in accordance with § 171.51.

Subpart C—Executive Order 12958 Provisions

§ 171.20 Definitions.

As used in this subpart, the following definitions shall apply:

(a) *Agency* means any executive branch agency, as defined in 5 U.S.C. 105, any military department, as defined by 5 U.S.C. 102, and any other entity within the executive branch that comes into possession of classified information.

(b) *Classified information* means information that has been determined pursuant to E.O. 12958 or any predecessor order on national security information to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(c) *Declassification* means the authorized change in the status of information from classified information to unclassified information.

(d) *Department* means the U.S. Department of State, including its field offices and Foreign Service posts abroad.

(e) FOIA means the Freedom of Information Act, 5 U.S.C. 552.

(f) *Foreign government information* means:

(1) Information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) Information received and treated as foreign government information under the terms of a predecessor executive order.

(g) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics that is owned by, produced by or for, or is under the control of the United States Government.

(h) *Mandatory declassification review* means the process by which specific classified information is reviewed for declassification pursuant to a request under § 171.21.

(i) *National Security* means the national defense or foreign relations of the United States.

(j) *Certain former government personnel* includes former officials of the Department of State or other U.S. Government agencies who previously have occupied policy-making positions to which they were appointed by the President under 3 U.S.C. 105(a)(2)(A) or by the Vice President under 3 U.S.C. 106(a)(1)(A). It does not include former Foreign Service Officers as a class or persons who merely received assignment commissions as Foreign Service Officers, Foreign Service Reserve Officers, Foreign Service Staff Officers and employees.

(k) *Senior Agency Official* means the Under Secretary of State for Management.

§ 171.21 Declassification review.

(a) *Scope.* All information classified under E.O. 12958 or predecessor orders shall be subject to declassification review upon request by a member of the public or a U.S. government employee or agency with the following exceptions:

(1) Information originated by the incumbent President or, in the performance of executive duties, the incumbent Vice President; the incumbent President's White House staff or, in the performance of executive duties, the incumbent Vice President's staff; committees, commissions, or boards appointed by the incumbent President; other entities within the Executive Office of the President that solely advise and assist the incumbent President;

(2) Information that is the subject of litigation;

(3) Information that has been reviewed for declassification within the past two years; and

(4) Information exempted from search and review under the Central Intelligence Agency Information Act.

(b) *Requests.* Requests for mandatory declassification review should be addressed to the Information and Privacy Coordinator at the address given in § 171.5. E-mail requests are not accepted at this time.

(c) *Mandatory declassification review and the FOIA.* A mandatory declassification review request is separate and distinct from a request for records under the FOIA. When a requester submits a request under both mandatory declassification review and the FOIA, the Department shall require the requester to elect review under one process or the other. If the requester fails to make such election, the request will be under the process that would result in the greatest disclosure unless

the information requested is subject to only mandatory declassification review.

(d) *Description of information sought.* In order to be processed, a request for declassification review must describe the document or the material containing the information sought with sufficient specificity to enable the Department to locate the document or material with a reasonable amount of effort. Whenever a request does not sufficiently describe the material, the Department shall notify the requester that no further action will be taken unless additional description of the information sought is provided.

(e) *Refusal to confirm or deny existence of information.* The Department may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of existence or nonexistence is itself classified.

(f) *Processing.* In responding to mandatory declassification review requests, the Department shall make a review determination as promptly as possible and notify the requester accordingly. When the requested information cannot be declassified in its entirety, the Department shall release all meaningful portions that can be declassified and that are not exempt from disclosure on other grounds (see § 171.25).

(g) *Other agency information.* When the Department receives a request for information in its possession that was originally classified by another agency, it shall refer the request and the pertinent information to the other agency for processing unless that agency has agreed that the Department may review such information for declassification on behalf of that agency. The Department may, after consultation with the other agency, inform the requester of the referral unless association of the other agency with the information is itself classified.

(h) *Foreign government information.* In the case of a request for material containing foreign government information, the Department, if it is also the agency that initially received the foreign government information, shall determine whether the information may be declassified and may, if appropriate, consult with the relevant foreign government on that issue. If the Department is not the agency that initially received the foreign government information, it shall refer the request to the original receiving agency for direct response to the requester.

(i) *Cryptologic and intelligence information.* Mandatory declassification review requests for cryptologic information shall be processed in accordance with special procedures established by the Secretary of Defense, and such requests for information concerning intelligence activities or intelligence sources and methods shall be processed in accordance with special procedures established by the Director of Central Intelligence.

§ 171.22 Appeals.

Any denial of a mandatory declassification review request may be appealed to the Department's Appeals Review Panel in accordance with § 171.52. A denial by the Appeals Review Panel of a mandatory declassification review appeal may be further appealed to the Interagency Security Classification Appeals Panel.

§ 171.23 Declassification in the public interest.

It is presumed that information that continues to meet classification requirements requires continued protection. In exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the senior Department official with Top Secret authority having primary jurisdiction over the information in question. That official, after consultation with the Assistant Secretary for Public Affairs, will determine whether the public interest in disclosure outweighs the damage to national security that reasonably could be expected from disclosure. If the determination is made that the information should be declassified and disclosed, that official will make such a recommendation to the Secretary or the senior agency official who shall make the decision on declassification and disclosure. This provision does not amplify or modify the substantive criteria or procedures for classification or create any substantive or procedural right subject to judicial review.

§ 171.24 Access by historical researchers and certain former government personnel.

(a) The restriction in E.O. 12958 and predecessor orders on limiting access to classified information to individuals who have a need-to-know the information may be waived, under the conditions set forth below, for persons who:

(1) Are engaged in historical research projects;

(2) Have served as Presidential or Vice Presidential appointees as defined in § 171.20(j), or

(3) Served as President or Vice President.

(b) Requests by such persons must be submitted in writing to the Information and Privacy Coordinator at the address set forth in § 171.5 and must include a general description of the records sought, the time period covered by the request, and an explanation why access is sought. Requests for access by such requesters may be granted if:

(1) The Secretary or the Senior Agency Official determines in writing that access is consistent with the interests of national security;

(2) The requester agrees in writing to safeguard the information from unauthorized disclosure or compromise;

(3) The requester submits a statement in writing authorizing the Department to review any notes and manuscripts created as a result of access;

(4) The requester submits a statement in writing that any information obtained from review of the records will not be disseminated without the express written permission of the Department;

(c) If a requester uses a research assistant, the requester and the research assistant must both submit a statement in writing acknowledging that the same access conditions set forth in paragraph (b)(4) of this section apply to the research assistant. Such a research assistant must be working for the applicant and not gathering information for publication on his or her own behalf.

(d) Access granted under this section shall be limited to items the appointee originated, reviewed, signed, or received while serving as a Presidential or Vice Presidential appointee or as President or Vice President.

(e) Such requesters may seek declassification and release of material to which they have been granted access under this section through either the FOIA or the mandatory declassification review provisions of E.O. 12958. Such requests shall be processed in the order received, along with other FOIA and mandatory declassification review requests, and shall be subject to the fees applicable to FOIA requests.

§ 171.25 Applicability of other laws.

Exemptions from disclosure set forth in the Freedom of Information Act, the Privacy Act, and other statutes or privileges protecting information from disclosure recognized in discovery or other such litigation-related procedures may be applied to withhold information declassified under the provisions of this subpart.

Subpart D—Privacy Act Provisions

§ 171.30 Purpose and scope.

This subpart contains the rules that the Department follows under the

Privacy Act of 1974, 5 U.S.C. 552a. These rules should be read together with the Privacy Act, which provides additional information about records maintained on individuals. The rules in this subpart apply to all records in systems of records maintained by the Department that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Department. If any records retrieved pursuant to an access request under the Privacy Act are found to be exempt from disclosure under that Act, they will be processed for possible disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552. No fees shall be charged for access to or amendment of Privacy Act records.

§ 171.31 Definitions.

As used in this subpart, the following definitions shall apply:

(a) *Department* means the United States Department of State, including its field offices and Foreign Service posts abroad.

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, or disseminate.

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Department, including, but not limited to education, financial transactions, medical history, and criminal or employment history, that contains the individual's name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

(e) *System of Records* means a group of any records under the control of the Department from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

(f) *Control* has the meaning set forth in § 171.11(f)

(g) *Information and Privacy Coordinator* has the meaning set forth in § 171.11(d).

(h) *DS* is the abbreviation for the Bureau of Diplomatic Security of the U.S. Department of State.

(i) *OIG* is the abbreviation for the Office of the Inspector General of the U.S. Department of State.

§ 171.32 Request for access to records.

(a) *Description of records sought.* All requests for access to a record must reasonably describe the System of Records and the individual's record within the system in sufficient detail to permit identification of the requested record. At a minimum, requests should include the individual's full name (including maiden name, if appropriate) and any other names used, present mailing address and ZIP Code, date and place of birth, and any other information that might help in identifying the record. Helpful data includes the approximate time period of the record and the circumstances that give the individual reason to believe that the Department of State maintains a record under the individual's name or personal identifier. In certain instances, it may be necessary for the Department to request additional information from the requester, either to ensure a full search, or to ensure that a record retrieved does in fact pertain to the individual.

(b) *Verification of personal identity.* The Department will require reasonable identification of individuals requesting records under the Privacy Act to ensure that records are disclosed only to the proper persons. Requesters must state their full name, current address, date and place of birth, and, at the requester's option, social security number. The request must be signed, and the requester's signature must be either notarized or submitted under penalty of perjury (28 U.S.C. 1746) as a substitute for notarization. If the requester seeks records under another name the requester has used, a statement, under penalty of perjury, that the requester has also used the other name must be included.

(c) *Third party access.* The Department shall allow third party access to records under certain conditions:

(1) *Parents.* Upon presentation of documentation of the parental relationship, a parent of a minor (an unmarried person under the age of 18) may, on behalf of the minor, request records pertaining to the minor and the Department may, in its discretion, disclose such records to the parent to the extent determined by the Department to be appropriate in the circumstances of the case. In any case, minors may request such records on their own behalf.

(2) *Guardians.* A guardian of a minor or of an individual who has been declared by a court to be incompetent may act for and on behalf of the minor or the incompetent individual upon presentation of appropriate documentation of the guardian relationship.

(3) *Authorized representatives or designees.* When an individual wishes to authorize another person or persons access to his or her records, the individual shall submit, in addition to the identifying information described in paragraph (b) of this section, a signed statement, either notarized or made under penalty of perjury, authorizing and consenting to access by a designated person or persons. Such requests shall be processed under the FOIA (see § 171.12).

(d) *Records relating to civil actions.* Nothing in this subpart entitles an individual to access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) *Time limits.* The Department will acknowledge the request promptly and furnish the requested information as soon as possible thereafter.

(f) *Information on amending records.* At the time the Department grants access to a record, it will also furnish guidelines for requesting amendment of a record. These guidelines may also be obtained by writing to the Information and Privacy Coordinator at the address given in § 171.5. The guidelines are also available in the reading room described in § 171.3 and in the electronic reading room described in § 171.4.

§ 171.33 Request to amend or correct records.

(a) An individual has the right to request that the Department amend a record pertaining to the individual that the individual believes is not accurate, relevant, timely, or complete.

(b) Requests to amend records must be in writing and mailed or delivered to the Information and Privacy Coordinator, at the address given in § 171.5, who will coordinate the review of the request with the appropriate offices of the Department. The Department will require verification of personal identity as provided in § 171.32(b) before it will initiate action to amend a record. Amendment requests should contain, as a minimum, identifying information needed to locate the record in question, a description of the specific correction requested, and an explanation of why the existing record is not accurate, relevant, timely, or complete. The requester should submit as much pertinent documentation, other information, and explanation as possible to support the request for amendment.

(c) All requests for amendments to records will be acknowledged within 10 days (excluding Saturdays, Sundays, and legal public holidays).

(d) In reviewing a record in response to a request to amend, the Department shall review the record to determine if it is accurate, relevant, timely, and complete.

(e) If the Department agrees with an individual's request to amend a record, it shall:

(1) Advise the individual in writing of its decision;

(2) Amend the record accordingly; and

(3) If an accounting of disclosure has been made, advise all previous recipients of the record of the amendment and its substance.

(f) If the Department denies, in whole or in part, the individual's amendment request, it shall advise the individual in writing of its decision, of the reason therefore, and of the individual's right to appeal the denial in accordance with § 171.52.

§ 171.34 Request for an accounting of record disclosures.

(a) *How made*. Except where accountings of disclosures are not required to be kept, as set forth in paragraph (b) of this section, an individual has a right to request an accounting of any disclosure that the Department has made to another person, organization, or agency of any record about an individual. This accounting shall contain the date, nature, and purpose of each disclosure as well as the name and address of the recipient of the disclosure. Any request for accounting should identify each particular record in question and may be made by writing directly to the Information and Privacy Coordinator at the address given in § 171.5.

(b) *Where accountings not required*. The Department is not required to keep an accounting of disclosures in the case of:

(1) Disclosures made to employees within the Department who have a need for the record in the performance of their duties;

(2) Disclosures required under the FOIA;

(3) Disclosures made to another agency or to an instrumentality of any governmental jurisdiction under the control of or within the United States for authorized civil or criminal law enforcement activities pursuant to a written request from such agency or instrumentality specifying the activities for which the disclosures are sought and the portions of the records sought.

§ 171.35 Denials of requests; appeals.

If the Department denies a request for access to Privacy Act records, for amendment of such records, or for an accounting of disclosure of such records, the requester shall be informed of the reason for the denial and of the right to appeal the denial to the Appeals Review Panel in accordance with § 171.52.

§ 171.36 Exemptions.

Systems of records maintained by the Department are authorized to be exempted from certain provisions of the Privacy Act under both general and specific exemptions set forth in the Act. In utilizing these exemptions, the Department is exempting only those portions of systems that are necessary for the proper functioning of the Department and that are consistent with the Privacy Act. Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, *e.g.*, public source materials, the applicable exemption may be waived, either partially or totally, by the Department or the OIG, in the sole discretion of the Department or the OIG, as appropriate.

(a) *General exemptions*. (1) Individuals may not have access to records maintained by the Department that were provided by another agency that has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j)(1). If such exempt records are the subject of an access request, the Department will advise the requester of their existence and of the name and address of the source agency, unless that information is itself exempt from disclosure.

(2) The systems of records maintained by the Bureau of Diplomatic Security (STATE–36), the Office of the Inspector General (STATE–53), and the Information Access Program Records system (STATE–35) are subject to general exemption under 5 U.S.C. 552a(j)(2). All records contained in record system STATE–36, Security Records, are exempt from all provisions of the Privacy Act except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent to which they meet the criteria of section (j)(2). These exemptions are necessary to ensure the effectiveness of the investigative, judicial, and protective processes. All records contained in STATE–53, records of the Inspector General and Automated Individual Cross-Reference System, are exempt from all of the provisions of the Privacy Act except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent to which they meet the criteria of section (j)(2). These exemptions are necessary to ensure the proper functions of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with the enforcement of criminal laws, to avoid the disclosure of investigative techniques, to avoid the endangering of the life and safety of any individual, to avoid premature disclosure of the knowledge of potential criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process. All records contained in the Information Access Program Records system (STATE–35) are exempt from all of the provisions of the Privacy Act except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent to which they meet the criteria of section (j)(2). These exemptions are necessary to ensure the protection of law enforcement information retrieved from various sources in response to information access requests.

(b) *Specific exemptions*. Portions of the following systems of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), and (4), (G), (H), and (I), and (f). The names of the systems correspond to those published in the **Federal Register** by the Department.

(1) *Exempt under 5 U.S.C. 552a(k)(1)*. The reason for invoking this exemption is to protect material required to be kept secret in the interest of national defense and foreign policy.

Board of Appellate Review Records. STATE–02.
Congressional Correspondence. STATE–43.
Congressional Travel Records. STATE–44.
Coordinator for the Combating of Terrorism Records. STATE–06.
External Research Records. STATE–10.
Extradition Records. STATE–11.
Foreign Assistance Inspection Records. STATE–48.
Human Resources Records. STATE–31.
Information Access Programs Records. STATE–35.
Intelligence and Research Records. STATE–15.
International Organizations Records. STATE–17.
Law of the Sea Records. STATE–19.
Legal Case Management Records. STATE–21.
Munitions Control Records. STATE–42.
Overseas Citizens Services Records. STATE–05.
Overseas Records. STATE–25.
Passport Records. STATE–26.
Personality Cross-Reference Index to the Secretariat Automated Data Index Records. STATE–28.
Personality Index to the Central Foreign Policy Records. STATE–29.
Personnel Payroll Records. STATE–30.

Records of the Inspector General and Automated Individual Cross-Reference System. STATE–53.
Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes. STATE–54.
Rover Records. STATE–41.
Records of Domestic Accounts Receivable. STATE–23.
Records of the Office of White House Liaison. STATE–34.
Board of Appellate Review Records. STATE–02.
Refugee Records. STATE–59.
Refugee Data Center Processing Records. STATE–60.
Security Records. STATE–36.
Visa Records. STATE–39.

(2) *Exempt under 5 U.S.C. 552(a)(k)(2).* The reasons for invoking this exemption are to prevent individuals that are the subject of investigation from frustrating the investigatory process, to ensure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the confidence of foreign governments in the integrity of the procedures under which privileged or confidential information may be provided, and to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel.

Board of Appellate Review Records. STATE–02.
Coordinator for the Combating of Terrorism Records. STATE–06.
Extradition Records. STATE–11.
Foreign Assistance Inspection Records. STATE–48.
Garnishment of Wages Records. STATE–61.
Information Access Program Records. STATE–35.
Intelligence and Research Records. STATE–15.
Munitions Control Records. STATE–42.
Overseas Citizens Services Records. STATE–05.
Overseas Records. STATE–25.
Passport Records. STATE–26.
Personality Cross Reference Index to the Secretariat Automated Data Index. STATE–28.
Personality Index to the Central Foreign Policy Records. STATE–29.
Records of the Inspector General and Automated Individual Cross-Reference System. STATE–53.
Security Records. STATE–36.
Visa Records. STATE–39.

(3) *Exempt under 5 U.S.C. 552(a)(k)(3).* The reason for invoking this exemption is to preclude impairment of the Department's effective performance in carrying out its lawful protective responsibilities under 18 U.S.C. 3056 and 22 U.S.C. 4802.

Extradition Records. STATE–11.
Information Access Programs Records. STATE–35.
Intelligence and Research Records. STATE–15.
Overseas Citizens Services Records. STATE–05.
Overseas Records. STATE–25.
Passport Records. STATE–26.
Personality Cross-Reference Index to the Secretariat Automated Data Index. STATE–28.
Personality Index to the Central Foreign Policy Records. STATE–29.
Security Records. STATE–36.
Visa Records. STATE–39.

(4) *Exempt under 5 U.S.C. 552a(k)(4).* The reason for invoking this exemption is to avoid needless review of records that are used solely for statistical purposes and from which no individual determinations are made.

Foreign Service Institute Records. STATE–14.
Human Resources Records. STATE–31.
Information Access Programs Records. STATE–35.
Personnel Payroll Records. STATE–30.
Security Records. STATE–36.

(5) *Exempt under 5 U.S.C. 552a(k)(5).* The reasons for invoking this exemption are to ensure the proper functioning of the investigatory process, to ensure effective determination of suitability, eligibility, and qualification for employment and to protect the confidentiality of sources of information.

Equal Employment Opportunity Records. STATE–09.
Foreign Assistance Inspection Records. STATE–48.
Foreign Service Grievance Board Records. STATE–13.
Human Resources Records. STATE–31.
Information Access Programs Records. STATE–35.
Legal Adviser Attorney Employment Application Records. STATE–20.
Overseas Records. STATE–25.
Personality Cross-Reference Index to the Secretariat Automated Data Index Records. STATE–28.
Records of the Inspector General and Automated Individual Cross-Reference System. STATE–53.
Records of the Office of White House Liaison. STATE–34.
Rover Records. STATE–41.
Security Records. STATE–36.
Senior Personnel Appointments Records. STATE–47.

(6) *Exempt under 5 U.S.C. 552(k)(6).* The reasons for invoking this exemption are to prevent the compromise of testing or evaluation material used solely to determine individual qualifications for employment or promotion and to avoid giving unfair advantage to individuals by virtue of their having access to such material.

Foreign Service Institute Records. STATE–14.
Human Resources Records. STATE–31.
Information Access Programs Records. STATE–35.
Security Records. STATE–36.

(7) *Exempt under 5 U.S.C. 552a(k)(7).* The reason for invoking this exemption is to prevent access to material maintained from time to time by the Department in connection with various military personnel exchange programs.

Overseas Records. STATE–25.
Human Resources Records. STATE–31.
Information Access Programs Records. STATE–35.
Personality Cross-Reference Index to the Secretariat Automated Data Index Records. STATE–28.
Personality Index to the Central Foreign Policy Records. STATE–29.

Subpart E—Ethics in Government Act Provisions

§ 171.40 Purpose and scope.

This subpart sets forth the regulations under which persons may request access to the public financial disclosure reports of employees of the Department as well as limits to such requests and use of such information. The Ethics in Government Act 1978, as amended, and the Office of Government Ethics implementing regulations, 5 CFR part 2634, require that high-level Federal officials disclose publicly their personal financial interests.

§ 171.41 Covered employees.

(a) Officers and employees (including special Government employees as defined in 18 U.S.C. 202) whose positions are classified at grades GS–16 and above of the General Schedule, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than the 120% of the minimum rate of basic pay for GS–15 of the General Schedule;

(b) Officers or employees in any other positions determined by the Director of the Office of Government Ethics to be of equal classification to GS–16;

(c) Employees in the excepted service in positions that are of a confidential or policy-making character, unless by regulation their positions have been excluded by the Director of the Office of Government Ethics;

(d) The designated agency official who acts as the Department's Ethics Officer;

(e) Incumbent officials holding positions referred to above if they have served 61 days or more in the position during the preceding calendar year.

(f) Officials who have terminated employment from a position referred to above and who have not accepted

another such position within 30 days of such termination.

§ 171.42 Requests and identifying information.

Requests for access to public financial disclosure reports of covered employees should be made in writing to the Information and Privacy Coordinator at the address given in § 171.5 setting forth:

(a) The name and/or position title of the Department of State official who is the subject of the request,

(b) The time period covered by the report requested,

(c) A completed Office of Government Ethics request form, OGE Form 201, October, 1999. This form may be obtained by writing to the Information and Privacy Coordinator or by visiting the Public Reading Room described in § 171.3 or *http://www.usoge.gov.*

§ 171.43 Time limits and fees.

(a) Reports shall be made available within thirty (30) days from receipt of a request by the Department. The Department does not charge a fee for a single copy of a public financial report. However, the Department will charge for additional copies of a report at a rate of 15 cents per page plus the actual direct cost of mailing the reports. However, the Department will not charge for individual requests if the total charge would be $10.00 or less.

(b) A report shall be retained by the Department and made available to the public for a period of six (6) years after receipt of such report. After such a six year period, the report shall be destroyed, unless needed in an ongoing investigation, except that those reports filed by individuals who are nominated for office by the President to a position that requires the advice and consent of the Senate, and who subsequently are not confirmed by the Senate, will be retained and made available for a one-year period, and then destroyed, unless needed in an ongoing investigation.

§ 171.44 Improper use of reports.

(a) The Attorney General may bring a civil action against any person who obtains or uses a financial disclosure report:

(1) For any unlawful purpose;

(2) For any commercial purpose, other than for news or community dissemination to the general public;

(3) For determining or establishing the credit rating of any individual;

(4) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(b) The court in which such action is brought may assess a civil penalty not to exceed $10,000 against any person who obtains or uses the reports for these prohibited purposes. Such remedy shall be in addition to any other remedy available under statutory or common law.

Subpart F—Appeal Procedures

§ 171.50 Appeal of denials of expedited processing.

(a) A denial of a request for expedited processing may be appealed to the Chief of the Requester Liaison Division of the office of the Information and Privacy Coordinator at the address given in § 171.5 within 30 days of receipt of the denial. Appeals should contain as much information and documentation as possible to support the request for expedited processing in accordance with the criteria set forth in § 171.12(b).

(b) The Requester Liaison Division Chief will issue a final decision in writing within ten (10) days from the date on which the office of the Information and Privacy Coordinator receives the appeal.

§ 171.51 Appeal of denials of fee waivers or reductions.

(a) A denial of a request for a waiver or reductions of fees may be appealed to the Chief of the Requester Liaison Division of the office of the Information and Privacy Coordinator at the address given in § 171.5 within 30 days of receipt of the denial. Appeals should contain as much information and documentation as possible to support the request for fee waiver or reduction in accordance with the criteria set forth in § 171.17.

(b) The Requester Liaison Division Chief will issue a final decision in writing within 30 days from the date on which the office of the Information and Privacy Coordinator receives the appeal.

§ 171.52 Appeal of denial of access to, declassification of, amendment of, accounting of disclosures of, or challenge to classification of records.

(a) *Right of administrative appeal.* Except for records that have been reviewed and withheld within the past two years or are the subject of litigation, any requester whose request for access to records, declassification of records, amendment of records, accounting of disclosures of records, or any authorized holder of classified information whose classification challenge has been denied, has a right to appeal the denial to the Department's Appeals Review Panel. This appeal right includes the right to appeal the determination by the Department that no records responsive to an access request exist in Department files. Privacy Act appeals may be made only by the individual to whom the records pertain.

(b) *Form of appeal.* There is no required form for an appeal. However, it is essential that the appeal contain a clear statement of the decision or determination by the Department being appealed. When possible, the appeal should include argumentation and documentation to support the appeal and to contest the bases for denial cited by the Department. The appeal should be sent to: Chairman, Appeals Review Panel, c/o Information and Privacy Coordinator/Appeals Officer, at the address given in § 171.5.

(c) *Time limits.* The appeal should be received within 60 days of the date of receipt by the requester of the Department's denial. The time limit for response to an appeal begins to run on the day that the appeal is received. The time limit (excluding Saturdays, Sundays, and legal public holidays) for agency decision on an administrative appeal is 20 days under the FOIA (which may be extended for up to an additional 10 days in unusual circumstances) and 30 days under the Privacy Act (which the Panel may extend an additional 30 days for good cause shown). The Panel shall decide mandatory declassification review appeals as promptly as possible.

(d) *Notification to appellant.* The Chairman of the Appeals Review Panel shall notify the appellant in writing of the Panel's decision on the appeal. When the decision is to uphold the denial, the Chairman shall include in his notification the reasons therefore. The appellant shall be advised that the decision of the Panel represents the final decision of the Department and of the right to seek judicial review of the Panel's decision, when applicable. In mandatory declassification review appeals, the Panel shall advise the requester of the right to appeal the decision to the Interagency Security Classification Appeals Panel under Sec. 3.5(d) of E.O. 12958.

(e) *Procedures in Privacy Act amendment cases.* (1) If the Panel's decision is that a record shall be amended in accordance with the appellant's request, the Chairman shall direct the office responsible for the record to amend the record, advise all previous recipients of the record of the amendment and its substance if an accounting of disclosure has been made, and so advise the individual in writing.

(2) If the Panel's decision is that the request of the appellant to amend the record is denied, in addition to the notification required by paragraph (d) of this section, the Chairman shall advise the appellant:

(i) Of the right to file a concise statement of the reasons for disagreeing with the decision of the Department;

(ii) Of the procedures for filing the statement of disagreement;

(iii) That any statement of disagreement that is filed will be made available to anyone to whom the record is subsequently disclosed, together with, at the discretion of the Department, a brief statement by the Department summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the disputed record will be provided a copy of any statement of disagreement, to the extent that an accounting of disclosures was maintained.

(3) If the appellant files a statement under paragraph (e)(2) of this section, the Department will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently have access to the record. When information that is the subject of a statement of dispute filed by an individual is subsequently disclosed, the Department will note that the information is disputed and provide a copy of the individual's statement. The Department may also include a brief summary of reasons for not amending the record when disclosing disputed information. Copies of the Department's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by an individual under these regulations.

Dated: February 27, 2004.

William A. Eaton,

Assistant Secretary for Administration, Department of State.

[FR Doc. 04–6119 Filed 3–30–04; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1327

[Docket No. NHTSA–04–17326]

RIN 2127–AI45

Procedures for Participating in and Receiving Data From the National Driver Register Problem Driver Pointer System

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

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes to amend the agency's National Driver Register (NDR) regulations to implement changes mandated by the Motor Carrier Safety Improvement Act of 1999 (MCSIA). MCSIA amended the NDR Act to require that a State, before issuing or renewing a motor vehicle operator's license, must verify an individual's driving record through informational checks of both the NDR and the Commercial Driver's License Information System (CDLIS).

This document proposes to amend the NDR regulations to reflect this statutory change. This document proposes also to update the NDR reporting codes located in the Appendix to reflect those codes currently in use by the States and the NDR. In addition, this document proposes to clarify that records should be reported to the NDR only regarding individuals who have been convicted or whose license has been denied, canceled, revoked, or suspended for one of the offenses identified in the Appendix. Finally, the document proposes to add a definition for the term ''employers or prospective employers of motor vehicle operators.''

DATES: Written comments may be submitted to this agency and must be received by June 1, 2004.

ADDRESSES: Comments should refer to the docket number and be submitted (preferably in two copies) to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the Docket number of this document. You may call the docket at (202) 366–9324. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Sean McLaurin, Chief, National Driver Register, NPO–124, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4800. For legal issues: Mr. Roland (R.T.) Baumann III, Attorney-Advisor, Office of the Chief Counsel, NCC–113, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–1834.

SUPPLEMENTARY INFORMATION:

The National Driver Register

The National Driver Register (NDR) is a central file of information on individuals whose license to operate a motor vehicle has been denied, revoked, suspended, or canceled, for cause, or who have been convicted of certain serious traffic-related violations, such as racing on the highway or driving while impaired by alcohol or other drugs. The NDR was designed to prevent a driver whose license was suspended, revoked, or withdrawn in one State from obtaining a driver's license in another State.

As provided in the NDR Act of 1982, as amended, 49 U.S.C. 30301, *et seq.*, State chief driver licensing officials are authorized to request and receive information from the NDR for driver licensing and driver improvement purposes. When an individual applies for a driver's license, for example, these State officials are authorized to request and receive NDR information to determine whether the applicant's driver's license has been withdrawn for cause or if the applicant has been convicted of specific offenses in any other State.

State chief driver licensing officials are also authorized under the NDR Act to request NDR information on behalf of other NDR users for specific transportation safety purposes. Other authorized NDR users include Federal agencies involved in transportation safety and the employers and prospective employers of certain transportation workers. These authorized users may receive NDR information under limited circumstances and only for specific transportation safety purposes. The NDR Act also provides that individuals may request information from the NDR about themselves.

States participate in the NDR by sending information to the NDR regarding individuals who have been subject to specified licensing actions and convictions. States can also request information from the NDR about driver license applicants. In this way, States can avoid issuing licenses to those drivers whose driving record contains violations or whose license has been denied, revoked, suspended, or canceled, for cause.

Originally, the NDR was designed to provide the actual adverse driving record for these problem drivers. However, the volume of information associated with each driver kept the NDR from operating efficiently. Congress sought to improve the NDR system and enacted the NDR Act of 1982, Pub. L. 97–364. The Act directed

the National Highway Traffic Safety Administration to implement a revised NDR system known as the Problem Driver Pointer System (PDPS). (*See* Final Rule, Procedures for Participating In and Receiving Data From the National Driver Register Problem Driver Pointer System, 56 FR 41394 (1991)). Under the PDPS, the NDR has been simplified to maintain only certain identifying information on problem drivers contained in ''pointer'' records. These records ''point'' to the State where the substantive adverse records can be obtained. The PDPS system is fully automated and enables State driver licensing officials to determine instantaneously whether another State has taken adverse action against a license applicant.

The Commercial Driver License (CDL) and the Commercial Driver License Information System (CDLIS)

''[T]o help prevent truck accidents * * * by establishing national standards for commercial drivers' licenses and requiring drivers to have a single commercial driver license and driving record,'' Congress enacted the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), Pub. L. 99–570, which created the Commercial Driver's License (CDL) Program. (*See* S. Rep. No. 99–411, at 1 (1986)). The CMVSA also mandated the creation of the Commercial Driver's License Information System (CDLIS) to serve as a national database for commercial driver licensing and conviction information. The CDLIS operates under an agreement between the Federal Motor Carrier Safety Administration (FMCSA) and the American Association of Motor Vehicle Administrators (AAMVA) and allows each State to quickly access commercial driver information. The CDLIS, like the NDR, is a pointer system. When an individual applies for a CDL, the State queries the CDLIS to determine whether the applicant has already been issued a CDL or whether the applicant's CDL has been revoked, suspended, or canceled. If a match is returned, the CDLIS indicates to the inquiring jurisdiction where more complete information on the applicant's commercial driving record can be found. The NDR operates in much the same way as the CDLIS, except that its recordkeeping function is limited to problem drivers. Individuals with a commercial driving record have a record maintained on the CDLIS, while the NDR keeps records only on those drivers with serious traffic offenses. To enforce the CMVSA requirement that a commercial motor vehicle operator hold only one license, States are required to access the CDLIS and the NDR before issuing a CDL. NDR regulations currently require States to check the NDR before issuing a motor vehicle operator's license. Prior to the statutory changes addressed in this notice, there was no requirement that a State check both informational databases before issuing a motor vehicle operator's license.

In an effort to measure the effectiveness of the CDL program and its general benefit to highway safety, the Office of Motor Carriers (OMC) of the Federal Highway Administration (FHWA) commissioned an effectiveness study in 1994. The study indicated that the CDL program had indeed been very successful in limiting commercial motor vehicle operators to a single license. However, the study also indicated that vulnerabilities existed in enforcing the single license requirement. States were not required to check the CDLIS when a CDL holder applied for a non-commercial driver's license (non-CDL), allowing a CDL holder to apply for a second license without detection. In contravening the single license requirement under the CMVSA, a commercial motor vehicle operator had the opportunity to ''spread'' traffic-related violations among various driver licenses. The study recommended that all States modify their licensing procedures to require that all CDL and non-CDL applicants have their records verified against both the NDR and the CDLIS. (*See* Commercial Driver License Effectiveness Study, Volume Two, Technical Report, at 24 (Feb. 1999)).

Statutory Change

Congress adopted the study's recommendation in the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, Section 204), which amended Section 30304 of title 49, United States Code by creating a new subsection that provides:

(e) Driver Record Inquiry—Before issuing a motor vehicle operator's license to an individual or renewing such a license, a State shall request from the Secretary information from the National Driver Register under section 30302 and the commercial driver's license information system under section 31309 on the individual's driving record.

The amendment requires all States to check both the NDR and the CDLIS before issuing any type of driver's license to an applicant. This statutory change was designed to curtail commercial motor vehicle operators from using multiple licenses to avoid the consequences of a traffic violation.

Agency Proposal

In view of the changes made by MCSIA, the agency is proposing amendments to the regulations implementing the NDR. Additional amendments, as noted below, provide clarification and updated information to improve program implementation.

Proposed Amendment to Section 1327.3

The current regulations use, but do not specifically define, the term ''employers or prospective employers of motor vehicle operators.'' An ''employer or a prospective employer of motor vehicle operator'' is a term used to describe a person who employs individuals that may be subject to NDR checks. (*See* 23 CFR 1327.6(c)). The lack of definition for this term could lead to inconsistent practices by States or employers who participate in and receive information from the NDR.

In order to more easily identify when a check of the NDR is appropriate, the agency has received informal requests from employers and State licensing officials to provide guidance on the term ''employer or prospective employer of motor vehicle operators.'' The agency proposes to define the term to include only those persons who hire or plan to hire individuals with a primary job function of operating a motor vehicle in the normal course of their employment. The proposed definition is intended to reduce burdens to employers by narrowing the class of employees subject to an NDR check. For instance, an employer that hires an individual to make regular business deliveries would be covered under this definition, whereas an employer that allows an employee to use a company-owned vehicle or to rent a vehicle (and receive reimbursement) to attend a business conference or take an occasional business trip would not. By meeting the definition of an employer or prospective employer of a motor vehicle operator, the employer is allowed to receive NDR information regarding the types of employees covered by the definition, pursuant to the procedures outlined in the existing regulation.

Proposed Notification Requirement Under 23 CFR 1327.4 and Conforming Amendments to 23 CFR 1327.3(m) and 1327.5(b)(1)

As a condition of participation in the NDR, Section 30303(a) of Title 49, United States Code requires a State to notify the Secretary of Transportation (by delegation, the NHTSA administrator (49 CFR 1.51(e))) of its ''intention to be bound by section 30304'' of title 49 with notification to be

''in the form and way the Secretary prescribes by regulation.'' (49 U.S.C. 30303(c)). To implement this statutory provision, the agency promulgated a regulation that requires a State to notify the agency of its intention to participate in the PDPS. If the State is judged by the agency to be in compliance with the requirements of the NDR Act of 1982 and 23 CFR 1327.5, it is certified as a participating State. (23 CFR 1327.3(m) and 1327.4(a)). Under the existing regulation, all 50 States and the District of Columbia received the required certification, and are currently considered active participants in the NDR.

The existing certification procedures, however, do not account for the above-referenced statutory changes to Section 30304 (*see* ''Statutory Change'' section above). With these MCSIA-mandated changes, the earlier certifications are outdated, and no longer reflect an intention by the States to be bound by all provisions of the statutory reporting requirements. Significantly, the agency has determined, through statistics about queries to the NDR that identify the type of license checked, that as many as fifty percent of the currently participating States are not, in fact, following the amended provisions of Section 30304, requiring a check of both the NDR and the CDLIS.

Under these circumstances, the highway safety benefits associated with the new requirements are not being fully realized, as States run the risk of failing to identify problem drivers who are ineligible for a license. Stated differently, the possibility is increased that a problem driver will successfully use the licensing process of one State to evade the penalties of a criminal conviction or license suspension of another State, in contravention of Congressional intent. Additionally, since States that check the NDR and the CDLIS as part of their commercial driver's license program receive Federal funds, the continued receipt of these funds may be placed in jeopardy in circumstances of non-compliance.

To address this situation, the agency is proposing to amend 23 CFR 1327.4 to provide that, with each change to 49 U.S.C. 30304, a participating State may be required to submit a new notification to the agency. This proposed change would ensure that the agency obtains the proper notification expressing the State's intent to be bound by all current requirements of Section 30304, as required by the statute. The agency anticipates requiring new notifications only when statutory changes affect the participating State reporting or inquiry requirements under section 30304 of title 49. Since the NDR Act of 1982 created the current PDPS system and set forth the requirements of participating States, the agency finds that MCSIA's statutory changes are the first changes that would necessitate a new notification. Statutory changes that involve minor language changes or otherwise result in no substantive addition to the list of actions that must be carried out by a State to remain as an active participant in the NDR would not necessitate a new notification. Under the agency's proposal, a State failing to provide the required notification would be subject to a termination of its participating State status 90 days after receiving a request for a new notification from the agency. This termination provision is consistent with existing termination provisions in the regulation, except for the inclusion of a longer time period to achieve compliance.

The agency is also proposing conforming amendments to 23 CFR 1327.5, to set forth the new statutory requirements for convenient reference. These proposed amendments follow the statutory changes made by MCSIA that require the chief driver licensing official of a State to submit an inquiry to the NDR and the CDLIS before issuing any type of license. The agency's proposal would include clarification that issuance of a license includes, but is not limited to, any original, renewal, temporary, or duplicate license. In addition, the definition of ''participating State'' under Section 1327.3(m) would be revised to conform to the new requirement that participating State status would be contingent on the State's compliance with Section 30304 of Title 49, United States Code and the agency's implementing regulations.

Proposed Amendment to 23 CFR Part 1327.5(a)

To act as a participating State in the NDR, the State's chief driver licensing official is required to transmit to the NDR a report, in the form of a pointer record, on any individual classified as a problem driver. The agency proposes to add a paragraph in section 1327.5(a), clarifying that pointer records transmitted to the NDR must be based on the violation codes appearing in the Appendix. (Proposed changes to violation codes are discussed under ''Proposed Amendment to Appendix A to 23 CFR part 1327,'' below.) Accordingly, these codes would serve as a comprehensive list of offenses the agency would deem to be proper grounds for establishing a pointer record regarding an individual. If an individual has not been convicted or the individual's driver's license has not been denied, canceled, revoked or suspended for an offense identified in these codes, then a pointer record should not be transmitted to the NDR regarding that individual. If a pointer record is transmitted to the NDR that is not based on one of these codes, the agency would contact the participating State responsible for the record and request its removal from the NDR.

Proposed Amendment to Appendix A to 23 CFR Part 1327 and Conforming Amendment to 23 CFR 1327.3(g)

Appendix A to Part 1327 (23 CFR 1327, Appendix A (2001)) currently contains a listing of traffic violation codes that are used by States in their motor vehicle operations. States that participate in the NDR Problem Driver Pointer System (PDPS) are required to transmit pointer records, based on the offenses identified in these codes, to the NDR when they deny, cancel, revoke, or suspend, for cause, a motor vehicle operator's license or convict an individual of certain serious traffic offenses, such as driving recklessly or driving while intoxicated. Appendix A presently contains the ANSI D20 code listings that were first developed in 1979. In 1996, AAMVA developed the AAMVA Code Dictionary (ACD) to help States share driver licensing information. Codes from the ACD were later incorporated into the ANSI D20 coding system, and are the violation codes currently used by the States and the NDR. The agency proposes to amend appendix A to part 1327 to update the code list to be consistent with the current ACD reporting codes.[1] Additionally, we propose to divide the Appendix into two parts to make it easy for a participating State to identify what codes correspond to ''for cause'' licensing actions and traffic offense convictions. The agency is also proposing to revise the definition of ''for cause'' under section 1327.3(g) to conform to the proposed revised Appendix.

Comments

Interested persons are invited to comment on this notice of proposed rulemaking. It is requested, but not required, that two copies be submitted. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. (*See*

[1] The agency acknowledges that AAMVA is currently considering a revision to the ACD. When that revision is finalized, the agency will determine whether corresponding changes should be made to the Appendix as a result. Any changes would be published in the **Federal Register.**

49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

You may submit your comments by one of the following methods:

(1) By mail to: Docket Management Facility, Docket No. NHTSA–04–XXXX, DOT, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;

(2) By hand delivery to: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday;

(3) By fax to the Docket Management Facility at (202) 493–2251; or

(4) By electronic submission: log onto the DMS Web site at *http://dms.dot.gov* and click on ''Help and Information'' or ''Help/Info'' to obtain instructions.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agency will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

You may review submitted comments in person at the Docket Management Facility located at Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday.

You may also review submitted comments on the Internet by taking the following steps:

(1) Go to the DMS Web page at *http://dms.dot.gov/search/.*

(2) On that page, click on ''search''.

(3) On the next page (*http://dms.dot.gov/search/*) type in the four digit docket number shown at the beginning of this notice. Click on ''search''.

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may also download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

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

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Analyses and Notices

Executive Order 12988 (Civil Justice Reform)

This proposed rule would not have any preemptive or retroactive effect. This action 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.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determinations on 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 agency has considered the impact of this proposed rule under Executive Order 12866 and determined that the notice is not significant. The notice is also treated as not significant under the Department of Transportation's regulatory policies and procedures. OMB has not reviewed this notice under Executive Order 12866.

In this document, the agency is revising the NDR implementing regulations to conform to the NDR Act. Checks would now be required of both the NDR and CDLIS databases before all license issuances. Although these new requirements may increase the number of inquiries that States are required to make and the number of responses they receive as a result, the agency believes that the additional checks and the revisions proposed will not create any significant or adverse economic effect on the States. The newly required checks of both the NDR and the CDLIS for CDL renewals and non-CDLs simply adds another verification in a process that States already perform when first issuing a CDL. Any additional maintenance fees associated with access to the CDLIS should not occur as States already pay a fee based on the number of CDL records on the CDLIS. Since the agency believes that the impacts of this rulemaking would be minimal, a preliminary regulatory evaluation has not been prepared.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 601–612) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The agency has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Employers who hire motor vehicle operators may qualify as small businesses. This document, however, does not change the procedure that employers must use to request a driver license check of an employee or prospective employee. Employers would still be required to contact the respective State chief driver licensing official. Further, as explained above in the section on Executive Order 12866 and DOT Regulatory Policies and Procedures, the agency believes that the impacts of this rulemaking would be minimal. Therefore, I hereby certify that it would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

There are reporting requirements contained in the regulation that this proposed rule would be amending that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3500, *et seq.*). These requirements have been approved through July 30, 2006, under OMB No. 2127–0001.

National Environmental Policy Act

The agency has reviewed this rulemaking action for the purposes of the National Environmental Policy Act (42 U.S.C. 4321, *et. seq.*) and has determined that it would not have a significant impact on the quality of the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed 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 $100 million or more (adjusted annually for inflation) in any one year. This proposed rule does not require an assessment under this law. The costs to States to make an additional check of the CDLIS and the NDR before issuing a license would not result in expenditures that exceed the $100 million threshold.

Executive Order 13132 (Federalism)

Executive Order 13132 requires the agency to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' The Executive Order defines ''policies that have Federalism implications'' 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 various levels of government.''

Under Executive Order 13132, the agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. The agency also may not issue a regulation with Federalism implications that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that this proposed rule would not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. Moreover, this proposed rule would not preempt any State law or regulation or affect the ability of States to discharge traditional State government functions.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The agency has analyzed this proposed rule under Executive Order 13175, and has determined that the proposed action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Regulation Identifier Number (RIN)

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

List of Subjects in 23 CFR Part 1327

Driver licensing, Driver records, Highway safety, National Driver Register, Transportation safety.

In consideration of the foregoing, the agency proposes to amend 23 CFR part 1327 as follows:

PART 1327—PROCEDURES FOR PARTICIPATING IN AND RECEIVING INFORMATION FROM THE NATIONAL DRIVER REGISTER PROBLEM DRIVER POINTER SYSTEM

1. The authority citation for part 1327 continues to read as follows:

Authority: Pub. L. 97–364, 96 Stat. 1740, as amended (49 U.S.C. 30301 *et seq.*); delegation of authority at 49 CFR 1.50.

2. Amend § 1327.3 by redesignating paragraphs (g) through (x) as paragraphs (h) through (y) and by adding new paragraph (g) and revising paragraphs (h) and (n) to read as follows:

§ 1327.3 Definitions.

* * * * *

(g) *Employer or Prospective Employer of Motor Vehicle Operators* means a person that hires one or more individuals to operate motor vehicles on a regular basis during their normal course of employment.

(h) *For Cause* as used in § 1327.5(a) means that an adverse action taken by a State against an individual was based on any violation listed in Part I, Appendix A, an Abridged Listing of the American Association of Motor Vehicle Administrators (AAMVA) Violations Exchange Code, which is used by the NDR for recording license denials and withdrawals.

* * * * *

(n) *Participating State* means a State that has notified the agency of its intention to participate in the PDPS and has been certified by the agency as being in compliance with the requirements of Section 30304 of Title 49, United States Code and § 1327.5 of this part.

* * * * *

3. Amend § 1327.4 by revising paragraph (c)(1) and adding new paragraph (d) to read as follows:

§ 1327.4 Certifications, termination and reinstatement procedures.

* * * * *

(c) *Reinstatement.* (1) The chief driver licensing official of a State that wishes to be reinstated as a participating State in the NDR under the PDPS shall send a letter certifying that the State wishes to be reinstated as a participating State and that it intends to be bound by the requirements of section 30304 of title 49, United States Code and § 1327.5 of this part. It shall also describe the changes necessary to meet the statutory and regulatory requirements of PDPS.

* * * * *

(d) *Notification.* (1) NHTSA may, at its discretion, require in writing that a participating State submit a new notification evidencing an intention to be bound by the requirements of section 30304 of title 49, United States Code and § 1327.5 of this part. The agency will exercise its discretion to require this notification when statutory changes have altered a participating States reporting or inquiry requirements under section 30304 of title 49, United States Code.

(2) After receiving a written request from NHTSA under paragraph (d)(1) of this Section, a participating State will have 90 days to submit the requested notification. If a participating State does not submit the requested notification within the 90-day time period, NHTSA will send a letter to the chief driver licensing official of a State canceling its status as a participating State.

4. Amend § 1327.5 by redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(3) through (a)(5) and adding new paragraph (a)(2) and by revising paragraph (b)(1) to read as follows:

§ 1327.5 Conditions for becoming a participating State.

(a) * * *

(2) A report shall not be transmitted by the chief driver licensing official of a participating State, regarding an individual, unless that individual has had his or her motor vehicle operator's license denied, canceled, revoked, or suspended for cause as represented by the codes in Part I of Appendix A or been convicted of a motor vehicle-related offense as represented by the codes in Part II of Appendix A. Unless the report transmitted to the NDR is based on these codes, NHTSA will

contact the participating State responsible for the record and request its removal from the NDR.

* * * * *

(b) * * *

(1) The chief driver licensing official of a participating State shall submit an inquiry to both the NDR and the Commercial Driver's License Information System for each driver license applicant before issuing a license to that applicant. The issuance of a license includes but is not limited to any original, renewal, temporary, or duplicate license.

* * * * *

5. Revise Appendix A to part 1327 to read as follows:

Appendix A to Part 1327—Abridged Listing of the American Association of Motor Vehicle Administrators Violations Exchange Code, Used by the NDR for Recording Driver License Denials, Withdrawals, and Convictions of Motor Vehicle-Related Offenses

CODE

Part I—For Cause Withdrawals	
A04	Driving under the influence of alcohol with BAC at or over .04.
A08	Driving under the influence of alcohol with BAC at or over .08.
A10	Driving under the influence of alcohol with BAC at or over .10.
A11	Driving under the influence of alcohol with BAC at or over __ (detail field required).
A12	Refused to submit to test for alcohol—Implied Consent Law.
A20	Driving under the influence of alcohol or drugs.
A21	Driving under the influence of alcohol.
A22	Driving under the influence of drugs.
A23	Driving under the influence of alcohol and drugs.
A24	Driving under the influence of medication not intended to intoxicate.
A25*	Driving while impaired.
A26	Drinking alcohol while operating a vehicle.
A31	Illegal possession of alcohol.
A33	Illegal possession of drugs (controlled substances).
A35	Possession of open alcohol container.
A41	Driver violation of ignition interlock or immobilization device.
A50*	Motor vehicle used in the manufacturing, distributing, or dispensing of a controlled substance.
A60	Underage Convicted of Drinking and Driving at .02 or higher BAC.
A61	Underage Administrative Per Se—Drinking and Driving at .02 or higher BAC.
A90	Administrative Per Se for .10 BAC.
A94	Administrative Per Se for .04 BAC.
A98	Administrative Per Se for .08 BAC.
B01	Hit and run—failure to stop and render aid after accident.
B02	Hit and run—failure to stop and render aid after accident—Fatal accident.
B03	Hit and run—failure to stop and render aid after accident—Personal injury accident.
B04	Hit and run—failure to stop and render aid after accident—Property damage accident.
B05	Leaving accident scene before police arrive.
B06	Leaving accident scene before police arrive—Fatal accident.
B07	Leaving accident scene before police arrive—Personal injury accident.
B08	Leaving accident scene before police arrive—Property damage accident.
B10*	Refusal to reveal identity after accident—Fatal accident.
B11*	Refusal to reveal identity after accident—Personal injury accident.
B20	Driving while license withdrawn.
B21	Driving while license barred.
B22	Driving while license canceled.
B23	Driving while license denied.
B24	Driving while license disqualified.
B25	Driving while license revoked.
B26	Driving while license suspended.
B27*	Driving while an out of service order is in effect.
B41	Possess or provide counterfeit or altered driver license (includes DL, CDL, and Instruction Permit) or ID.
B51	Expired or no driver license (includes DL, CDL, and Instruction Permit).
B63	Failed to file future proof of financial responsibility.
B91	Improper classification or endorsement on driver license (includes DL, CDL, and Instruction Permit).
D02	Misrepresentation of identity or other facts on application for driver license (includes DL, CDL, and Instruction Permit).
D06	Misrepresentation of identity or other facts to obtain alcohol.
D07	Possess multiple driver licenses (includes DL, CDL, and Instruction Permit).
D16	Show or use improperly—Driver license (includes DL, CDL, and Instruction Permit).
D27	Violate limited license conditions.
D29	Violate restrictions of driver license (includes DL, CDL, and Instruction Permit).
D35	Failure to comply with financial responsibility law.
D38	Failure to post security or obtain release from liability.
D39	Unsatisfied judgment.
D45*	Failure to appear for trial or court appearance.
D53*	Failure to make required payment of fine and costs.
D72	Inability to control vehicle.
D74	Operating a motor vehicle improperly because of drowsiness.
D75	Operating a motor vehicle improperly due to physical or mental disability.
D76*	Perjury.
E03	Operating without HAZMAT safety equipment as required by law.
F02	Child or youth restraint not used properly as required.

CODE—Continued

F03	Motorcycle safety equipment not used properly as required.
F04	Seat belt not used properly as required.
F05	Carrying unsecured passengers in open area of vehicle.
F06	Improper operation of or riding on a motorcycle.
M09	Failure to obey railroad crossing restrictions.
M10	Failure to obey railroad gates, signs or signals.
M20	For drivers who are not required to always stop, failure to slow down at a railroad-highway grade crossing and check that tracks are clear of approaching train.
M21	For drivers who are not required to always stop, failure to stop before reaching tracks at a railroad-highway grade crossing when the tracks are not clear.
M22	For drivers who are always required to stop, failure to stop as required before driving onto railroad-highway grade crossing.
M23	For all drivers, failing to have sufficient space to drive completely through the railroad-highway grade crossing without stopping.
M24	For all drivers, failing to negotiate a railroad-highway grade crossing because of insufficient undercarriage clearance.
M80	Reckless, careless, or negligent driving.
M81	Careless driving.
M82	Inattentive driving.
M83	Negligent driving.
M84	Reckless driving.
S01	01–05 > Speed limit (detail optional).
S06	06–10 > Speed limit (detail optional).
S11*	11–15 > Speed limit (detail optional).
S15	Speeding 15 mph or more above speed limit (detail optional).
S16	16–20 > Speed limit (detail optional).
S21	21–25 > Speed limit (detail optional).
S26	26–30 > Speed limit (detail optional).
S31	31–35 > Speed limit (detail optional).
S36	36–40 > Speed limit (detail optional).
S41	41+ > Speed limit (detail optional).
S50	Speeding in a school zone (detail optional).
S51	01–10 > Speed limit (detail optional).
S61	11–20 > Speed limit (detail optional).
S71	21–30 > Speed limit (detail optional).
S81	31–40 > Speed limit (detail optional).
S91	41+ > Speed limit (detail optional).
S92	Speeding—Speed limit and actual speed (detail required).
S93	Speeding.
S94	*Prima Facie* speed violation or driving too fast for conditions.
S95	Speed contest (racing) on road open to traffic.
S97	Operating at erratic or suddenly changing speeds.
U01	Fleeing or evading police or roadblock.
U02	Resisting arrest.
U03	Using a motor vehicle in connection with a felony (not traffic offense).
U05	Using a motor vehicle to aid and abet a felon.
U06	Vehicular assault.
U07	Vehicular homicide.
U08	Vehicular manslaughter.
U31	Violation resulting in fatal accident.
W01	Accumulation of convictions (including point systems and/or being judged a habitual offender or violator).
W14	Physical or mental disability.
W20	Unable to pass DL test(s) or meet qualifications.
W30	Two serious violations within three years.
W31	Three serious violations within three years.
W60	The accumulation of two RRGC violations within three years.
W61	The accumulation of three or more RRGC violations within three years.

Part II—Convictions

A04	Driving under the influence of alcohol with BAC at or over .04.
A08	Driving under the influence of alcohol with BAC at or over .08.
A10	Driving under the influence of alcohol with BAC at or over .10.
A11	Driving under the influence of alcohol with BAC at or over__ (detail field required).
A12	Refused to submit to test for alcohol—Implied Consent Law.
A20	Driving under the influence of alcohol or drugs.
A21	Driving under the influence of alcohol.
A22	Driving under the influence of drugs.
A23	Driving under the influence of alcohol and drugs.
A24	Driving under the influence of medication not intended to intoxicate.
A25*	Driving while impaired.
A26	Drinking alcohol while operating a vehicle.
A31	Illegal possession of alcohol.
A33	Illegal possession of drugs (controlled substances).
A35	Possession of open alcohol container.
A41	Driver violation of ignition interlock or immobilization device.
A50*	Motor vehicle used in the manufacturing, distributing, or dispensing of a controlled substance.

CODE—Continued

A60	Underage Convicted of Drinking and Driving at .02 or higher BAC.
A61	Underage Administrative Per Se—Drinking and Driving at .02 or higher BAC.
A90	Administrative Per Se for .10 BAC.
A94	Administrative Per Se for .04 BAC.
A98	Administrative Per Se for .08 BAC.
B01	Hit and run—failure to stop and render aid after accident.
B02	Hit and run—failure to stop and render aid after accident—Fatal accident.
B03	Hit and run—failure to stop and render aid after accident—Personal injury accident.
B04	Hit and run—failure to stop and render aid after accident—Property damage accident.
B05	Leaving accident scene before police arrive.
B06	Leaving accident scene before police arrive—Fatal accident.
B07	Leaving accident scene before police arrive—Personal injury accident.
B08	Leaving accident scene before police arrive—Property damage accident.
B10*	Refusal to reveal identity after accident—Fatal accident.
B11*	Refusal to reveal identity after accident—Personal injury accident.
B20	Driving while license withdrawn.
B21	Driving while license barred.
B22	Driving while license canceled.
B23	Driving while license denied.
B24	Driving while license disqualified.
B25	Driving while license revoked.
B26	Driving while license suspended.
B27*	Driving while an out of service order is in effect.
B41	Possess or provide counterfeit or altered driver license (includes DL, CDL, and Instruction Permit) or ID.
B51	Expired or no driver license (includes DL, CDL, and Instruction Permit).
B91	Improper classification or endorsement on driver license (includes DL, CDL, and Instruction Permit).
D02	Misrepresentation of identity or other facts on application for driver license (includes DL, CDL, and Instruction Permit).
D06	Misrepresentation of identity or other facts to obtain alcohol.
D07	Possess multiple driver licenses (includes DL, CDL, and Instruction Permit).
D16	Show or use improperly—Driver license (includes DL, CDL, and Instruction Permit).
D27	Violate limited license conditions.
D29	Violate restrictions of driver license (includes DL, CDL, and Instruction Permit).
D72	Inability to control vehicle.
D76*	Perjury.
E03	Operating without HAZMAT safety equipment as required by law.
M10	Failure to obey railroad gates, signs or signals.
M20	For drivers who are not required to always stop, failure to slow down at a railroad-highway grade crossing and check that tracks are clear of approaching train.
M21	For drivers who are not required to always stop, failure to stop before reaching tracks at a railroad-highway grade crossing when the tracks are not clear.
M22	For drivers who are always required to stop, failure to stop as required before driving onto railroad-highway grade crossing.
M23	For all drivers, failing to have sufficient space to drive completely through the railroad-highway grade crossing without stopping.
M24	For all drivers, failing to negotiate a railroad-highway grade crossing because of insufficient undercarriage clearance.
M80	Reckless, careless, or negligent driving.
M81	Careless driving.
M82	Inattentive driving.
M83	Negligent driving.
M84	Reckless driving.
S95	Speed contest (racing) on road open to traffic.
U07	Vehicular homicide.
U08	Vehicular manslaughter.
U31	Violation resulting in fatal accident.

* AAMVA is currently considering a change to this code on the ACD. When revisions to the ACD are finalized, the agency will determine whether corresponding changes should be made to the Appendix.

Issued on: March 26, 2004.

Jeffrey W. Runge,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 04–7245 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–017]

RIN 1625–AA00

Safety and Security Zones; Boston Harbor, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to remove the safety and security zones around the Pacific Gas and Electric (PG & E) Power Plant Terminal Wharf, Salem, Massachusetts, because the Captain of the Port Boston has determined that these zones are no longer needed. If this proposed rule is adopted as final, those seeking to enter these waters in Salem Harbor around the PG & E facility would no longer need to seek permission of the Captain of the Port.

DATES: Comments and related material must reach the Coast Guard on or before June 1, 2004.

ADDRESSES: You may mail comments and related material to Marine Safety Office (MSO) Boston, 455 Commercial Street, Boston, Massachusetts 02109. MSO Boston 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 MSO Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Waterways Safety and Response Division, Marine Safety Office Boston, at (617) 223–3000.

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 (CGD01–04–017), 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 that your submission 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 Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

As a result of the terrorist attacks on the World Trade Center and Washington, DC, on September 11, 2001, several security measures were enacted to protect vessels and facilities throughout the Captain of the Port Boston zone. On July 11, 2002, a final rule was published in the **Federal Register** (67 FR 45909) creating several permanent safety and security zones in Boston and Salem Harbors under 33 CFR 165.116. One element of this regulation included the creation of safety and security zones around the Pacific Gas and Electric (PG & E) Power Plant Terminal in Salem, Massachusetts (33 CFR 165.116(a)(3)).

These zones were created to safeguard the facility, persons at the facility, and the public and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. Aside from protecting the facility and vessels from the new general terrorist threat, reasons for creating these zones in this location included historical occurrences of hostile protesters attempting to gain access to the facility. Since the publication of this regulation, however, the risk environment is better defined, and other security measures have been enacted, both of which support eliminating the permanent safety and security zones.

Despite initial concerns, the Coast Guard has found it unnecessary to continuously enforce these zones since their inception. With respect to the threat, there is no current specific threat to the PG & E terminal nor to ships destined there. Additionally, there have been no recent instances of protesters or other violent acts in that area. The risk that the vessels themselves pose to the terminal or surrounding area is relatively low, due to the non-volatile/non-explosive nature of their heavy fuel oil or coal cargoes. Lastly, under the Maritime Transportation Act of 2002 regulations, PG & E is required to institute terminal security procedures, which include preventing unauthorized access onto the facility from the waterside.

Since the expectation for permanent safety and security zones is that they will be enforced on a regular basis, the presence of these zones requires the expenditure of scarce Coast Guard resources. The relatively low risk posed and the experience over the past 2 years, as discussed above, support elimination of the permanent zones. In the event of a change to the threat environment, the Captain of the Port can quickly establish a temporary security zone to protect the PG & E terminal and/or associated vessels.

Discussion of Proposed Rule

This proposed rule would amend 33 CFR 165.116 by removing paragraph (a)(3) which describes 250-yard safety and security zones around the PG&E Power Plant Terminal Wharf, Salem, Massachusetts. The remaining zones in § 165.116—Reserved Channel, Boston Harbor and Boston Inner Harbor—would remain in effect and unchanged. Our proposed rule also removes paragraph (b), Effective date, because it is not needed.

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. This proposed rule will not create a safety and security zone, but instead will remove an existing security zone thereby removing any perceived impediment to the maritime public.

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.

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 (Pub. L. 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 proposed rule would affect your small business, organization, or

governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Daniel Dugery, Waterways Safety and Response Division, Marine Safety Office Boston, at (617) 223–3000.

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 would 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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.

Environment

We have analyzed this proposed 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)(g), of the Instruction, from further environmental documentation. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) 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 recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. Revise § 165.116 to read as follows:

§ 165.116 Safety and Security Zones: Boston Harbor, Massachusetts.

(a) *Location.* The following areas are permanent safety and security zones:

(1) *Reserved Channel, Boston Harbor.* All waters of Boston Harbor within one hundred fifty (150) yards off the bow and stern and one hundred (100) yards abeam of any vessel moored at the Massachusetts Port Authority Black Falcon Terminal;

(2) *Boston Inner Harbor.* All waters of Boston Harbor within one hundred (100) feet of the Coast Guard Integrated Support Command (ISC) Boston piers.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 and § 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

(3) No person may enter the waters or land area within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port, Boston or his authorized patrol representative.

Dated: March 8, 2004.

Brian M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 04–7109 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1254 and 1284

RIN 3095–AB10

Revision of NARA Research Room Procedures

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA proposes to revise its regulations on research room procedures. This proposal entirely rewrites this portion of NARA's regulations to incorporate several changes, and also to clarify it using plain language. Subparts on access to unclassified records and donated historical materials, as well as access to national security information, are being moved to 36 CFR part 1256 in a previously published proposed rule. Information about the loan of archival materials for exhibits is being moved to 36 CFR part 1284 in this current proposed rule. This proposed rule will affect the public.

DATES: Comments must be received on or before June 1, 2004.

ADDRESSES: You may submit comments, identified by RIN 3095–AB10, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *comments@nara.gov.* Include RIN 3095–AB10 in the subject line of the message.
- Fax: (301) 837–0319.
- Mail: Regulation Comments Desk (NPOL), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- Hand Delivery / Courier: Regulation Comments Desk (NPOL), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at (301) 837–1801.

SUPPLEMENTARY INFORMATION: Following is a discussion of substantive changes contained in this proposed rule. Additional nonsubstantive changes have been made and the proposed regulation has been written in plain language in accordance with the Presidential Memorandum of June 1, 1998, Plain Language in Government Writing.

What Changes Have Been Made in This Proposed Rule?

We propose to retitle part 1254 Using Records and Donated Historical Materials. While the majority of the regulations address archival records, we propose to retain references to temporary records stored in Federal Records Centers and historical records on deposit, where applicable.

In a previous proposed rule published on January 5, 2004 (69 FR 295), we proposed to move the current § 1254.8 about subpoenas and other legal demands, the current subpart C, Access to Unclassified Records and Donated Historical Materials, and current subpart D, Access to National Security Information, to part 1256 of this chapter. In this proposed rule, we propose to divide the current subpart B of part 1254 into two subparts to more clearly delineate rules that apply in NARA's various research rooms nationwide. These include rules for applying to do research, using archival materials, and making copies.

The proposed revised subpart B describes regulations in common among NARA research rooms, regardless of location. The proposed subpart C describes copying services at all NARA facilities. We propose to eliminate duplicate information with the creation of the new subparts B and C. We also updated some procedures to reflect current practice, especially concerning changes in technology. For example, we removed reference to typewriters among equipment researchers may wish to bring into a research room because we find that researchers no longer make requests to use typewriters. In addition, we prohibited the use of cell phones, pagers, and similar communications devices that emit sound signals, because of the disruption these cause in our research rooms.

We also propose to move the existing § 1254.1(f) on the loan of NARA archival materials to other institutions for exhibit purposes to part 1284 of this chapter.

We propose to retain the subpart outlining our policies for private microfilming of records and donated historical materials in our custody without substantive change. We plan to address private scanning and digitizing project requests in a future rulemaking.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this rule applies to individual researchers. This proposed rule contains two information collections previously approved by OMB. This proposed rule does not have any federalism implications.

List of Subjects

36 CFR Part 1254

Archives and records, Micrographics.

36 CFR Part 1284

Archives and records, Federal buildings and facilities.

For the reasons set forth in the preamble, NARA proposes to amend chapter XII of title 36 of the Code of Federal Regulations as follows:

1. Revise part 1254 to read as follows:

PART 1254—USING RECORDS AND DONATED HISTORICAL MATERIALS

Subpart A—General Information

Sec.
1254.1 What kinds of archival materials may I use for research?
1254.2 Does NARA provide information about documents?
1254.4 Where and when are documents available to me for research?
1254.6 Do I need a researcher identification card to use archival materials at a NARA facility?
1254.8 What information do I need to provide when applying for a researcher identification card?
1254.10 For how long and where is my researcher identification card valid?
1254.12 Will NARA log or inspect my computer, other equipment, and notes?
1254.14 Are some procedures in regional archives and Presidential libraries different from those in the Washington, DC area?

Subpart B—Research Room Rules

General Procedures

1254.20 What general policies apply in all NARA facilities where archival materials are available for research?
1254.22 Do I need to register when I visit a NARA facility for research?
1254.24 Whom does NARA allow in research rooms?
1254.26 What can I take into a research room with me?
1254.28 What items are not allowed in research rooms?
1254.30 Does NARA provide any supplies?
1254.32 What rules apply to public access use of the Internet on NARA-supplied computers?

Rules Relating to Using Original Documents

1254.34 What are my responsibilities when using documents?
1254.36 What care must I take when handling documents?
1254.38 How do I keep documents in order?
1254.40 How does NARA prevent removal of documents?

Rules Relating to Using Microfilm

1254.42 What are the rules that apply to using self-service microfilm?
1254.44 How long may I use a microfilm reader?

Other Conduct Rules

1254.46 Are there other rules of conduct that I must follow?
1254.48 When does NARA revoke research privileges?
1254.50 Does NARA consider reinstating research privileges?
1254.52 Can NARA extend the period of revoked research privileges?

Subpart C—Copying Archival Materials

General Information

1254.60 What are NARA's copying services?
1254.62 Does NARA have archival materials protected by copyright?
1254.64 Will NARA certify copies?

Rules Relating to Self-Service Copying

1254.70 How may I make my own copies of documents?
1254.72 What procedures do I follow to copy documents?
1254.74 What documents are unsuitable for copying on a self-service or personal copier or scanner?
1254.76 What procedures do I follow to copy formerly national security-classified documents?

Rules Relating to Using Copying Equipment

1254.80 Does NARA allow me to use scanners or other personal copying equipment?
1254.82 What limitations apply to my use of self-service card-operated copiers?
1254.84 How may I use a debit card for copiers in the Washington, DC, area?
1254.86 May I use a personal paper-to-paper copier at the National Archives at College Park?
1254.88 What are the rules for the Motion Picture, Sound, and Video Research Room at the National Archives at College Park?

Subpart D—Microfilming Archival Materials

1254.90 What is the scope of this subpart?
1254.92 How do I submit a request to microfilm records and donated historical materials?
1254.94 What must my request include?
1254.96 What credits must I give NARA?
1254.98 May I copyright my microfilm publication?
1254.100 How does NARA evaluate requests?
1254.102 What requests does NARA not approve?
1254.104 How does NARA determine fees to prepare documents for microfilming?
1254.106 What are NARA's equipment standards?
1254.108 What are NARA's requirements for the microfilming process?
1254.110 Does NARA ever rescind permission to microfilm?

Authority: 44 U.S.C. 2101–2118.

Subpart A—General Information

§ 1254.1 What kinds of archival materials may I use for research?

(a) The National Archives and Records Administration (NARA) preserves records of all three branches (Executive, Legislative, and Judicial) of the Federal Government in record groups that reflect how government agencies created and maintained them. Most of these records are of Executive Branch agencies. We also have individual documents and collections of donated historical materials that significantly supplement existing records in our custody or provide information not available elsewhere in our holdings. Descriptions of many of our records are available through our Web site, *www.archives.gov.*

(b) We provide information about records and we make them available to the public for research unless they have access restrictions. Some records may be exempt from release by law. Donors may apply restrictions on access to historical materials that they donate to NARA. Access restrictions are further explained in part 1256 of this chapter. We explain procedures for obtaining information about records in § 1254.2.

(c) In addition to traditional paper (textual) materials, our holdings also include special media materials such as microfilm, still pictures, motion pictures, sound and video recordings, cartographic and architectural records, and electronic records. The majority of these materials are housed at the National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001. Many of these types of materials also are represented in the holdings of our Presidential libraries and our regional archives facilities listed in part 1253 of this chapter.

(d) The majority of our archival materials are 30 years old or older.

(e) Records creating agencies hold the legal title and control access to records housed in NARA records centers. Our procedures to obtain access to these records are in § 1256.2.

§ 1254.2 Does NARA provide information about documents?

(a) Upon request, we provide overall information about our holdings or about specific documents, if the time required to furnish the information is not excessive and if the information is not restricted (*see* part 1256 of this chapter). For anyone unable to visit, we may provide information contained in specific documents by offering copies of the documents for a fee (*see* § 1254.60).

(b) Requests must be on designated forms when we require them. The Office of Management and Budget (OMB) approves these forms as information collections and the forms bear the approved control number.

(c) If requests that we receive in the normal course of reference service do not specifically cite the Freedom of Information Act (5 U.S.C. 552, as amended), we do not consider those requests made under the Act. To make a request under the Act, follow the procedures in part 1250 of this chapter.

§ 1254.4 Where and when are documents available to me for research?

(a) You may obtain general information about the location of records by visiting the NARA Web site at *http://www.archives.gov*; writing to the National Archives and Records Administration (NWCC2), 8601 Adelphi Road, College Park, MD 20740–6001; sending an e-mail message to *inquire@nara.gov*; sending a fax request to (301) 837–0483; or calling (202) 501–5400, (301) 837–2000, or toll free (866) 272–6272.

(b) The locations and hours of operation (expressed in local time) of NARA's research rooms are shown in part 1253 of this chapter. Contact our facilities directly for information about their particular holdings. A facility or unit director may authorize that documents be made available at times other than the times specified in part 1253.

(c) Before planning a visit, contact the facility holding materials of potential interest to determine whether the documents are available, whether there are enough documents to warrant a visit, or whether ordering copies would be more practical.

(d) In addition to the procedures in this part, researchers who wish to use archival materials that contain national security classified information must follow procedures in part 1256 of this chapter.

§ 1254.6 Do I need a researcher identification card to use archival materials at a NARA facility?

(a) Yes, you need a researcher identification card to use original archival materials at a NARA facility. *See* §§ 1254.8 and 1254.10 for information on obtaining a card.

(b) You also need a researcher identification card if you wish to use only microfilm copies of documents in a NARA facility where the microfilm research room is not separate from textual research rooms.

(c) If you are using only microfilm copies of records in the National Archives Building and some regional archives where the microfilm research room is separate from textual research rooms, you do not need an identification card but you must register as described in § 1254.22.

§ 1254.8 What information do I need to provide when applying for a researcher identification card?

(a) You must apply in person and show identification containing your picture or physical description, such as a driver's license or school identification card. You also must provide proof of your current address, such as a bank statement, utility bill, or department of motor vehicles change of address card, if the address on your driver's license or other identification is not current. Students who consider the home of their parents as their permanent address, but who do not live there during the academic session, must provide their current student address. If you travel long distance to conduct research in original archival materials at a NARA facility, we may ask you how we can contact you locally. In special circumstances, the director of a facility or unit has the authority to grant exceptions to these requirements.

(b) If you apply for access to large quantities of documents or to documents that are especially fragile or valuable, we may require you to furnish additional information about reasons why you require access. Some materials are too fragile or valuable for direct handling or viewing. Preservation concerns (*see* §§ 1254.20(b) and 1254.36(e)) and availability of resources (*see* § 1254.20(c)) may limit our ability to accommodate certain requests.

(c) If you are younger than 14, you must follow the procedures in § 1254.24 to seek permission to conduct research.

(d) We do not issue you a researcher identification card if the appropriate supervisor or director of the NARA facility determines that the documents that you wish to use are not in the legal custody of NARA and you do not present appropriate written authorization from the legal title holder to examine the documents.

(e) The collection of information contained in this section has been approved by the Office of Management and Budget with the control number 3095–0016.

§ 1254.10 For how long and where is my researcher identification card valid?

(a) Your card is valid for 1 year and may be renewed. Cards we issue at one NARA facility are valid at each facility, except as described in paragraph (b) of this section. Cards are not transferable and you must present your card if a guard or research room attendant requests to see it.

(b) At the National Archives in College Park and other NARA facilities that issue and use plastic researcher identification cards as part of their security systems, NARA issues a plastic card to replace the paper card issued at some NARA facilities at no charge. The plastic card is acceptable at all NARA facilities.

§ 1254.12 Will NARA log or inspect my computer, other equipment, and notes?

(a) If you bring personal computers, scanners, tape recorders, cameras, and other equipment into our facilities, we will inspect the equipment.

(1) In the Washington, DC area, you must complete the Equipment Log at the guard's desk. The guard checks the log for proof of your personal ownership before you remove your equipment from the building.

(2) In the regional archives and Presidential libraries, we may tag your equipment after inspection and approval.

(b) Not all NARA facilities permit you to take your personal notes into the research room. In research rooms that permit taking in your notes, a NARA or contractor employee may stamp, initial, and date notes and other research materials we approve for admission to indicate that they are your personal property.

(c) We inspect your personal property, including notes, electrostatic copies, equipment cases, tape recorders, cameras, personal computers, and other property, before you may remove them from our research rooms or facilities.

§ 1254.14 Are some procedures in regional archives and Presidential libraries different from those in the Washington, DC area?

Yes, the variety of facilities, locations of research rooms, room sizes, and other factors contribute to differences in some, but not all, practices from the Washington, DC area. When the appropriate regional director of archival operations or library director indicates, you must follow the procedures in regional archives and Presidential library archival research rooms where researchers use original documents. These procedures are in addition to the procedures we specify elsewhere in this part. The procedures are either posted in the facility or the staff gives copies of them to researchers.

Subpart B—Research Room Rules

General Procedures

§ 1254.20 What general policies apply in all NARA facilities where archival materials are available for research?

(a) Researchers may use original documents only in the designated research room at the facility where they are stored.

(b) Researchers must use microfilm copies or other alternative copies of documents when available, rather than the original documents. Some of our microfilm publications are available in more than one NARA facility.

(c) We may limit the quantity of documents that we deliver to you at one time. In some research rooms, we furnish records according to a specific time schedule.

§ 1254.22 Do I need to register when I visit a NARA facility for research?

(a) Yes, you must register each day you enter a NARA research facility by furnishing the information on the registration sheet or scanning a bar-coded researcher identification card. We may ask you to provide additional personal identification.

(b) The National Archives at College Park contains several research rooms; you must register in each research room you visit on a daily basis.

(c) In regional archives, you also sign out when leaving the research room for the day. In some Presidential libraries, where we instruct you to do so, you sign out when you leave the building.

§ 1254.24 Whom does NARA allow in research rooms?

(a) We limit admission to research rooms in our facilities to individuals examining and/or copying documents and other materials.

(b) We do not admit children under the age of 14 to these research rooms unless we grant them research privileges (*see* paragraph (d) of this section).

(c) The appropriate supervisor may make exceptions for a child who is able to read and who will be closely supervised by an adult while in the research room. The adult must agree in writing to be present when the child uses documents and to be responsible for compliance with the research room and copying rules in subparts B and C of this part.

(d) Students under the age of 14 who wish to perform research on original documents must apply in person at the facility where the documents are located. At the National Archives Building, apply to the chief of the Research Support Branch (NWCC1). At the National Archives at College Park, apply to the chief of the Research Support Branch (NWCC2). For regional archives and Presidential libraries, apply to the appropriate supervisor or archivist in charge. We may require either that the student must present a letter of reference from a teacher or that an adult accompany the student while doing research. Students may contact NARA by phone, email, fax, or letter in advance of their visit to discuss their eligibility for research privileges.

Current contact information for our facilities is available on our Web site, *http://www.archives.gov.*

(e) We may permit adults and children participating in scheduled tours or workshops in our research rooms when they do not handle any documents that we show to them. These visitors do not need a researcher identification card.

§ 1254.26 What can I take into a research room with me?

(a) *Personal belongings.* You may take a hand-held wallet and coin purse for the carrying of currency, coins, credit cards, keys, driver's license, and other identification cards into research rooms, but these are subject to inspection when you enter or leave the room. The guard or research room attendant determines whether your wallet or purse is sufficiently small for purposes of this section. You may take cell phones, pagers, and similar telecommunications devices into a research room only under the circumstances cited in § 1254.46(b) and, for cell phone cameras, in § 1254.70(f).

(b) *Notes and reference materials.* You may take notes, references, lists of documents to be consulted, and other materials into a research room if the supervisor administering the research room or the senior staff member on duty in the research room determines that they are essential to your work requirements. Not all facilities permit you to take notes into the research room. In facilities that allow you to bring notes, staff may stamp your items to indicate that they are your property.

(c) You may bring back into the research room on subsequent visits your research notes made on notepaper and notecards we provide and electrostatic copies you make on copying machines in NARA research rooms which are marked with the statement ''Reproduced at the National Archives.'' You must show any notes and copies to the research room attendant for inspection when you enter the research room.

(d) *Personal equipment.* The research room attendant, with approval from the supervisor, archivist, or lead archives technician in charge of the room, may admit personal computers, tape recorders, scanners, cameras, and similar equipment if the equipment meets NARA's approved standards for preservation. We do not approve the use of any equipment that could potentially damage documents. If demand to use equipment exceeds the space available for equipment use, we may impose time limits. If you wish to use computers, sound recording devices, or other equipment, you must work in areas the research room attendant designates, when required.

§ 1254.28 What items are not allowed in research rooms?

(a) You may not bring into the research rooms overcoats, raincoats, jackets, hats, or other outerwear; personal paper-to-paper copiers, unless permitted in accordance with § 1254.86 of this part; briefcases, satchels, valises, suitcases, day packs, purses, boxes, or similar containers of personal property. We may make exceptions for headwear worn for religious or health reasons. In facilities where we provide notepaper and notecards, you also may not bring into the research room notebooks, notepaper, notecards, folders or other containers for papers.

(b) You may store personal items at no cost in lockers or other storage facilities in the NARA facility. These lockers or other storage facilities are available on a first-come-first-served basis.

(c) You must remove your personal belongings each night from the lockers or other storage facilities we provide to hold them. If you do not remove your personal belongings, NARA personnel will remove them. We post directions for reclaiming confiscated items near the lockers or other storage facilities.

(d) NARA is not responsible for the loss or theft of articles you store in the lockers.

(e) We may charge a replacement fee for lost locker keys.

(f) Knives and other sharp objects such as box cutters, razors, or wire are not permitted in our research rooms.

§ 1254.30 Does NARA provide any supplies?

Yes, in most facilities NARA furnishes you, without charge, pencils and specially marked lined and unlined notepaper and notecards, for use in the research rooms. NARA also provides diskettes and paper for our public access computers. Return unused pencils and notepaper, notecards, diskettes, and printer paper to the research room attendant at the end of the day.

§ 1254.32 What rules apply to public access use of the Internet on NARA-supplied computers?

(a) Public access computers (workstations) are available for Internet use in all NARA research rooms. The number of workstations varies per location. We provide these workstations for research purposes on a first-come-first-served basis. When others are waiting to use the workstation, we may impose a 30-minute time limit on the use of the equipment.

(b) You should not expect privacy while using these workstations. These workstations are operated and maintained on a United States Government system, and activity may be monitored to protect the system from unauthorized use. By using this system, you expressly consent to such monitoring and the reporting of unauthorized use to the proper authorities.

(c) You may not use these workstations to gain access to entertainment or other inappropriate web sites in our research rooms. You also may not use these workstations to conduct private business not related to your research or NARA holdings.

(d) NARA provides at least one Internet access workstation in each facility that complies with the Workforce Investment Act of 1998, ensuring comparable accessibility to individuals with disabilities.

(e) You may download information to a diskette and print materials, but the research room staff will furnish the diskettes and paper. You may not use personally owned diskettes on NARA personal computers. You may not load files or any type of software on these workstations.

Rules Relating to Using Original Documents

§ 1254.34 What are my responsibilities when using documents?

(a) You must sign for the documents you receive and we may require you to show your researcher identification card.

(b) You are responsible for the proper handling of and prevention of damage to all documents delivered to you until you return them. Specific handling instructions are given in §§ 1254.36 and 1254.38.

(c) When you finish using the documents, you must return them to the research room attendant.

(d) You must not remove the reference service slip that accompanies the documents to the research room.

(e) If we ask, you must return documents up to 15 minutes before closing time.

(f) Before leaving a research room, even for a short time, you must notify the research room attendant and place all documents in their proper containers.

§ 1254.36 What care must I take when handling documents?

To prevent damage to documents, we have rules relating to the physical handling of documents.

(a) You must use only pencils in research rooms where original documents are used.

(b) You must not lean on, write on, refold, trace, or otherwise handle documents in any way likely to cause damage.

(c) You must follow any additional rules that apply to the use of special media records at our facilities, such as wearing cotton gloves we provide you for handling still pictures and any original film-based materials.

(d) You must identify documents for reproduction only with a paper tab that we provide you. You must not use paper clips, rubber bands, self-stick notes or similar devices to identify documents.

(e) You must use exceptionally valuable or fragile documents only under conditions the research room attendant specifies.

(f) You must request that research room personnel unstaple or remove other fasteners from documents that cannot otherwise be read.

(g) If you notice damage to any document(s), notify the research room attendant immediately.

§ 1254.38 How do I keep documents in order?

(a) You must keep unbound documents in the order in which we deliver them to you.

(b) You must not attempt to rearrange documents that appear to be in disorder. Instead, you must refer any suspected problems with the records to the research room attendant.

(c) You may use only one folder at a time.

(d) Remove documents from only one container at a time.

§ 1254.40 How does NARA prevent removal of documents?

(a) You must not remove documents from a research room. Removing, mutilating, or revising or otherwise altering documents is forbidden by law and is punishable by fine or imprisonment or both (18 U.S.C. 2071).

(b) Upon leaving the research room or facility, you must present for examination any article that could contain documents or microfilm, as well as presenting copies or notes to ensure that no original records are mixed in with them.

(c) To ensure that no one unlawfully removes or mutilates documents, NARA may post at the entrance to research rooms instructions supplementing the rules in this part. These instructions are specific to the kinds of records you use or to the facility where the records are stored.

Rules Relating to Using Microfilm

§ 1254.42 What are the rules that apply to using self-service microfilm?

NARA makes available microfilm copies of many records on a self-service basis.

(a) When microfilm is available on a self-service basis, research room attendants assist you in identifying research sources on microfilm and provide information concerning how to locate and retrieve the roll(s) of film containing the information of interest. You are responsible for retrieving and examining the roll(s).

(b) Unless you require assistance in learning how to operate microfilm reading equipment or have a disability, we expect you to install the microfilm on the reader, rewind it when finished, remove it from the reader, and return it to the proper microfilm box. You must carefully remove from and return to the proper microfilm boxes rewound microfilm. You must take care when loading and unloading microfilm from microfilm readers. Report damaged microfilm to the research room attendant as soon you discover it.

(c) Unless we make an exception, you may use only one roll of microfilm at a time.

(d) After using each roll, you must return the roll of microfilm to the location from which you removed it, unless we otherwise instruct you.

(e) You should bring to the attention of the research room attendant any microfilm you find in the wrong box or file cabinet.

§ 1254.44 How long may I use a microfilm reader?

(a) Use of the microfilm readers in the National Archives Building is on a first-come-first-served basis. When other researchers are waiting to use a microfilm reader, we may place a 3-hour limit on using a reader. After 3 hours of machine use, you may sign the waiting list for an additional 3-hour period. For fire safety reasons, we may limit the number of researchers in the microfilm research room in the National Archives Building to those researchers assigned a microfilm reader.

(b) Archival operations directors at our regional archives may permit reservations for use of microfilm readers and set time limits on use to meet local circumstances.

Other Conduct Rules

§ 1254.46 Are there other rules of conduct that I must follow?

(a) Part 1280 specifies conduct rules for all NARA facilities. You must also obey any additional rules supplementing subpart B of part 1254 that are posted or distributed by the facility director.

(b) You may not eat, drink, chew gum, smoke, or use smokeless tobacco products, or use a cell phone, pager, or similar communications device that emits sound signals in a research room. Communications devices must be in vibrate mode. You must make and receive telephone calls outside of research rooms.

(c) We prohibit loud talking and other activities likely to disturb other researchers.

§ 1254.48 When does NARA revoke research privileges?

(a) Behaviors listed in paragraphs (a)(1) through (a)(4) of this section may result in NARA denying or revoking research privileges.

(1) Refusing to follow the rules and regulations of a NARA facility;

(2) Demonstrating by actions or language that you present a danger to documents or NARA property;

(3) Presenting a danger to other researchers, NARA or contractor employees, or volunteers; or

(4) Verbally or physically harassing or annoying other researchers, NARA or contractor employees, or volunteers.

(b) Denying or revoking research privileges means:

(1) We may deny or revoke your research privileges for up to 180 days;

(2) You lose research privileges at all NARA research rooms nationwide; and

(3) You lose your valid researcher identification card if you already have one.

(c) We notify all NARA facilities of the revocation of your research privileges.

(d) If we revoke your research privileges, we send you a written notice of the reasons for the revocation within 3 working days of the action.

§ 1254.50 Does NARA consider reinstating research privileges?

(a) You have 30 calendar days after the date of revocation to appeal the action in writing and seek reinstatement of research privileges. Mail your appeal to the Archivist of the United States (address: National Archives and Records Administration (N), 8601 Adelphi Road, College Park, MD 20740–6001).

(b) The Archivist has 30 calendar days from receipt of an appeal to decide whether to reinstate your research privileges and to respond to you in writing.

(c) If the Archivist upholds the revocation of privileges or if you do not appeal, you may request in writing reinstatement of research privileges no

earlier than 180 calendar days from the date we revoked privileges. This request may include application for a new researcher identification card.

(d) Our reinstatement of research privileges applies to all research rooms.

(e) If we reinstate your research privileges, we issue you a card for a probationary period of 60 days. At the end of the probationary period, you may apply for a new, unrestricted identification card, which we issue to you if your conduct during the probationary period follows the rules of conduct in this part and in part 1280 of this chapter.

§ 1254.52 Can NARA extend the period of revoked research privileges?

(a) If the reinstatement of research privileges would pose a threat to the safety of persons, property, or NARA holdings, or if, in the case of a probationary identification card, you fail to comply with the rules of conduct for NARA facilities, we may extend the revocation of privileges for additional 180-day periods. We send you a written notice of an extension within 3 workdays of our decision to continue the revocation of research privileges.

(b) You have 30 calendar days after the decision to extend the revocation of research privileges to appeal the action in writing. Mail your appeal to the Archivist at the address given in § 1254.50(a). The Archivist has 30 calendar days from receipt of your appeal to decide whether to reinstate your research privileges and to respond to you in writing.

Subpart C—Copying Archival Materials

General Information

§ 1254.60 What are NARA's copying services?

(a) You may order copies of many of our documents for a fee. Our fee schedule for copies is located in § 1258.12 of this chapter. Exceptions to the fee schedule are located in § 1258.4. *See* § 1258.6 about reproductions NARA may provide without charging a fee.

(b) For preservation reasons, we do not make copies from the original documents if the documents are available on microfilm and a clear copy (electrostatic, photographic, or microfilm) can be made from the microfilm.

§ 1254.62 Does NARA have archival materials protected by copyright?

Yes, although many of our holdings are in the public domain as products of employees or agents of the Federal Government, some records and donated historical materials do have copyright protection. Particularly in the case of some special media records, Federal agencies may have obtained materials from private commercial sources, and these may carry publication restrictions in addition to copyright protection. Presidential records may also contain copyrighted materials. You are responsible for obtaining any necessary permission for use, copying, and publication from copyright holders and for any other applicable provisions of the Copyright Act (Title 17, United States Code).

§ 1254.64 Will NARA certify copies?

Yes, the responsible director of a unit, or any of his or her superiors, the Director of the Federal Register, and their designees may certify copies of documents as true copies for a fee. The fee is found at § 1258.12(a).

Rules Relating to Self-Service Copying

§ 1254.70 How may I make my own copies of documents?

(a) Self-service copiers are available in some of our facilities. Contact the appropriate facility to ask about availability before you visit.

(b) In the Washington, DC, area, self-service card-operated copiers are located in research rooms. Other copiers we set aside for use by reservation are located in designated research areas. Procedures for use are outlined in §§ 1254.80 through 1254.84 of this subpart.

(c) You may use NARA self-service copiers where available after the research room attendant reviews the documents to determine their suitability for copying. The appropriate supervisor or the senior archivist on duty in the research room reviews the determination of suitability if you request.

(d) We may impose time limits on using self-service copiers if others are waiting to use them.

(e) In some of our facilities, you may use your own scanner or personal paper-to-paper copier to copy textual materials if the equipment meets our standards cited in §§ 1254.80 and 1254.86. Contact the appropriate facility for additional details before you visit.

(f) You must follow our document handling instructions in §§ 1254.36 and 1254.72. You also must follow our microfilm handling instructions in § 1254.42.

(g) You may use a hand-held camera with no flash or a cell phone camera to take pictures of documents if you have the permission of the research room attendant.

(h) You may not use a self-service copier or personal scanner to copy some special media records. If you wish to copy motion pictures, maps and architectural drawings, or aerial photographic film, the appropriate staff can advise you on how to order copies. If you wish to obtain copies of electronic records files, the appropriate staff will assist you.

§ 1254.72 What procedures do I follow to copy documents?

(a) You must use paper tabs to designate individual documents you wish to copy. You must show the container including the tabbed documents to the research room attendant who determines whether they can be copied on the self-service copier. The manager of the staff administering the research room reviews the determination of suitability if you ask. After copying is completed, you must return documents removed from files for copying to their original position in the file container, you must refasten any fasteners removed to facilitate copying, and you must remove any tabs placed on the documents to identify items to be copied.

(b) If you are using a reserved copier, you must submit the containers of documents to the attendant for review before your appointment. The review time required is specified in each research room. Research room attendants may inspect documents after copying.

(c) You may copy from only one box and one folder at a time. After copying the documents, you must show the original documents and the copies to a research room attendant.

§ 1254.74 What documents are unsuitable for copying on a self-service or personal copier or scanner?

(a) Bound archival volumes (except when specialized copiers are provided).

(b) Documents fastened together by staples, clips, acco fasteners, rivets, or similar fasteners, where folding or bending documents may cause damage.

(c) Documents larger than the glass copy plate of the copier.

(d) Documents with uncancelled security classification markings.

(e) Documents with legal restrictions on copying.

(f) Documents that the research room attendant judges to be in poor physical condition or which may be subject to possible damage if copied.

§ 1254.76 What procedures do I follow to copy formerly national security-classified documents?

(a) We must properly cancel security classification markings (Confidential, Secret, Top Secret) and other restricted markings on declassified records before

documents are copied. Only a NARA staff member can cancel security markings. Properly declassified documents bear the declassification authority as required by 32 CFR 2001.24.

(b) You may not remove from the research room copies of documents bearing uncancelled classification markings. We confiscate copies of documents with uncancelled markings.

(c) When you copy individual documents, the research room staff cancels the classification markings on each page of the copy and places the declassification authority on the first page of each document. If you copy only selected pages from a document, you must make a copy of the first page bearing the declassification authority and attach that page to any subsequent page(s) you copy from the document. You must show this declassification authority to the guard or research room attendant when you remove copies of documents from the research room and/or the building.

(d) Before you copy formerly-classified materials, we provide you with a declassification strip, which you attach to the copier. The strip reproduces on each page copied and cancels the security markings. We may also provide a declassification strip to attach to your personal copier or scanner.

(e) Staff at Presidential libraries cancel security markings before documents are provided to researchers in research rooms.

Rules Relating To Using Copying Equipment

§ 1254.80 Does NARA allow me to use scanners or other personal copying equipment?

(a) Subject to §§ 1254.26(d) and 1254.86, you may use scanners and other copying equipment if the equipment meets certain conditions or minimum standards described in paragraphs (b) through (g) of this section. Exceptions are noted in paragraph (h). The supervisor administering the research room or the senior staff member on duty in the research room reviews the research room attendant's determination if you request.

(b) Equipment platens or copy boards must be the same size or larger than the records. No part of a record may overhang the platen or copy board.

(c) No part of the equipment may come in contact with records in a manner that causes friction, abrasion, or that otherwise crushes or damages records.

(d) We prohibit drum scanners.

(e) We prohibit automatic feeder devices on flatbed scanners. When using a slide scanner, we must check slides after scanning to ensure that no damage occurs while the slide is inside the scanner.

(f) Light sources must not raise the surface temperature of the record you copy. You must filter light sources that generate ultraviolet light.

(g) All equipment surfaces must be clean and dry before you use records. You may not clean or maintain equipment, such as replacing toner cartridges, when records are present. We do not permit aerosols or ammonia-containing cleaning solutions. We permit a 50% water and 50% isopropyl alcohol solution for cleaning.

(h) If you wish to use a scanner or other personal copier in a regional archives or Presidential library, contact the facility first for approval. Not all facilities permit the use of scanners or personal copying equipment because of space, electrical load concerns, and other reasons. Your request must state the space and power consumption requirements and the intended period of use.

(i) In facilities that provide a self-service copier or permit the use of personal paper-to-paper copiers or scanners, you must show documents you wish to copy to the research room attendant for approval.

(j) If you have any question about what is permissible at any given facility, consult with the facility before your visit. Contact information for our facilities is found in part 1253 of this chapter and at the NARA Web site, *http://www.archives.gov.*

§ 1254.82 What limitations apply to my use of self-service card-operated copiers?

(a) There is a 5-minute time limit on copiers in research rooms when others are waiting to use the copier. If you use a microfilm reader-printer, we may limit you to three copies when others are waiting to use the machine. If you wish to copy large quantities of documents, you should see a staff member in the research room to reserve a copier for an extended time period.

(b) If we must cancel an appointment due to copier failure, we make every effort to schedule a new mutually agreed-upon time. However, we do not displace researchers whose appointments are not affected by the copier failure.

§ 1254.84 How may I use a debit card for copiers in the Washington, DC area?

You may use cash to purchase a debit card from a vending machine during the hours that research rooms are open as cited in part 1253 of this chapter. In addition, you may buy debit cards with cash, check, money order, credit card, or funds from an active deposit account from the Cashier's Offices located in the National Archives Building and in the researcher lobby of the National Archives at College Park, during posted hours. Inserting a debit card into the copier enables you to make copies, for the appropriate fee, up to the value on the debit card. You may add value to the debit card by using the available vending machines in our research rooms. We cannot make refunds. The fee for self-service copiers is found in § 1258.12 of this chapter.

§ 1254.86 May I use a personal paper-to-paper copier at the National Archives at College Park?

(a) At the National Archives at College Park facility NARA approves a limited number of researchers to bring in and use personal paper-to-paper copying equipment in the Textual Research Room (Room 2000). Requests must be made in writing to the chief of the Research Support Branch (NWCC2), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001. Requests must identify the records you wish to copy, the expected duration of the project, and the make and model of the equipment.

(b) We evaluate requests using the following criteria:

(1) A minimum of 3,000 pages must be copied;

(2) The project is expected to take at least 4 weeks, with the copier in use a minimum of 6 hours per day or 30 hours per week;

(3) The copying equipment must meet our standards for preservation (*see* §§ 1254.26(d) and 1254.80); and

(4) Space is available for the personal copying project. NARA allows no more than 3 personal copying projects in the research room at one time, with Federal agencies given priority over other users.

(c) You must coordinate with research room management and oversee the installation and removal of copying equipment. You are responsible for the cost and supervision of all service calls and repairs. You must remove copying equipment and supplies within two business days after the personal copying project is completed.

(d) NARA is not responsible for any personal equipment or consumable supplies.

(e) You must be trained by NARA staff on the proper methods for handling and copying archival documents.

(f) You must abide by all regulations on copying stated in this subpart.

(g) We reserve the right to discontinue the privilege of using a personal copier at any time without notice. We discontinue your privilege if you violate one of the conditions in this subpart, we need to provide space for a Federal agency, or we lack staff to supervise the area.

§ 1254.88 What are the rules for the Motion Picture, Sound, and Video Research Room at the National Archives at College Park?

(a) We provide use of NARA viewing and listening equipment in the research room on a first-come-first-served basis. When others are waiting to use the equipment, we may impose a 3-hour limit on your use.

(b) You may use the NARA-furnished recorder or your personal recording device and media to make a copy of unrestricted archival materials in the research room.

(c) We provide you with a copy of the Motion Picture, Sound, and Video Research Room rules and a warning notice on potential copyright claims in unrestricted titles. You are responsible for obtaining any needed permission or release from a copyright owner for other than personal use of the copy.

(d) The research room attendant may inspect and tag your personal recording equipment before admitting you into the unrestricted viewing and copying area in the research room. You must place all equipment and accessory devices on the carts we provide, except that you may place a tripod holding a video camera on the floor in front of a film-viewing station. We are not responsible for damage to or loss of personal equipment and accessories.

(e) You must remain in the research room at your audio or film viewing station at all times while your personal equipment is in use. You must remove your personal equipment from the research room when you leave the room for the day. We cannot be responsible for any damage to or loss of your equipment.

(f) We are not responsible for assisting with ''hook-up'' to NARA viewing equipment, for providing compatibility between the personal recording equipment and NARA viewing equipment, or for the quality of the copies you make. We provide you information on the types of NARA equipment that we have in the research room and on the cables necessary for hook-up to our viewing equipment.

(g) When you bring audio or video recording tapes or cassettes into the unrestricted area of the research room, the research room attendant marks the recording media ''NARA-approved personal property'' for identification purposes. We inspect this media before you leave the research room and when you leave the research complex at the National Archives at College Park.

(h) You may reserve a NARA-furnished video copying station and 120-minute blank video cassette, for a fee, on a first-come-first-served basis for 90 minutes. If no one else is waiting to use the station, you may reserve an additional 90 minutes. You may not connect personal recording devices to NARA equipment at the video copying station. You may use only NARA-provided tapes at the video copying station. Fees for use of the station and blank cassette are specified in § 1258.12 of this chapter.

(i) You may not take any personal recording device or media in the restricted viewing area in the research room.

Subpart D—Microfilming Archival Materials

§ 1254.90 What is the scope of this subpart?

(a) This subpart establishes rules and procedures for the use of privately owned microfilm equipment to film accessioned archival records and donated historical materials in NARA's legal and physical custody by:

(1) Foreign, Federal, State, and local government agencies;

(2) Private commercial firms;

(3) Academic research groups; or

(4) Other entities or individuals that request exemption from obtaining copies through the regular fee schedule reproduction ordering system of NARA.

(b) If you wish to microfilm Federal agency records in the physical custody of the Washington National Records Center (WNRC), contact the director, WNRC, about procedures for obtaining permission from the originating agency to film those records (*see* § 1253.4). For information about procedures for obtaining permission from the originating agency to film records in the records center operation of one of NARA's regional records facilities or in the physical custody of the National Personnel Records Center (NPRC), contact the Regional Administrator of the region in which the records are located (*see* § 1253.6), or the director, NPRC, for records in NPRC (*see* § 1253.5).

(c) Federal agencies that need to microfilm archival records in support of the agency's mission must contact the appropriate office as specified in § 1254.92(a) as soon as possible after the need is identified for information concerning standards and procedures that apply to their microfilming of archival records.

§ 1254.92 How do I submit a request to microfilm records and donated historical materials?

(a) You must submit your request to microfilm materials to the appropriate office.

(1) Submit your written request to microfilm archival records or donated historical materials (except donated historical materials under the control of the Office of Presidential Libraries) in the Washington, DC area to the Assistant Archivist for Records Services—Washington, DC (NW.), 8601 Adelphi Rd., College Park, MD 20740–6001.

(2) Submit your written request to microfilm archival records or donated historical materials in a NARA regional archives to the Assistant Archivist for Regional Records Services (NR), 8601 Adelphi Rd., College Park, MD 20740–6001.

(3) Submit your written request to microfilm records or donated historical materials in a Presidential library or donated historical materials in the Washington area under the control of the Office of Presidential Libraries to the Assistant Archivist for Presidential Libraries (NL), 8601 Adelphi Rd., College Park, MD 20740–6001.

(4) OMB control number 3095–0017 has been assigned to the information collection contained in this section.

(b) You must submit your request to use privately owned microfilm equipment four months in advance of the proposed starting date of the microfilming project. If you submit your request with less advance notice, we consider it and may approve it if we have available adequate NARA space and staff and if you can complete all training, records preparation, and other NARA requirements in a shorter time frame.

(1) You may include in your request only one project to microfilm a complete body of documents, such as an entire series, a major continuous segment of a very large series which is reasonably divisible, or a limited number of separate series related by provenance or subject.

(2) We do not accept additional requests from an individual or organization to microfilm records in a NARA facility while we evaluate an earlier request from that individual or organization to microfilm records at that facility.

(3) We establish the number of camera spaces available to a single project based upon the total number of projects approved for filming at that time.

§ 1254.94 What must my request include?

(a) A description of the documents you wish to copy that includes the following elements:

(1) Record group number or agency of origin or, for donated historical materials, title of the collection;

(2) Title of series or file segment;

(3) Date span; and

(4) Estimated volume in number of pages or cubic feet.

(b) The estimated amount of time (work-days) that the microfilm copying project will take; the date that you would like to begin the project; and the number of persons who would require training (*see* § 1254.108(b)).

(c) The number and a description of the equipment that you will use for copying including:

(1) The name of the manufacturer and model number; and

(2) The type of light source to be employed (fluorescent, tungsten, or electronic flash) and if electronic flash (*i.e.*, strobe) or fluorescent, whether the light source is filtered to omit ultraviolet radiation.

(d) A statement of the procedures that you will follow to ensure that you copy all pages, that the images on the microfilm are legible, and that the microfilm is properly processed. At a minimum, the procedures should meet the requirements specified in part 1230 of this chapter regarding the microfilming of permanent records.

§ 1254.96 What credits must I give NARA?

(a) You must agree to credit NARA as having custody of the original documents. The credit must appear at the beginning of a microfilm publication and in any publicity material or descriptions of the publication.

(b) If the original documents are Federal records, you must agree to include on the film this statement: ''The documents reproduced in this publication are among the records of the (name of agency) in the custody of the National Archives of the United States. (Name of microfilm publication producer) does not claim any copyright interest in these official U.S. Government records.''

(c) If the original documents are donated historical materials, you must agree to include on the film this statement: ''The documents reproduced in this publication are donated historical materials from (name of donor) in the custody of the (name of Presidential library or National Archives of the United States). The National Archives and Records Administration administers them in accordance with the requirements of the donor's deed of gift and the U.S. Copyright Law, Title 17, U.S.C. (Name of microfilm publication producer) does not claim any copyright interest in these donated historical materials.''

(d) If the original documents are Presidential or Vice-Presidential records as specified in 44 U.S.C. 2201, you must agree to include on the film this statement: ''The documents reproduced in this publication are Presidential records in the custody of the (name of Presidential library or National Archives of the United States). The National Archives and Records Administration administers them in accordance with the requirements of Title 44, U.S.C. (Name of microfilm publication producer) does not claim any copyright interest in these official Presidential records.''

(e) If the original documents are records of Congress, you must agree to include on the film this statement: ''The documents reproduced in this publication are among the records of the (House of Representatives/Senate) in the physical custody of the National Archives and Records Administration (NARA). NARA administers them in accordance with the requirements of the (House/Senate). (Name of microfilm publication producer) does not claim any copyright interest in these official congressional records.''

§ 1254.98 May I copyright my microfilm publication?

If you plan to copyright the microfilm publication, you must give NARA a royalty-free worldwide license to sell copies of the publication seven years after you complete filming at the NARA facility, or earlier if there is no commercial distributor.

§ 1254.100 How does NARA evaluate requests?

(a) NARA evaluates requests by estimating how well completion of a proposed project would further our efforts to preserve and to make available to the public the historically valuable records of the Government.

(b) In considering multiple requests to film at the same time, we give priority to microfilming records that have research value for a variety of studies or that contain basic information for fields of research in which researchers have demonstrated substantial interest.

(c) The records to be filmed should be reasonably complete and not subject to future additions, especially of appreciable volumes, within the original body of records. Records with pending or future end-of-series additions are appropriate for filming.

(d) The records to be filmed should not have substantial numbers of documents withdrawn because of continuing national security classification, privacy, or other restrictions.

(e) We approve only requests to microfilm a complete body of documents, such as an entire series or a major continuous segment of a very large series that is reasonably divisible. Microfilming a complete body of documents means that you must consecutively copy all documents within the file unit(s), from the first to the last page, not skipping any pages in between except for pages that are exact duplicates or blank pages that are not included in a pagination scheme.

(f) We normally approve only requests that include assurances that the project will adhere to the specifications in part 1230 of this chapter concerning microfilm stock standards, index placement, and microfilm processing for permanent records.

(g) We approve only requests that specify that NARA will receive a first generation silver halide duplicate negative containing no splices made from the original camera negative of the microform record created in accordance with part 1230 of this chapter. NARA may waive any of the requirements of this paragraph at its discretion.

(1) We may use this duplicate negative microform to make duplicate preservation and reference copies. The copies may be made available for NARA and public use in NARA facilities and programs immediately upon receipt, subject to the limitation in paragraph (g)(2) of this section.

(2) We may also sell copies of the microform seven years after you complete filming at the NARA facility, or earlier if there is no commercial distributor. We may choose to add our own editorial material to the microform copies that we distribute or sell.

(3) You must deliver detailed roll lists with the microfilm. The lists must give the full range of file titles and a complete list of all file numbers on each roll of microfilm. We prefer that the list be provided in a fielded, electronic format to facilitate its use by staff and researchers. If the electronic format is a data file with defined or delimited fields, you should transfer with the file the records layout identifying the fields, any coded values for fields, and explanations of any delimiters.

(4) Microfilm projects may donate to us additional indexes and/or finding aids. NARA and the microfilm project execute a deed of gift that specifies restrictions on NARA's use and dissemination of these products under mutually acceptable terms.

§ 1254.102 What requests does NARA not approve?

(a) We do not approve any request that does not include all of the information we require in §§ 1254.94 and 1254.96.

(b) We do not normally approve requests to microfilm documents that:

(1) Have previously been microfilmed and made available to the public;

(2) We have approved for microfilming by another party; or

(3) We plan to film as a NARA microfilm publication or which relate closely to other documents previously microfilmed or approved for microfilming by NARA. We may grant exceptions to this provision at our discretion.

(c) We normally do not approve requests to microfilm documents:

(1) Having restrictions on access that preclude their reproduction;

(2) Known to be protected by copyright;

(3) Having high intrinsic value that only authorized NARA personnel may handle;

(4) In vulnerable physical condition;

(5) Having a high research demand and which we would have to deny to others for an extended period of time during the microfilming process. Where possible, we assist you in developing filming schedules that avoid the need to close documents for a lengthy period of time; and

(6) In formats, such as oversize documents, bound volumes, and others, that would be subject to excessive stress and possible damage from special equipment you plan to use, as well as documents fastened with grommets, heavy duty staples, miscellaneous fasteners, or wafers and other adhesives that cannot be removed without tearing or breaking documents.

(d) We normally do not approve requests from persons or organizations that failed to produce usable microfilm or to honor commitments they made in previous requests, or for whom we have had to rescind previous permission to microfilm documents because of their conduct.

(e) We do not approve requests to microfilm records in NARA facilities in which there is insufficient space available for private microfilming. We do not permit private microfilming in our records storage (stack) areas.

(1) Federal agencies microfilming records in support of the agency's mission may use the space set aside for private microfilming. Agency microfilming takes priority over private microfilming when there is insufficient space to accommodate both at the same time.

(2) When a NARA facility does not have enough space to accommodate all requests, we may schedule separate projects by limiting the time allowed for each particular project or by requiring projects to alternate their use of the space.

(3) We also do not approve requests where the only space available for filming is in the facility's research room, and such work would disturb researchers. We do not move records from a facility lacking space for private microfilming to another NARA facility for that purpose.

(f) We do not approve requests to microfilm records when there is not enough staff to provide the necessary support services, including document preparation, training of private microfilmers, and monitoring the filming.

(g) We do not approve the start of a project to microfilm records until you have agreed in writing to the amount and schedule of fees for any training, microfilm preparation, and monitoring we must conduct that is necessary to support your project. Our letter of tentative approval for the project includes an agreement detailing the records in the project and the detailed schedule of fees for NARA services for the project. We give final approval when we receive your signed copy of the agreement.

§ 1254.104 How does NARA determine fees to prepare documents for microfilming?

(a) As part of our evaluation of a request to microfilm documents, we determine the amount of microfilm preparation that we must do before you can microfilm the documents and the estimated cost of such preparation. We base fees for microfilm preparation on direct salary costs (including benefits) and supply costs when we perform the work. When a NARA contractor performs the work, the fees are the cost to NARA. Microfilm preparation includes:

(1) Removing document fasteners from documents when the fasteners can be removed without damage to the documents; and

(2) Taking any document conservation actions that must be accomplished in order to film the documents, such as document flattening or mending.

(b) We provide you detailed information on the fees for microfilm preparation in the letter of approval. You must pay fees in accordance with § 1258.14 of this chapter. When a body of documents requires extensive microfilm preparation, we may establish a different payment schedule at our discretion.

§ 1254.106 What are NARA's equipment standards?

(a) Because we have limited space in many NARA facilities, microfilm/fiche equipment should be operable from a table top unless we have given written permission to use free standing/floor model cameras. You may only use planetary type camera equipment. You may not use automatic rotary cameras and other equipment with automatic feed devices. We may approve your use of book cradles or other specialized equipment designed for use with bound volumes, oversized documents, or other formats, as well as other camera types not specified here, on a case-by-case basis.

(b) The power consumption of the equipment normally must not exceed 1.2 kilowatts. Power normally available is 115 volts, 60 hz. You must make requests for electricity exceeding that normally available at least 90 days in advance.

(c) You may not use equipment having clamps or other devices to exert pressure upon or to attach the document to any surface in a way that might damage the document.

(d) The equipment must not use a heat generating light source in close enough proximity to the documents to result in their physical distortion or degradation. All sources of ultraviolet light must be filtered.

§ 1254.108 What are NARA's requirements for the microfilming process?

(a) Your equipment must conform to the equipment standards in § 1254.106.

(b) You must handle documents according to the training and instructions provided by our staff so that documents are not damaged during copying and so that their original order is maintained. Only persons who have attended NARA training will be permitted to handle the documents or supervise microfilming operations. We charge you fees for training services and these fees will be based on direct salary costs (including benefits) and any related supply costs. We specify these fees in the written agreement we require for project approval in § 1254.102(h).

(c) You may microfilm documents from only one file unit at a time. After you complete microfilming, you must return documents you removed from files for microfilming to their original position in the file container, refasten any fasteners you removed to facilitate copying, and remove any tabs you placed on the documents to identify

items to copy. We will provide fasteners for replacement as necessary.

(d) You may not leave documents unattended on the copying equipment or elsewhere.

(e) Under normal microfilming conditions, actual copying time per sheet must not exceed 30 seconds.

(f) You must turn off any lights used with the camera when the camera is not in actual operation.

(g) You may operate microfilm equipment only in the presence of the research room attendant or a designated NARA employee. If NARA places microfilm projects in a common research area with other researchers, the project will not be required to pay for monitoring that is ordinarily provided. If the microfilm project is performed in a research room set aside for copying and filming, we charge the project fees for these monitoring services and these fees will be based on direct salary costs (including benefits). When more than one project share the same space, monitoring costs will be divided equally among the projects. We specify the monitoring service fees in the written agreement required for project approval in § 1254.102(h).

(h) The equipment normally should be in use each working day that it is in a NARA facility. The director of the NARA facility (as defined in § 1252.2 of this chapter) decides when you must remove equipment because of lack of regular use. You must promptly remove equipment upon request of the facility director.

(i) We assume no responsibility for loss or damage to microfilm equipment or supplies you leave unattended.

(j) We inspect the microform output at scheduled intervals during the project to verify that the processed film meets the microfilm preparation and filming standards required by part 1230 of this chapter. To enable us to properly inspect the film, we must receive the film within 5 days after it has been processed. You must provide NARA with a silver halide duplicate negative of the filmed records (*see* § 1254.100(g)) according to the schedule shown in paragraph (k) of this section. If the processed film does not meet the standards, we may require that you refilm the records.

(k) When you film 10,000 or fewer images, you must provide NARA with a silver halide duplicate negative upon completion of the project. When the project involves more than 10,000 images, you must provide a silver halide duplicate negative of the first completed roll or segment of the project reproducing this image count to NARA for evaluation. You also must provide subsequent completed segments of the project, in quantities approximating 100,000 or fewer images, to NARA within 30 days after filming unless we approve other arrangements.

(l) If the microfilming process is causing visible damage to the documents, such as flaking, ripping, separation, fading, or other damage, filming must stop immediately and until the problems can be addressed.

§ 1254.110 Does NARA ever rescind permission to microfilm?

We may, at any time, rescind permission to microfilm records if:

(a) You fail to comply with the microfilming procedures in § 1254.108;

(b) Inspection of the processed microfilm reveals persistent problems with the quality of the filming or processing;

(c) You fail to proceed with the microfilming or project as indicated in the request, or

(d) The microfilming project has an unanticipated adverse effect on the condition of the documents or the space set aside in the NARA facility for microfilming.

(e) You fail to pay NARA fees in the agreed to amount or on the agreed to payment schedule.

2. Revise part 1284 to read as follows:

PART 1284—EXHIBITS

Sec.
1284.1 Scope of part.
1284.20 Does NARA exhibit privately-owned material?
1284.30 Does NARA lend documents to other institutions for exhibit purposes?

Authority: 44 U.S.C. 2104(a), 2109.

§ 1284.1 Scope of part.

This part sets forth policies and procedures concerning the exhibition of materials.

§ 1284.20 Does NARA exhibit privately-owned material?

(a) NARA does not normally accept for display documents, paintings, or other objects belonging to private individuals or organizations except as part of a NARA-produced exhibit.

(b) NARA may accept for temporary special exhibit at the National Archives Building privately-owned documents or other objects under the following conditions:

(1) The material to be displayed relates to the institutional history of the National Archives and Records Administration or its predecessor organizations, the National Archives Establishment and the National Archives and Records Service;

(2) Exhibition space is available in the building that NARA judges to be appropriate in terms of security, light level, climate control, and available exhibition cases or other necessary fixtures; and

(3) NARA has resources (such as exhibit and security staff) available to produce the special exhibit.

(c) The Director of Museum Programs (NWE), in conjunction with the NARA General Counsel when appropriate, reviews all offers to display privately-owned material in the Washington, DC area, and negotiates the terms of exhibition for offers that NARA can accept. Directors of Presidential libraries perform these tasks for their respective libraries. The lender must provide in writing evidence of title to and authenticity of the item(s) to be displayed before NARA makes a loan agreement.

(d) The Director of Museum Programs or director of the pertinent Presidential library will inform the offering private individual or organization of NARA's decision in writing within 60 days.

§ 1284.30 Does NARA lend documents to other institutions for exhibit purposes?

Yes, NARA considers lending documents that are in appropriate condition for exhibition and travel. Prospective exhibitors must comply with NARA's requirements for security, fire protection, environmental controls, packing and shipping, exhibit methods, and insurance. For additional information, contact Registrar, Museum Programs (NWE), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

Dated: March 24, 2004.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04–7169 Filed 3–30–04; 8:45 am]

BILLING CODE 7515–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 04–53 and 02–278; FCC 04–52]

Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on how best to implement

regulations to protect consumers from unwanted mobile service commercial messages. This document also seeks comment on two possible revisions to rules implementing the national do-not-call registry.

DATES: Comments in CG Docket No. 04–53, concerning unwanted mobile service commercial messages and the CAN–SPAM Act, are due on or before April 30, 2004 and reply comments are due on or before May 17, 2004. Comments in CG Docket No. 02–278, concerning both a limited safe harbor under the TCPA and the required frequency for telemarketers to access the national do-not-call registry, are due on or before April 15, 2004 and reply comments are due on or before April 26, 2004. Written comments by the public on the proposed information for this collection for CG Docket No. 04–53 and CG Docket No. 02–278, are due April 30, 2004. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before June 1, 2004.

ADDRESSES: Parties who choose to file comments by paper must file an original and four copies to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *http://www.fcc.gov/e-file/ecfs.html*. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov* and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 via the Internet to *Kristy_L._LaLonde@omb.eop.gov* or by fax to 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken, of the Consumer & Government Affairs Bureau at (202) 418–2512 (voice), or e-mail *ruth.yodaiken@fcc.gov*. For additional information concerning the information collection contained in this document, contact Leslie Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM), *Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003*; CG Docket No. 04–53; and this *Further Notice of Proposed Rulemaking* (FNPRM), *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02–278, FCC 04–53, adopted March 11, 2004, and released March 19, 2004. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554. Parties who choose to file paper comments also should send four paper copies of their filings to Kelli Farmer, Federal Communications Commission, Room 4–C734, 445 12th Street, SW., Washington, DC 20554. In addition, commenters choosing to file in paper must send copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, D.C. 20554. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554.

Paperwork Reduction Act

This *NPRM* and *FNRPM* contain proposed and modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invited the general public and OMB to comment on the information collection contained in this *NPRM* and *FNPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB notification of action is due 60 days from date of publication of this NPRM and FNPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–xxxx.

Title: Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM); FCC 04–52.

Form Number: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit entities.

Number of Respondents: There are approximately 22,620,000 total businesses in the USA. We would assume that only—at most—half of those send unwanted commercial electronic mail messages.

Estimated Time per Response: Varies with proposed rules. For the domain name proposals, this might only affect CMRS carriers to report domain names, and senders of commercial messages to check periodically. Census data indicates that there are approximately 350 CMRS carriers. The proposal involving a registry of individual addresses would involve checking a list of mail addresses regularly and comparing that to any list the sender has. We note that with the adoption of the CAN–SPAM Act in general, since January 1, 2004, senders are prohibited from sending commercial electronic mail messages to any recipient who makes a request not to receive any more such mail from that sender. Hence, senders must already check a list of electronic mail addresses against a list they must keep of anyone who has requested not to receive such mail. The Commission noted in the CMRS Competition Report that there are approximately 142 million mobile subscribers. 1.5–12 hours

Frequency of Responses: On occasion. This is a recordkeeping requirement.

Total Annual Burden: Approximately 17 million hours–132 million hours (depending on the options).

Total Annual Cost: $1,750,000.

Needs and Uses: The item asks how senders can identify electronic mail addresses as belonging to mobile services messaging systems, which the statute requires the FCC to protect. We seek comment in particular on whether there could be a list or standard naming convention of domain names; or an individual registry of electronic mail addresses. Further we ask about whether there are automatic challenge-response mechanisms that would alert senders that they are sending their message to such a subscriber. Further, we explore mechanisms that do not require the sender to recognize the addresses. These methods are filtering mechanisms. We also explore the use of senders tagging their messages to identify them as commercial. These steps are examined for their usefulness in giving wireless subscribers the ability to stop receiving unwanted commercial mobile services messages.

OMB Control Number: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, NPRM, CG Docket No. 02–278, FCC 04–52.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 30,000.

Estimated Time per Response: 3 hours (average).

Frequency of Response: On occasion. This is a reporting requirement.

Total Annual Burden: 90,000 hours.

Total Annual Costs: $1,710,000.

Needs and Uses: The current total public disclosure and recordkeeping burden for collections of information under the TCPA rules is 1,728,600 hours, as stated most recently in the Commission's OMB submission to extend approval of the information collection in connection with the TCPA rules. We believe that the amended safe harbor, which would require telemarketers to scrub their call lists monthly, could increase the burdens by 60,000 hours and increase the total annual costs by $855,000 to $1,710,000.

Proposal Revision to Certain Recordkeeping Requirements

The Commission seeks comment on whether to revise certain recordkeeping requirements that must be met before companies may avail themselves of any ''safe harbor'' protections for violating the do-not-call rules. Companies that conduct telemarketing already maintain their own do-not-call lists and many of them must reconcile their lists with the national do-not-call list on a quarterly basis. We believe that any additional recordkeeping burden as a result of specific ''safe harbor'' requirements would be minimal for most telemarketers. We estimate that this requirement will account for an additional 2 hours of recordkeeping burden per company, or an additional 60,000 hours.

Synopsis

I. CAN–SPAM

A. Definition of Mobile Service Commercial Messages

Section 14(b)(1) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act or the Act) states that the Commission shall adopt rules to provide subscribers with the ability to avoid receiving a ''mobile service commercial message'' (MSCM) unless the subscriber has expressly authorized such messages beforehand. The Act defines an MSCM as a ''commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile service'' as defined in 47 U.S.C. 332(d) ''in connection with that service.'' For purposes of this discussion, we shall refer to mobile service messaging as MSM. As a threshold matter, we commence our inquiry by exploring the scope of messages covered by section 14.

1. Commercial Electronic Mail Message

Although the Act defines an electronic mail message broadly as a message having a unique electronic mail address with ''a reference to an Internet domain,'' the scope of electronic messages covered under section 14 is narrowed. MSCMs are only those electronic mail messages ''transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile service'' as defined in 47 U.S.C. 332(d) ''in connection with that service.'' Section 332(d) defines the term ''commercial mobile service'' as a mobile service that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public. The Commission equates the statutory term ''commercial mobile service'' with ''commercial mobile radio service'' or CMRS used in its rules.

Accordingly, it appears that only commercial electronic messages transmitted directly to a wireless device used by a CMRS subscriber would fall within the definition of MSCMs under the Act. Further, we note that the Act states that an electronic mail message shall include a unique electronic mail address, which is defined to include two parts: (1) ''a unique user name or mailbox;'' and (2) ''a reference to an Internet domain.'' Thus, it appears that MSCM would be limited under the Act, to a message that is transmitted to an electronic mail address provided by a CMRS provider for delivery to the addressee subscriber's wireless device. We seek comment on this interpretation and its alternatives. Commenters should address whether only these or other messages would fall under the definition of MSCM.

Under the Act, whether an electronic mail message is considered ''commercial'' is based upon its ''primary purpose.'' It meets this definition if its primary purpose is ''the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).'' A ''commercial'' message for

purposes of the Act does not include a transactional or relationship message. The Act requires the FTC to issue regulations defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message by January of 2005.

2. Transmitted Directly to a Wireless Device Used by a Subscriber of Commercial Mobile Service

As explained above, in order to satisfy the definition of an MSCM, the message must be ''transmitted directly to a wireless device.'' In light of the definition of an MSCM, as discussed above, it appears that the statutory language would be satisfied when a message is transmitted to an electronic mail address provided by a CMRS provider for delivery to the addressee subscriber's wireless device. As discussed below, we believe that the specific transmission technique used in delivering a particular message may not be relevant under the statute, and that messages ''forwarded'' by a subscriber to his or her own wireless device are not covered under section 14. We seek comment on these interpretations as well as the issues described below.

We have asked above whether a message becomes an MSCM only if it is transmitted to a wireless device used by a subscriber of CMRS ''in connection with that service.'' We seek comment on whether an interpretation that all commercial electronic mail messages sent to CMRS carriers' mobile messaging systems are MSCMs would be consistent with the definition of MSCM in the Act. For example, do CMRS carriers offer services through which electronic mail messages are sent directly to wireless devices other than in connection with commercial mobile service as defined in section 332(d)? Commenters should also discuss any other relevant issues involving the definition of MSCM.

Transmission techniques. Currently, there appear to be two main methods for transmitting messages to a wireless device, and those methods are through push and pull technologies. Message transmission techniques using ''pull'' technologies store messages on a server until a recipient initiates a request to access the messages from either a wireless or non-wireless device. ''Push'' technologies automatically—without action from the recipient—send messages to a recipient's wireless device. Certain messages that are initiated as electronic mail messages on the Internet and converted for delivery to a wireless device, discussed below in the context of SMS messaging, are examples of messages delivered to wireless devices using such push technologies. We believe that the definition of a MSCM should include all messages transmitted to an electronic mail address provided by a CMRS provider for delivery to the addressee subscriber's wireless device irrespective of the transmission technique. We seek comment on this interpretation and alternatives.

The legislative history of the Act suggests section 14, in conjunction with the Telephone Consumer Protection Act (TCPA), was intended to address wireless text messaging. SMS messages are text messages directed to wireless devices through the use of the telephone number assigned to the device. When SMS messages are sent between wireless devices, the messages generally do not traverse the Internet and therefore do not include a reference to an Internet domain. However, a message initially may be sent through the Internet as an electronic mail message, and then converted by the service provider into an SMS message associated with a telephone number. We seek comment on whether the definition of an MSCM should include messages using such technology and similar methods, and specifically whether it should include either or both of these types of SMS messages described above. We note here that the TCPA and Commission rules prohibit calls using autodialers to send certain voice calls and text calls, including SMS messages, to wireless numbers.

Forwarding. The manner in which recipients of MSCMs utilize messaging options may also be relevant to our interpretation of the definition of MSCM. For example, another way for a commercial mobile service subscriber to obtain electronic mail messages is for that subscriber to take steps to have messages forwarded from a server to the subscriber's wireless device. With this type of electronic mail transmission, a subscriber can, for example, obtain messages initially sent to an electronic mail account that is normally accessed by a personal computer. We do not believe that section 14 was intended to apply to all such messages. First, defining the scope of section 14 to include all ''forwarded'' messages could result in our rules applying to virtually all electronic mail covered by the CAN–SPAM Act because subscribers can forward most electronic mail to their wireless devices. We do not believe that Congress intended such a result given that it would duplicate in large measure the FTC's authority under the Act. Moreover, the legislative history of the Act suggests that section 14 was not intended to address messages ''forwarded'' in this manner. Congressman Markey, in support of section 14, stated: ''Spam sent to a desktop computer e-mail address, and which is then forwarded over to a wireless network to a wireless device, *i.e.*, delivered 'indirectly' from the initiator to the wireless device, would be treated by the rest of this bill and not by the additional section 14 wireless-specific provisions we subject to an FCC rulemaking.'' We seek comment on the view that such transmissions fall outside the category of those ''transmitted directly to a wireless device.'' Commenters should address our assumption that a broad interpretation of ''transmitted directly to a wireless device'' to cover ''forwarded'' electronic mail messages would expand the scope of section 14 to cover all electronic mail covered by the CAN–SPAM Act in general.

Section 14 requires that the FCC ''consider the ability of a sender of a commercial electronic mail message to reasonably determine that the message is a mobile service commercial message.'' We seek comment on how a sender would know that it was sending an MSCM if any action by a recipient to retrieve his messages by a wireless device could convert a non-MSCM into an MSCM, or vice-versa. We seek comment on the technical and administrative characteristics relevant to distinguishing forwarded messages as well as other messages.

B. The Ability To Avoid Receiving MSCMs

1. How To Enable Consumers To Avoid Unwanted MSCMs

We seek comment on ways in which we can implement Congress's directive to protect consumers from ''unwanted mobile service commercial messages.'' As explained above, section 14(b)(1) of the CAN–SPAM Act states that the Commission shall adopt rules to provide subscribers with the ''ability to avoid receiving [MSCMs] unless the subscriber has provided express prior authorization to the sender.'' The legislative history of the Act suggests that section 14 was included so that wireless subscribers would have greater protections from commercial electronic mail messages than those protections provided elsewhere in the Act. As explained below, we believe that section 14(b)(1) is intended to provide consumers the opportunity to generally bar receipt of all MSCMs (except those from senders who have obtained the consumer's prior express consent). However, we believe that in order to do so, the consumer must take affirmative action to bar the MSCMs in the first

instance. Although it appears that Congress intended to afford wireless subscribers greater protection from unwanted commercial electronic mail messages than those protections provided elsewhere in the Act, it is not clear that Congress necessarily sought to impose a flat prohibition against such messages in the first instance. However, as set forth below, we seek comment on both of these different interpretations of section 14(b)(1).

The language of the CAN–SPAM Act requires the Commission to ''protect consumers from unwanted mobile service commercial messages.'' The protections extend to unwanted MSCMs from senders who may ignore the provisions of the CAN–SPAM Act. As a practical matter, the particular protections for wireless subscribers required by the Act may require comprehensive solutions. Therefore, in addition to those considerations directed by the CAN–SPAM Act discussed below, we seek comment generally on technical mechanisms that could be made available to wireless subscribers so that they may voluntarily, and at the subscriber's discretion, protect themselves against unwanted mobile service commercial messages. We seek comment on means by which wireless providers might protect consumers from MSCMs transmitted by senders who may willfully violate the wireless provisions of the CAN–SPAM Act addressed in this proceeding. We seek comment on how, in particular, small businesses would be affected by the various proposals we consider.

We are aware that a number of other countries have taken a variety of technical and regulatory steps to protect their consumers from unwanted electronic mail messages in general. In doing so, some countries such as Japan and South Korea have adopted an opt-out approach; while others such as the United Kingdom, France, and Germany had adopted an opt-in approach. Still others have a mixed approach. Also, different countries have taken a variety of positions on whether labeling and identification of commercial messages is required, whether a Do-Not-E-Mail registry can be developed, and whether the use of ''spamware'' is prohibited. We seek comment on any of these approaches, consistent with section 14, applicable to unwanted mobile service commercial messages, with particular emphasis on their effectiveness, associated costs and burdens, if any, on carriers, subscribers or other relevant entities. Commenters should not only focus on the present, but also on the foreseeable future.

a. Prohibiting the Sending of MSCMs. Section 14(b)(1) states that the Commission's rules shall ''provide subscribers to commercial mobile services the ability to avoid receiving mobile service commercial messages unless the subscriber has provided express prior authorization to the sender.'' One possible interpretation of this provision is that Congress intended to prohibit all senders of commercial electronic mail from sending MSCMs unless the senders first obtain express authorization from the recipient. This reading would allow the subscriber to avoid all MSCMs unless the subscriber acts affirmatively to give express permission for messages from individual senders.

Another interpretation of this provision is that Congress intended the subscriber to take affirmative steps to avoid receiving MSCMs to indicate his or her desire not to receive such messages. For example, under this interpretation, the customer might, at the time he or she subscribes to the mobile service, affirmatively decline to receive MSCMs. The subscriber would still have the option to agree to accept MSCMs from particular senders. We invite comment on both interpretations, particularly in light of the technological abilities and any constitutional concerns.

We also ask for comment on the practical aspects of either interpretation of this provision, given potential problems senders might have currently in determining whether the message sent is an MSCM. Commenters should address enforcement and administrative concerns associated with any Commission action taken to protect subscribers from unwanted MSCMs. We also ask whether the mechanisms described below might help alleviate those problems. In addition, we ask for comment on the effect either interpretation might have upon small businesses.

We seek comment on whether senders at this time have the practical ability to ''reasonably determine'' whether an electronic mail message is sent directly to a wireless device or elsewhere. Some MSM subscriber addresses might be identifiable if they use a phone number in front of a reference to an Internet domain of a recognizable wireless carrier. For example, ''2024189999@[wireless company].com'' would be such an address. However, we understand that other MSM subscriber addresses do not have such easily distinguishable addresses, such as ''nickname@[wireless company].com.'' Moreover, as technology evolves, the options available for accessing and reading electronic mail messages from mobile devices will only expand. Therefore, as required by the Act, we must ''consider the ability of a sender'' of a commercial message to ''reasonably determine'' that the message is an MSCM.

There appear to be a variety of mechanisms that, if implemented, could allow a sender to reasonably determine that a message is being sent to an MSM subscriber. We seek comment on the efficacy and cost considerations of each of the specific mechanisms identified below, as well as any reasonable alternatives, whether they are offered at the network level by service providers, at the device level by manufacturers, or even by other mechanisms involving subscribers themselves. We especially seek comment from small businesses on these issues. If wireless providers are to follow direction from subscribers as to which senders' messages should be blocked or allowed to pass through any filter, we seek comment on whether such information about the subscribers' choices is adequately protected. We seek comment on whether other protections are needed and what they might be.

In this section we focus on possible mechanisms to enable senders to recognize MSMs by the recipient's electronic mail message address, specifically the Internet domain address portion.

List of MSM domain names. We seek comment on whether we should establish a list of all domain names that are used exclusively for MSM subscribers, to allow senders to identify the electronic mail addresses that belong to MSM subscribers. We note that this list would not include unique user names or mailboxes—rather, it would solely be a registry of a small number of mail domains to allow senders to identify whether any messages they were planning to send would in fact be MSCMs. If an MSM provider were to use a portion of their domain exclusively for MSMs, the list would include the portion of its domain devoted to that purpose. In that case, we believe that a sender could consult such a list to reasonably determine if a message was addressed to a mobile service subscriber. We seek comment on whether it is industry practice for providers to employ subdomains that are exclusively used to serve their MSM subscribers that distinguish such customers from other customers. For example, if a company offers both MSM and non-MSM services, does it assign subscribers to those different services the same or different domain names for their addresses? If not, we seek

comment on whether we should require MSM providers to do so. We seek comment on whether using exclusive subdomain names should be required for all MSM service, or whether we should require carriers to offer subscribers the option of using such a name.

In connection with this approach, we seek comment on whether we should establish such a list and prohibit the sending of commercial electronic mail messages to domains on that list as violations of the Act. We seek comment on what steps the Commission may take to encourage or require the use of domain name oriented solutions by entities subject to our jurisdiction. Further, we seek comment on what steps the Commission could take to facilitate these solutions through interaction with industry and other entities not directly regulated by the Commission. We seek comment on any practical, enforceability, cost or other concerns related to establishing such a list. We seek comment on how it might be established, maintained, accessed and updated. We seek comment regarding any burdens on small business owners who advertise using electronic mail to check such a list in order to comply with the Act.

Registry of individual subscriber addresses. We seek comment on whether we should establish a limited national registry containing individual electronic mail addresses, similar to the national ''do-not-call'' registry. The FTC is tasked with reviewing how a nationwide marketing ''Do-Not-E-Mail'' registry might offer protection for those consumers who choose to join. Would a similar registry just for MSM addresses be consistent with the Act in general and with the greater protections provided in section 14(b)(1) for MSM subscribers? If the FTC implements a registry, how would ours differ? We seek comment on any practical, technical, security, privacy, enforceability, and cost concerns related to establishing such a registry. In particular, we seek comment on how it might be established, maintained, accessed and updated. We seek information about the volume of addresses potentially included in such a registry, how MSM providers could verify that submitted addresses were only for MSM service, and how such a registry might be funded. In particular, could the confidentiality of MSM subscriber electronic mail addresses be adequately protected if maintained on a widely-accessible list? We seek comment on the burdens on small businesses to participate in such a registry. We seek comment on whether the establishment of a registry of electronic mail addresses could result in more, rather than less, unwanted electronic mail messages being sent to those addresses.

MSM-only domain name. We seek comment on whether it would be possible and useful to require the use of specific top-level and second-level domains, which form the last two portions of the Internet domain address. For example, could we allow carriers to use a top-level domain, particularly the ''.us'' country-code top-level domain, and require that to be preceded by a standard second-level domain (such as ''<reserved domain>'' for mobile message service)? Under such an approach, MSM providers wireless company ABC and wireless company XYZ would gradually transition the domain parts of their subscribers' electronic mail addresses to ''@[wireless company ABC].<reserved domain>.us'' and ''@[wireless company XYZ].<reserved domain>.us'' respectively. Could carriers or other parties subject to the Commission's jurisdiction implement such solutions independently, or would such approaches require cooperation of entities not generally under our jurisdiction? We seek comment on the burdens on small businesses to use such domain names.

Common MSM subdomain names. We seek comment on whether we should require one portion of the domain to follow a standard naming convention to be used for all MSM service, or whether each carrier could choose its own naming convention within its own domains, as long as it was only used for such service. We note that one apparently significant difficulty with this approach is that entities that do not provide MSM service might also adopt such names. Thus, the sender might not be able to distinguish those addresses to which sending an MSCM was prohibited from some other addresses to which it is not prohibited. We seek comment on these and any other domain name-based approaches, their respective merits, and their practicality. In addition, we seek comment as to the effect a domain-name based approach will have on small communications carriers and whether there are less burdensome alternatives for such businesses.

b. Challenge and Response Mechanisms. As an alternative, we seek comment on whether we should require wireless providers to adopt mechanisms that would offer what is known as a ''challenge-response'' system. A challenge-response mechanism sends back a challenge that requires a response verifying some aspect of the message. It is our understanding that technical mechanisms exist that could automatically hold a message and send a response to the sender to let the sender know the message was addressed to an MSM subscriber. For example, such technology might either ask for confirmation from the sender before forwarding the message to the intended recipient, or just return the first message from a sender with a standard response noting that the intended recipient was an MSM subscriber. Data suggests that this ''challenge-response'' approach is available in countering unwanted electronic mail, and a number of variants are possible. We seek comment on such mechanisms and alternatives. Is it reasonable to expect the sender to note the addressee's status and refrain from sending future messages to that address unless the sender has prior express authorization? Could mechanisms notifying the sender after he has sent an MSCM serve as an alternative or supplement to other mechanisms for enabling the sender to identify MSM subscriber addresses before an MSCM is sent? Would this practice be less burdensome to small businesses than alternative proposals? Would a challenge-response mechanism designed to filter out commercial electronic mail present an inappropriate impediment to non-commercial messages?

c. Commercial Message Identification. We note that, in order to make any blocking or filtering mechanisms respond only to commercial messages, rather than to all messages, commercial messages would first need to be identified. We seek comment on the best methods that could be used by an MSM provider to identify such messages as commercial, if such methods are needed to make a filtering system effective. For example, would it be useful to use characters at the start of the subject line, or other methods? We seek comment on methods for ''tagging'' such messages so that they are identifiable as commercial messages. In addition, we ask about the practicality of having an MSM provider automatically request a response from the sender's server for any MSCMs identified by unique characters in the subject line labeling. We seek comment on this and other similar approaches and their respective merits and practicality. We seek comment on specific alternative approaches.

By itself, a prohibition against anyone sending MSCMs without prior express permission would place the burden on the sender to ensure that it is not sending its messages to MSM addresses. We seek comment therefore on whether

it would be necessary or useful to consider the option of ''tagging'' commercial messages to identify them. We seek comment on this issue and on our authority to require such tagging on all commercial electronic mail. We note that the Act requires the FTC to tender a report to Congress outlining a plan to address the labeling of commercial electronic mail messages in general. We are especially interested in the comments of small businesses about this alternative. Is it less burdensome than other alternatives?

2. Express Prior Authorization

Congress directed the FCC to adopt rules to provide consumers with the ability to avoid receiving MSCMs, unless the subscriber has provided express prior authorization to the sender. We seek comment on the form and content of such ''express prior authorization.'' We seek comment on whether it should be required to be in writing, and how any such requirement could be met electronically. We note that certain other requirements of the Act do not apply if the sender has obtained the subscriber's ''affirmative consent.'' As defined in the Act, ''affirmative consent'' means: (1) That the recipient expressly consented either in response to a clear and conspicuous request for such consent, or at the recipient's own initiative; and (2) in cases when the message is from a party other than the party which received consent, that the recipient was given clear and conspicuous notice at the time of consent that the electronic mail address could be transferred for the purpose of initiating commercial e-mail messages. We seek comment on whether the definition of ''affirmative consent'' would also be suited to use in defining ''express prior authorization.''

We seek comment on whether any additional requirements are needed and the technical mechanisms that a subscriber could use to give express prior authorization. For example, should there be a notice to the recipient about the possibility that costs could be incurred in receiving any message? What technical constraints imposed by the unique limitations of wireless devices are relevant in considering the form and content of express prior authorization. We seek comment on ways to ease the burdens on both consumers and businesses, especially small businesses, of obtaining ''express prior authorization'' while maintaining the protections intended by Congress.

3. Electronically Rejecting Future MSCMs

Section 14(b)(2) specifically requires that we develop rules that ''allow recipients of MSCMs to indicate electronically a desire not to receive future MSCMs from the sender.'' We seek comment on whether there are any technical options that might be used, such as a code that could be entered by the subscriber on her wireless device to indicate her withdrawal of permission to receive messages. For example, could an interface be accessed over the Internet (not necessarily through the wireless device) so that a user would access his or her account and modify the senders' addresses for which messages would be blocked or allowed through? We seek comment on whether carriers, especially small carriers, already have systems in place to allow subscribers to block messages from a sender upon request of a subscriber. We also seek comment on whether a challenge-and-response system, as discussed above, could be used to accomplish this goal. A challenge-response mechanism sends back a challenge that requires a response verifying some aspect of the message. In addition to the challenge-response systems, could an MSM subscriber select a ''secret code'' or other personal identifier that a subscriber could distribute selectively to entities who she wanted to be able to send MSCMs to her? Could such an approach enable a carrier to filter out all commercial messages that do not include that ''secret code'' or personal identifier? We seek comment on whether there is some mechanism using the customer's wireless equipment, rather than the network, that could be used by a subscriber to screen out future MSCMs. We seek comment on these and any other methods that would allow the recipient of MSCMs to indicate electronically a desire not to receive future MSCMs from the sender. We especially seek comment from small businesses that might be affected by such a requirement. Further we seek comment on whether it would be appropriate to require or allow senders of MSCMs to give subscribers the option of going to an Internet Web site address provided by the sender to indicate their desire not to receive future MSCMs from the sender. Additionally, we seek comment on whether there are additional considerations needed for MSCMs sent to subscribers who are roaming on the network, given, for example, that different networks may have different technological capabilities.

4. Exemption for Providers of Commercial Mobile Services

Section 14(b)(3) requires the Commission to take into consideration whether to subject providers of commercial mobile services to paragraph (1) of the Act. As a result, the Commission may exempt CMRS providers from the requirement to obtain express prior authorization from their current customers before sending them any MSCM. In making any such determination, the Commission must consider the relationship that exists between CMRS providers and their subscribers.

We seek comment on whether there is a need for such an exemption and how it would impact consumers. As discussed above, the Act already excludes certain ''transactional and relationship'' messages from the definition of unsolicited commercial electronic mail. These transactional and relationship messages include those sent regarding product safety or security information, notification to facilitate a commercial transaction, and notification about changes in terms, features, or the customer's status. We seek comment then on whether there is a need for a separate exemption for CMRS providers from the section 14 ''express prior permission'' requirement. In particular, we seek specific examples of messages, if any, that CMRS providers send to their customers that are not already excluded under the Act in general. Should any exemptions for carriers be limited to only those messages sent by CMRS carriers regarding their own service? What would be the impact of any such exemption on small businesses?

If the Commission opts to exempt CMRS carriers from obtaining prior express authorization, Congress has required that such providers, in addition to complying with other provisions of the Act, must allow subscribers to indicate a desire to receive no future MSCMs from the provider: (1) At the time of subscribing to such service and (2) in any billing mechanism. We seek comment on how we might implement those requirements, if we provide an exemption. Finally, we seek comment regarding whether small wireless service providers should be treated differently with respect to any of these issues, and if so, how.

C. Senders of MSCMs and the CAN–SPAM Act in General

Section 14(b)(4) of the Act requires the Commission to determine how a sender of an MSCM may comply with

the provisions of the CAN–SPAM Act in general, considering the ''unique technical aspects, including the functional and character limitations, of devices that receive such messages.'' If a sender is not prohibited from sending MSCMs to an address, either because the subscriber has not used his ability to stop such messages or because the sender has received ''express prior authorization,'' then the message must still comply with the Act in general. Therefore, we ask for comment on specific compliance issues that senders of MSCM might have with other sections of the Act.

We believe that a large segment of MSM subscribers who receive and send text-based messages on their wireless devices today do so on digital cellular phones that are designed principally for voice communications and that provide limited electronic mail message functionality. Currently, text messages are often limited to a maximum message length of ranging from 120 to 500 characters. Some MSM providers limit the length of messages allowed on their systems to approximately 160 characters. As a result, it might be difficult for senders to supply information required by the CAN–SPAM Act (such as header information and required identifier, material on how to request no more messages, and postal address), because that content might be limited in length or might not be readily displayable. Consequently, there might be some technical difficulties in ensuring that electronic mail content is provided to subscribers in compliance with the requirements of the Act. We seek comment on these issues, particularly as they affect small wireless providers and other small businesses. We ask for comment on whether any such issues will be mitigated in the near future with advances in technology. For example, we understand that some commercial mobile service subscribers may already supplement the limited text handling functionality with ancillary personal computer technology. We seek comment on this and any other possible technical considerations for senders of MSCMs that must comply with the Act.

II. TCPA

A. Safe Harbor for Calls to Wireless Numbers

We now seek additional comment on the ability of telemarketers, especially small businesses, to comply with the TCPA's prohibition on calls to wireless numbers since implementation of intermodal Local Number Portability (LNP). We specifically seek comment on whether the Commission should adopt a limited safe harbor for autodialed and prerecorded message calls to wireless numbers that were recently ported from a wireline service to a wireless service provider.

The Direct Marketing Association (DMA) indicates that it is in the process of creating a ported number database. It contends, however, that this solution will not allow marketers to update their call lists instantaneously when consumers port their wireline numbers. The DMA argues that, even with a direct link to Neustar's database of wireless service numbers that have recently been ported from wireline service, there will be time lags throughout the process, during which a consumer who has just ported a wireline number to wireless service could receive a call from a marketer.

As the Commission stated in the *2003 TCPA Order,* the TCPA rules prohibiting telemarketers from placing autodialed and prerecorded message calls to wireless numbers have been in place for 12 years and the Commission's porting requirements have been in place for over five years. Telemarketers have received sufficient notice of these requirements in order to develop business practices that will allow them to continue to comply with the TCPA. The record continues to demonstrate that information is currently available to assist telemarketers in determining which numbers are assigned to wireless carriers. Nevertheless, we recognize that once a number is ported to a wireless service, a telemarketer may not have access to that information immediately in order to avoid calling the new wireless number.

We seek comment on the narrow issue of whether the Commission should adopt a limited safe harbor during which a telemarketer will not be liable for violating the rule prohibiting autodialed and prerecorded message calls to wireless numbers once a number is ported from wireline to wireless service. If so, we seek comment on the appropriate safe harbor period given both the technical limitations on telemarketers and the significant privacy and safety concerns regarding calls to wireless subscribers. For example, would a period of up to seven days be a reasonable amount of time for telemarketers to obtain data on recently ported numbers and to scrub their call lists of those numbers? Or, as the DMA has requested, should any safe harbor the Commission adopt provide telemarketers with up to 30 days to do so? Are there other options in the marketplace available to telemarketers that should affect whether we adopt a limited safe harbor as well as the duration of any such safe harbor? We also seek comment on whether any safe harbor period adopted should sunset in the future and, if so, when. In addition, we seek comments from small businesses which engage in telemarketing about the appropriateness of such a limited safe harbor and its parameters.

B. National Do-Not-Call Registry and Monthly Updates by Telemarketers

We seek comment on whether we should amend our safe harbor provision to mirror any amendment made by the FTC to its safe harbor. The Appropriations Act does not require the FCC to amend its rules. However, in the Do-Not-Call Implementation Act (Do-Not-Call Act), Congress directed the FCC to consult and coordinate with the FTC to ''maximize consistency'' with the rules promulgated by the FTC. In addition, we note that, absent action to amend our safe harbor, many telemarketers will face inconsistent standards because the FTC's jurisdiction extends only to certain entities, while our jurisdiction extends to all telemarketers.

Therefore, in an effort to remain consistent with the FTC's rules, we propose amending our safe harbor to require sellers and telemarketers acting on behalf of sellers to use a version of the national do-not-call registry obtained from the administrator of the registry no more than 30 days prior to the date any call is made. We seek comment on how amending our safe harbor provision, or failing to do so, would affect telemarketers' ability to comply with the Commission's do-not-call rules. What problems will telemarketers, including small businesses, face in ''scrubbing'' their call lists every 30 days that they do not experience under the current rules? Are there any reasons the Commission should not amend its rules to be consistent with the FTC?

Initial Regulatory Flexibility Analysis (IRFA)

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603 *et seq.*, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM. See* 5 U.S.C. 603. A substantial number of small entities might be affected by our action. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* or *FNPRM*, as applicable. The

Commission will send a copy of the *NPRM* and *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

On December 8, 2003, Congress passed the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act) to address the growing number of unwanted commercial electronic mail messages, which Congress determined to be costly, inconvenient, and often fraudulent or deceptive. Congress found that recipients ''who cannot refuse to accept such mail'' may incur costs for storage, and ''time spent accessing, reviewing, and discarding such mail.'' The CAN–SPAM Act prohibits any person from transmitting such messages that are false or misleading and gives recipients the right to decline to receive additional messages from the same source. Certain agencies, including the Commission, are charged with enforcement of the CAN–SPAM Act.

Section 14 of the CAN–SPAM Act requires the Commission to (1) promulgate rules to protect consumers from unwanted mobile service commercial messages, and (2) in doing so consider the ability of senders to determine whether a message is a mobile commercial electronic mail message. In addition, the Commission shall consider the ability of senders of mobile service commercial messages to comply with the CAN–SPAM Act in general. Furthermore, the CAN–SPAM Act requires the Commission to consider the relationship that exists between providers of such services and their subscribers.

The Telephone Consumer Protection Act (TCPA) was enacted to address certain telemarketing practices, including calls to wireless telephone numbers, which Congress found to be an invasion of consumer privacy and even a risk to public safety. The TCPA specifically prohibits calls using an autodialer or artificial or prerecorded message ''to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other common carrier service, or any service for which the called party is charged.'' In addition, the TCPA required the Commission to ''initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights'' and to consider several methods to accommodate telephone subscribers who do not wish to receive unsolicited advertisements.

In 2003, the Commission released a Report and Order (*2003 TCPA Order*) revising the TCPA rules to respond to changes in the marketplace for telemarketing. Specifically, we established in conjunction with the Federal Trade Commission (FTC) a national do-not-call registry for consumers who wish to avoid unwanted telemarketing calls. The national do-not-call registry supplements long-standing company-specific rules which require companies to maintain lists of consumers who have directed the company not to contact them. In addition, we determined that the TCPA prohibits any call using an automatic telephone dialing system or an artificial or prerecorded message to any wireless telephone number. We concluded that this encompasses both voice calls and text calls to wireless numbers including, for example, Short Message Service calls. We acknowledged that, beginning in November of 2003, numbers previously used for wireline service could be ported to wireless service providers and that telemarketers will need to take the steps necessary to identify these numbers. Intermodal local number portability (LNP) went into effect November, 2003.

The 2003 TCPA Order required that telemarketers use the national do-not-call registry maintained by the FTC to identify consumers who have requested not to receive telemarketing calls. Currently, in order to avail themselves of the safe harbor for telemarketers, a telemarketer is required to update or ''scrub'' its call list against the national do-not-call registry every 90 days. Recently the FTC released a Notice of Proposed Rulemaking proposing to amend its safe-harbor provision and require telemarketers to update their call lists every 30 days. This Notice proposes to modify the Commission's rules to parallel any changes to the FTC's rules. With this amendment, all telemarketers would be required to scrub their lists against the national do-not-call registry every 30 days in order to avail themselves of that safe harbor.

Issues Raised in Notice

This Notice addresses three policy and rule modifications. First, it initiates a proceeding to implement the CAN-SPAM Act by enacting regulations to protect consumers from unwanted mobile service commercial messages. Second, under the TCPA we are exploring the need for a safe harbor for telemarketers who call telephone numbers that have been recently ported from wireline to wireless service. Third, we propose a change to the existing telemarketing safe-harbor provision which would require telemarketers to access the do-not-call registry every 30 days.

Legal Basis

The proposed action is authorized under Sections 1–4, 227, and 303(r) of the Communications Act of 1934, as amended; the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Public Law Number 108–187, 117 Statute 2699; and the Do-Not-Call Implementation Act, Public Law Number 108–10, 117 Statute 557.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

The regulations and policies proposed in this item on telephone solicitation and the prohibitions of sending electronic commercial mail messages apply to a wide range of entities, including all entities that use the telephone or electronic messaging to advertise. That is, our actions affect the myriad of businesses throughout the nation that use telemarketing or electronic messaging to advertise. We have attempted to identify, with as much specificity as possible, all business entities that potentially may be affected by the policies and rules proposed herein, but are not expanding in this analysis the scope of entities possibly subject to requirements adopted in this proceeding beyond the scope described in the Notice itself. In order to assure that we have covered all possible entities we have included general categories, such as Wireless Service Providers and Wireless Communications Equipment Manufacturers, while also including more specific categories, such as Cellular Licensees and Common Carrier Paging. Similarly, for completeness, we have also included descriptions of small entities in various categories, such as 700 MHz Guard Band Licenses, who

may potentially be affected by this proceeding but who would not be subject to regulation simply because of their membership in that category.

Sometimes when identifying small entities we provide information describing auctions' results, including the number of small entities that were winning bidders. We note, however, that the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that applicants provide business size information, nor does the Commission track subsequent business size, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, we request that commenters estimate the number of small entities that may be affected by any changes.

Small Businesses. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.

Telemarketers. SBA has determined that ''telemarketing bureaus'' with $6 million or less in annual receipts qualify as small businesses. For 1997, there were 1,727 firms in the ''telemarketing bureau'' category, total, which operated for the entire year. Of this total, 1,536 reported annual receipts of less than $5 million, and an additional 77 reported receipts of $5 million to $9,999,999. Therefore, the majority of such firms can be considered to be small businesses.

Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

Internet Service Providers. The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments ''primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.'' Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999. Thus, under this size standard, the great majority of firms can be considered small entities.

Wireless Communications Equipment Manufacturers. The Commission has not developed special small business size standards for entities that manufacture radio, television, and wireless communications equipment. Therefore, the applicable small business size standard is the definition under the SBA rules applicable to ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.'' Examples of products that fall under this category include ''transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment'' and may include other devices that transmit and receive Internet Protocol enabled services, such as personal digital assistants. Under that standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35%, so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Given the above, the Commission estimates that the great majority of wireless communications equipment manufacturers are small businesses.

Radio Frequency Equipment Manufacturers. The Commission has not developed a special small business size standard applicable to Radio Frequency Equipment Manufacturers. Therefore, the applicable small business size standard is the definition under the SBA rules applicable to ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.'' Under that standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. Thus, under this size standard, the majority of establishments can be considered small entities.

Paging Equipment Manufacturers. The Commission has not developed a special small business size standard applicable to Paging Equipment Manufacturers. Therefore, the applicable small business size standard is the definition under the SBA rules applicable to ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.'' Under that standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. Thus, under this size standard, the majority of establishments can be considered small entities.

Telephone Equipment Manufacturers. The Commission has not developed a special small business size standard applicable to Telephone Equipment Manufacturers. Therefore, the applicable small business size standard is the definition under the SBA rules applicable to ''Telephone Apparatus Manufacturing.'' Under that standard, firms are considered small if they have 1,000 or fewer employees. Census Bureau data indicates that for 1997 there were 598 establishments that manufacture telephone equipment. Of those, there were 574 that had fewer than 1,000 employees, and an additional 17 that had employment of 1,000 to 2,499. Thus, under this size standard, the majority of establishments can be considered small.

As noted in paragraph 10, we believe that all small entities affected by the policies and proposed rules contained

in this Notice will fall into one of the large SBA categories described above. In an attempt to provide as specific information as possible, however, we are providing the following more specific categories.

Cellular Licensees. The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data. We have estimated that 294 of these are small, under the SBA small business size standard.

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

In the *Paging Second Report and Order,* the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 608 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Of these, we estimate that 589 are small, under the SBA-approved small business size standard. We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

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

Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 294 of these are small under the SBA small business size standard.

Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

Narrowband Personal Communications Services. The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the

Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

Lower 700 MHz Band Licenses. We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. We have defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is ''entrepreneur,'' which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

Upper 700 MHz Band Licenses. The Commission released a Report and Order, authorizing service in the upper 700 MHz band. This auction, previously scheduled for January 13, 2003, has been postponed.

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

Specialized Mobile Radio. The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

I. CAN–SPAM

It is difficult to assess the cost of compliance for this item given the multiple avenues and the varied, layered approaches to protecting consumers from the unwanted commercial electronic mail messages under consideration. The umbrella analysis is that if a small business which currently engages in sending commercial electronic mail messages as part of its advertising campaign ceases sending such commercial messages, then there is no cost to comply with any prohibition being considered. Congress noted that the CAN–SPAM Act only addresses unwanted messages, so the

loss of business for senders that may result from the decrease in advertising in this manner should be nominal.

Proposed in this item is the development of a small list of electronic mail addressing domains. The development of specific domain names might require providers to change addressing systems if domain names are not already distinguishable, and to register such names. If the Commission then prohibited the sending of commercial messages to such domains, businesses, including small businesses, that send commercial electronic mail would be required to check such a list before sending such messages. Because the list would be small, only containing the list of relevant providers of such domains, we do not anticipate the compliance burden of checking such a list to be great.

The alternative considered that creates the greatest compliance burden on small entities appears to be the use of a registry of individual electronic addresses. This alternative would not require providers to register names, but would instead require subscribers, including small businesses, to register their addresses on a list similar to the telemarketing do-not-call registry. Small businesses sending commercial electronic mail messages would then be required to prescreen or check this list. It is unclear how many listings there would be, but given consumer frustration over the number of unwanted electronic commercial messages, we expect a large number of individuals and businesses to register. The costs to small businesses sending commercial electronic mail messages associated with this requirement would be the cost of acquiring the ''Do-Not-E-Mail'' list and the cost of ''scrubbing'' the small business's solicitation list against the ''Do-Not-E-Mail'' list. We know the cost of obtaining the FTC's do-not-call registry is a maximum of $7,375 per year and for many small businesses it is free. We estimate that the cost of scrubbing against a Do-Not-E-Mail registry to be approximately $300—400 per month for a small telemarketing business. Who would pay for such a list to be compiled and maintained has not been determined; however, we expect this burden on small businesses to be significant.

II. TCPA

The proposed change in the safe-harbor rules, which would require telemarketers to update their lists monthly instead of quarterly, has no additional compliance cost for accessing the national do-not-call registry, because once a telemarketer has paid its fee to the FTC the telemarketer may access the list as often as it wants, up to once a day. There may, however, be an increase in costs associated with scrubbing the telemarketer's call list more frequently. These increased costs might include an increase in staff time to scrub the call list or payments to a third party for ''scrubbing'' services. Many small businesses perform these ''scrubbing'' operations internally and therefore the cost is in staff time and data processing resources. Other small businesses chose to hire outside parties to scrub their lists. We estimate the cost of scrubbing such a list to be $300–400 per month for a small telemarketing business.

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

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

I. CAN–SPAM

Initially, we note that the rules are intended to protect subscribers, including small businesses, from unwanted mobile service commercial messages. Congress found these unwanted messages to be costly and time-consuming. Therefore, these measures should benefit small businesses by reducing cost and time burdens on small businesses that receive such messages.

There are two alternatives, which might be used in combination, considered in the Notice to minimize the burden on some small businesses that send mobile commercial electronic mail messages. These alternatives are (1) the use of a domain name to indicate those entities to which sending a mobile service commercial message is not acceptable; and (2) the use of a challenge-response mechanism to reject electronic commercial messages. The burden of each alternative on small businesses as senders is minimal. We expect that the burden of alternative one on small carriers to be minimal as well.

Alternative one allows senders to recognize mobile service messaging by the recipient's electronic mail message address. The Commission is considering the requirement that domain names be used to identify carriers' mobile service messaging clients. We expect that if domain name changes are required, the burden will rest on carriers, including small carriers, to change the domain names of their clients. We anticipate that this burden on carriers will be minimal. We also expect there to be a slight burden on those small businesses that chose to use the special domain names to limit incoming commercial messages. These small businesses might need to reprint or alter letterhead, business cards, or advertising material to reflect the name change. We note, however, that for businesses choosing this option, those burdens would be offset by the savings they would realize from a reduction in unwanted mobile service commercial messages. We consider this burden on small businesses receiving commercial messages to be a less burdensome alternative than the alternative described in paragraph 37 above that would require the establishment of an individual ''Do-Not-E-Mail'' registry and would result in a significant burden on small businesses sending commercial messages.

The second alternative considered is the challenge-response alternative, which might also require electronic mail messages to be identified as commercial. The identification process, known as ''tagging,'' would then allow recipients to use software that would reject or hold such electronic mail. This challenge-response process requires a software trigger that would require confirmation from the sender before forwarding the message to the intended recipient or would return the first message from a sender with a standard response noting that the intended recipient is a mobile service messaging subscriber. Although there might be a burden imposed on senders to mark their commercial messages, this alternative would free all businesses, including small businesses, from having to pre-screen their mailing lists before sending messages. The burden on small business senders would be to note the addressee's status and refrain from sending to that address unless the recipient provided prior express authorization. This alternative would place a slight burden on small businesses that use electronic mail messaging for commercial purposes. We expect that it would impose a significant burden on the software design companies and the

manufacturers of wireless message receiving devices.

In regard to rejecting future messages, we note that two alternatives are discussed. One involves a filtering mechanism. A filtering mechanism would burden senders in that they might need to obtain and retain a secret code from particular subscribers. This code would be required to get their commercial messages past the filter. We expect that obtaining and retaining a code from particular subscribers would be a minimal burden on the small business that chooses to filter its messages to keep out unwanted ones. Depending on how the system is set up, there might be a small burden on the carriers for enabling such a filtering mechanism. In order for the system to work, there might be a requirement that small businesses sending these messages mark or tag them as commercial. We anticipate that any burden of marking or tagging messages would be very small.

The other alternative we discuss is whether there should be an option to use a website interface for subscribers, including small businesses, to change their filtering options. The alternative might require businesses, including small businesses, to develop a website for collecting addresses of subscribers that want to reject future messages. We also discuss the possibility of using a webpage for subscribers to notify senders that they do not want such messages. As far as we can determine at this time, this alternative would be the most difficult for small businesses to implement in terms of staff resources, cost, software development and use, and Internet access and website development. We would appreciate hearing from small businesses if this is an accurate assessment.

II. TCPA

The Commission is also considering modifications to the TCPA safe-harbor provision. This modification would require that telemarketers scrub their lists on a monthly, rather than quarterly, basis. An alternative to this proposed rule change is to leave the rule the way it currently stands. An advantage to not changing the rule is that there would be no increased burden on small businesses. Businesses would continue to scrub their own call lists every three months. The disadvantage to not changing the rule is that the FTC and Commission rules might be inconsistent with one another. Small businesses subject to the jurisdiction of both agencies would be faced with this inconsistency. Congress has directed us to maximize consistency with the FTC's rules. In addition, we believe that it is easier and less burdensome for small businesses if the two agencies have consistent requirements.

The TCPA specifically prohibits calls using an autodialer or artificial or prerecorded message to any wireless telephone number. With the advent of intermodal number portability it became important for companies engaged in telemarketing to track recently ported numbers in order to ensure continued compliance with the TCPA. The Commission is now considering the adoption of a limited safe harbor for autodialed and prerecorded message calls to wireless numbers that were recently ported from a wireline service to a wireless service provider. It is our belief that such an alternative will not have a significant economic impact on any small businesses, only a benefit. The alternative would be to not adopt a safe harbor for calls to recently ported wireless numbers which, according to telemarketers, could make compliance with the TCPA's prohibition difficult for callers using autodialers and prerecorded messages. Small businesses, which disagree with the Commission's determination and believe the creation of a safe harbor would impact their business in a negative way, are requested to file comments and advise the Commission about such an impact.

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

No federal rules conflict with the rules discussed in this item; however, there are areas in which the CAN–SPAM Act and the TCPA may overlap as indicated in the primary item. In addition, the Commission is required to consult with the FTC on its rulemaking. The FTC is charged with implementing and enforcing most of the CAN–SPAM Act, including criteria that further defines items that the Commission rules will reference. The FTC is conducting its own rulemaking concurrently, although most of the FTC's deadlines occur after the Commission's rules must be promulgated. The TCPA and the Telemarketing Sales Rule (enforced by the FTC) are duplicative in part.

Ordering Clauses

Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 227 and 303(r) of the Communications Act of 1934, as amended; the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Public Law 108–187, 117 Statute 2699; and the Do-Not-Call Implementation Act, Public Law 108–10, 117 Statute 557; 47 U.S.C. 151–154, 227 and 303(r); the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking are Adopted.

It is further ordered that the commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7226 Filed 3–30–04; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1834, 1835, 1836, 1837, 1839, and 1841

RIN 2700–AC86

Re-Issuance of NASA FAR Supplement Subchapter F

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

DATES: Comments should be submitted on or before June 1, 2004, to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN

number 2700-AC86, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments can also be submitted by e-mail to: *Celeste.M.Dalton@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–1645; e-mail: *Celeste.M.Dalton@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also contains information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2).'' FAR 1.301(a)(2) states in part ''an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements).'' Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This proposed rule will modify the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors.

The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment. Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register.** NFS regulations that require public comment are issued as Chapter 18 of Title 48, CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule would only remove from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1834, 1835, 1836, 1837, 1839, and 1841

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1834, 1835, 1836, 1837, 1839, and 1841 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1834, 1835, 1836, 1837, 1839, and 1841 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1834—MAJOR SYSTEM ACQUISITION

2. Remove part 1834.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

3. Amend part 1835 by —

(a) Removing sections 1835.003, 1835.010, 1835.011, 1835.015, 1835.016;

(b) In section 1835.016–70, removing paragraph (b);

(c) In section 1835.016–71, removing paragraphs (b), (c), (d), (e), and (f); and

(d) Removing section 1835.016–72.

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

4. Amend part 1836 by removing sections 1836.209, 1836.213, 1836.213–3, 1836.213–4, 1836.602–2, 1836.602–4, 1836.602–5, 1836.602–70, 1836.603, 1836.605, subpart 1836.7, 1836.7001, 1836.7002, 1836.7003, and in section 1836.7004 removing ''in accordance with 1836.7003''.

PART 1837—SERVICE CONTRACTING

5. Amend part 1837 by removing section 1837.204.

PART 1839—ACQUISITION OF INFORMATION TECHNOLOGY

6. Amend part 1839 by removing section 1839.105.

PART 1841—ACQUISITION OF UTILITY SERVICES

7. Amend part 1841 by removing Subparts 1841.2, 1841.3, and 1841.4.

[FR Doc. 04–7239 Filed 3–30–04; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AI95

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021223326–4022–02]

RIN 0648–AQ69

50 CFR Part 402

Joint Counterpart Endangered Species Act Section 7 Consultation Regulations

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: We, the U.S. Department of the Interior, Fish and Wildlife Service (FWS) and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) (referred to jointly as ''Services'' and individually as ''Service''), after coordination with the Environmental Protection Agency (EPA) and the U.S. Department of Agriculture (USDA) announce the extension of the public comment period for the proposal to issue joint counterpart regulations pursuant to the Endangered Species Act of 1973 (as amended). We are extending the comment period for the proposal to allow all interested parties additional time to provide comments. Comments previously submitted will be incorporated into the public record as part of this extended comment period, and will be fully considered in the final decision.

DATES: Comments on this proposal must be received by April 16, 2004, to be considered in the final decision on this proposal.

ADDRESSES: Comments or materials concerning the proposed rule should be sent by regular mail or courier service to the Assistant Director for Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203. You may also submit electronic comments via the Internet to *Pesticide.ESARegulations@noaa.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: 1018–AI95'' and your name and return address in your Internet message. Comments and materials received in conjunction with this rulemaking will be available for inspection, by appointment, during normal business hours at the above address.

The FWS agreed to take responsibility for receipt of public comments and will share any comments it receives with NOAA Fisheries, EPA and USDA. All the agencies will work together to compile, analyze, and respond to the public comments. Due to a recent court decision blocking the Fish and Wildlife Service's access to the internet, NOAA Fisheries will assume responsibility for receiving any subsequent comments sent electronically from the date of this notice until the close of the comment period and will share those comments with the other agencies. Comments that are sent via the postal service or courier should be sent to the FWS at the above address.

FOR FURTHER INFORMATION CONTACT: Gary Frazer, Assistant Director for Endangered Species, at the above address (Telephone 703/358–2171, Facsimile 703/358–1735) or Phil Williams, Chief, Endangered Species Division, NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 (301/713–1401; facsimile 301/713–0376).

SUPPLEMENTARY INFORMATION: The U.S. Department of the Interior, Fish and Wildlife Service (FWS) and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) (referred to jointly as ''Services'' and individually as ''Service''), after coordination with the Environmental Protection Agency (EPA) and the U.S. Department of Agriculture (USDA), proposed joint counterpart regulations for consultation under section 7 of the Endangered Species Act of 1973, as amended (ESA) for regulatory actions under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) on January 30, 2004 (69 FR 4465).

Counterpart regulations, described in general terms at 50 CFR 402.04, are intended to provide flexibility in the ways that a federal agency may meet its obligations under the ESA by creating alternative procedures to the existing section 7 consultation process described at 50 CFR subpart B. These proposed counterpart regulations would complement the existing section 7 consultation process and enhance the efficiency and effectiveness of the section 7 consultation process by increasing interagency cooperation and providing two optional alternatives for completing section 7 consultation for FIFRA regulatory actions. One alternative process would eliminate the need for EPA to conduct informal consultation and obtain written concurrence from the Service for those FIFRA actions that EPA determines are ''not likely to adversely affect'' any listed species or critical habitat. The other alternative consultation process would permit the Service to conduct formal consultation in a manner that more effectively takes advantage of EPA's substantial expertise in evaluating ecological effects of FIFRA regulatory actions on federally-protected threatened and endangered species (''listed species'') and critical habitats.

By court order dated March 15, 2004, the Department of the Interior was directed to disconnect all of its Information Technology systems from the Internet. This court order has precluded agencies and other parties from submitting comments electronically to the Internet mailbox *PesticideESARegulations@fws.gov,* which was established for the purpose of receiving electronic comments. Although a stay was granted allowing the FWS to reconnect to the Internet on March 24, 2004, parties wishing to submit public comments on this proposed rule should no longer use the e-mail address described in the January 30, 2004, notice of proposed rulemaking. We are establishing a new electronic mailbox to receive electronic comments. Any comments that were submitted electronically to *PesticideESARegulations@fws.gov* between March 15, 2004, and March 25, 2004, should be re-submitted to the internet address described below or by hardcopy to the address indicated in the **ADDRESSES** section above. Other comments submitted to *PesticideESARegulations@fws.gov* before March 15, 2004, will be considered and do not need to be re-submitted. As of March 31, 2004 electronic comments should now be submitted to *Pesticide.ESARegulations@noaa.gov.* Any comments on this proposed rule must be received no later than April 16, 2004, to be considered in the final decision. Additional information regarding this proposed rule may be viewed online at *http://www.nmfs.noaa.gov/pr/laws/pesticides.htm.*

Dated: March 26, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: March 25, 2004.

Rebecca Lent,

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

[FR Doc. 04–7284 Filed 3–29–04; 10:23 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 62
Wednesday, March 31, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Fuelwood and Post Assessment in Selected States

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to extend the information collection, Fuelwood and Post Assessment in Selected States. The information is collected from residential households and logging contractors. Forest Service personnel use this information to evaluate trends in the use of logs and wood chips, to forecast anticipated demands for logs and wood chips, and to analyze changes in the harvest of these resources.

DATES: Comments on this notice must be received in writing on or before June 1, 2004.

ADDRESSES: Comments concerning this notice should be addressed to Michael Howell, Forest Inventory and Analysis, Southern Research Station, Forest Service, USDA, 4700 Old Kingston Pike, Knoxville, TN 37919–5206.

Comments also may be submitted via facsimile to (865) 862–2048 or by e-mail to *mhowell@fs.fed.us.*

The public may inspect comments received at Resource Use Office, Southern Research Station, Forest Service, USDA, 4700 Old Kingston Pike, Knoxville, Tennessee, during normal business hours. Visitors are encouraged to call ahead to (865) 862–2000 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Michael Howell, Southern Research Station, at (865) 862–2054.

SUPPLEMENTARY INFORMATION:

Title: Residential Fuelwood and Post Assessment.

OMB Number: 0596–0009.

Expiration Date of Approval: March 31, 2004.

Type of Request: Extension.

Abstract: The Forest and Rangeland Renewable Resource Research Act of 1978 and the Energy Security Act of 1980 require the Forest Service to evaluate trends in the use of logs and wood chips, to forecast anticipated demands for logs and wood chips, and to analyze changes in the harvest of these resources.

Forest Service personnel collect the information from individual households and fuelwood logging firms through telephone interviews and through the use of the questionnaire, Residential Fuelwood and Post Assessment, which will be mailed to respondents and returned voluntarily via surface mail to the agency.

Respondents answer questions that include the quantity of fuelwood burned, the variety of tree species burned for fuelwood, and the geographic locations from which the fuelwood was procured. The Residential Fuelwood and Post Assessment questionnaire also includes the State and calendar year for which information will be collected.

Forest Service personnel evaluate the information collected to monitor the volume, types, species, and sources of fuelwood harvested. The collected data will provide essential information about the current drain on the Nation's timber resources for fuelwood.

The information is collected at the following Forest Service research stations: Northeast Research Station, Radnor, Pennsylvania; North Central Research Station, St. Paul, Minnesota; Southern Research Station, Asheville, North Carolina; Rocky Mountain Research Station, Ogden, Utah; and Pacific Northwest Research Station, Portland, Oregon.

Data from this collection of information are not available from other sources.

Estimate of Annual Burden: 0.07 hours.

Type of Respondents: Residential households and logging contractors.

Estimated Annual Number of Respondents: 2,425.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 170 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record and will be available for public inspection and copying. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: March 25, 2004.

Barbara C. Weber,

Associate Deputy Chief for Research & Development.

[FR Doc. 04–7160 Filed 3–30–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ogden District Travel Plan; Ogden Ranger District, Wasatch-Cache National Forest; Box Elder, Cache, Rich, Weber and Morgan Counties, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The project will update the travel management plan for the Ogden Ranger District focusing on summer season motorized travel routes and how these routes will be used. The analysis and disclosure will assess the effects of alternatives on physical, biological and social resources including non-motorized recreation. The current travel management plan was developed in 1988 and amended in 1991. This project acknowledges changed environmental and social conditions and will respond with an improved plan and map to

direct motorized access and use of the Ogden Ranger District.

DATES: Comments concerning the scope of the analysis must be received by April 30, 2004. It is important to note that scoping responses received on the Ogden Ranger District Travel Plan Update during July-August 2003 are accepted in this EIS planning process; no other action is required of those who responded to scoping in July-August 2003 to have those original comments incorporated into and made part of this planning process. A draft environmental impact statement is expected to be published in October 2004, with public comment on the draft material requested for a period of 45 days, and completion of a final environment impact statement is expected April 2005.

ADDRESSES: Send written comments to: District Ranger, Ogden Ranger District, 507 25th Street, Suite 103, Ogden, UT 84401, ATTN: Travel Plan.

FOR FURTHER INFORMATION CONTACT: Rick Vallejos, Recreation Forester, Ogden Ranger District, 507 25th Street, Suite 103, Ogden, UT 84401, (801) 625–5112; or e-mail at: *comments-intermtn-wasatch-cache-ogden@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the proposed action is to implement decisions made in the 2003 Forest Plan Revision for the Wasatch-Cache National Forest that result in a system of motorized roads and trails that provides opportunities for quality motorized recreation experiences, administrative access for Forest Service personnel and permittees, healthy wildlife habitat, stable soil, high quality water, sustainable vegetation and outstanding scenery.

The need for change is demonstrated by the following: Since the Ogden Ranger District travel plan was last revised in 1991, demands for motorized recreational experiences have increased dramatically. In this period of time there has been a surge in the popularity of summer motorized recreation especially Off-Highway Vehicle (OHV) use.

While quantitative data is lacking, field observation clearly shows that this increase in demand for motorized recreation experiences has come at a cost. There are abundant examples where unmanaged motorized recreational use has resulted in a labyrinth of unauthorized OHV's trails, denuded hillsides, erosion from gullies and ruts, loss of aesthetic appeal, and deterioration of quality wildlife habitat.

The system of roads and motorized trails on the Ogden Ranger District has evolved over time. Like many of the tracts of land acquired by the Forest Service over the years, the area being studied in this analysis contains a number of old roads and trails. Some of these historical roads and trails were incorporated into the Ogden Ranger District travel system when the 1988 and 1991 travel management plans were completed. Traces of many travelways have remained and continue to be used inappropriately by the public. Over the past decade there has been an alarming increase in illegal user created trails. The process of incorporating roads and trails into the Ranger District's travel management system while user created travelways continue to evolve has created an unacceptable situation for management and provided unclear direction to the public.

The objective of this analysis is to take a systematic look at these historic and user created trails and make decisions about which should be incorporated into the system and which should be removed and rehabilitated. The proposed action also includes several new motorized trail segments to be added to the system. By carefully considering what should be included in its motorized travel system, the Ogden Ranger District will be positioned to: provide quality motorized opportunities; better manage increased demand and, reduce environmental damage.

Proposed Action

The Ogden Ranger District of the Wasatch-Cache National Forest is proposing 28 separate projects and changes to update the existing Travel Management Plan. These projects are identical to those proposed in the July 2003 scoping document. Included are the following:

Curtis Creek Area

1. Otter Creek road—No FS Road Number—0.43 miles—Add this road to the system to connect BLM roads through National Forest.
2. Red Spur Radio—FS Road Number 20205—1.03 miles—Add a road to the system that has few environmental impacts and is used to access the radio sites.
3. Dry Fork—FS Road Number 20162—1.08 miles—Close northern piece of road to public use that has drainage problems and not needed for access.
4. Valley Ridge North—No FS Road Number—0.2 miles—Add this road to the system to connect BLM roads and bypass a section of closed road.
5. Big Crawford Spring—FS Road Number 26704, 26705, 26706–1.38 miles—Close three sections of road with drainage problems and not needed for access.
6. Zion Spring—FS Road Number 20221—1.17 miles—Close and obliterate a section of the road past the spring that is not needed.
7. Tilda Springs ATV—No FS Road Number—0.83 miles—Build a new ATV trail to expand the existing system of trails.
8. Davenport Hollow—FS Road Number 20196—2.34 miles—Add a road to the system that expands ATV opportunities and ends at a scenic overlook.
9. Tilda Springs ATV—FS Road Number 26001 to 26004—1.98 miles—Add four sections to the system of open ATVs trails to expand motorized opportunities.

Monte Cristo Area

10. Dairy Wash ATV trail—No FS Road Number—2.02 miles—Build a new ATV trail adjacent to State Highway 39 to connect existing open roads.
11. Silvia Hollow Trail—FS Trail Number 6314 to 6317—4.95 miles—Change the designation of non-motorized trails to allow ATV use on the power line roads.
12. Dairy Ridge 2—FS Road Number 26731—0.40 miles—Add a road that has few environmental impacts and could access a proposed gravel source.
13. Silvia Hollow and Wasatch Dispersed—FS Road Number 20069, 26733—1.64 miles—Add two roads to the system of approved roads that have few environmental impacts and access existing dispersed camp sites.
14. Dry Bread Upper—FS Road Number 20107—1.33 miles—Open a previously closed road to ATV travel that would create few environmental impacts.

South Fork Area

15. Camp Red Cliffe—FS Road Number 20191—0.47 mile—Close this road used by the camps and cabins to reduce management problems but allow permitted use.

Lewis Peak Area

16. North Ogden Canyon Trail—FS Trail Number 6083—1.78 miles—Change the designation from non-motorized system trails to allow motorcycle use. ATVs will not be allowed. This trails uses the road under the power line and connects to the Skyline trail currently open to motorcycles.
17. Dry Canyon Overlook and City View Trails—FS Trail Numbers 6352, 6040—1.88 miles—Change the designation from non-motorized system

trails to allow motorcycle use. These trails connect to the Lewis Peak trail currently open to motorcycles.

Inspiration Point—Willard Mountain Area

18. Willard ATV Trail—FS Trail Number 6323—1.50 miles—Change the designation from motorized system trails to non-motorized use only since this trail is causing environmental impacts and is hard to maintain for motorized recreation.

19. Inspiration Point Trail—FS Trail Number 6091—0.48 mile—Change the designation on motorcycle-only motorized trails to allow ATV use. This trail connects to the Willard Peak road currently open to motorized use.

20. Willard Lake Trail—FS Trail Number 6090—1.36 miles—Change the designation from non-motorized trails to allow ATV use. This trail connects to the Willard Peak road currently open to motorized use and would add a new motorized recreation loop opportunity.

Public Grove Area

21. Public Grove 4×4—FS Road number 20220—2.61 miles—Add a road to the system of approved roads to connect two county roads together.

22. Public Hollow Loop 4×4 and Flat Canyon 4×4—FS Road Numbers 20092, 26015—1.60 miles—Close and obliterate two sections of road to reduce environmental impacts. These roads are currently closed each spring to prevent damage.

Willard Area

23. Brigham City Water—No Road Number—0.51 miles—Add a road that will be used as access to developed springs on National Forest.

24. Devils Hole Canyon ATV Trail—No FS Trail Number—1.77 miles—Build a new ATV trail to reduce mixed use traffic on the main road.

25. Box Elder Creek Trail—No FS Trail Number—2.62 miles—Add an ATV trail to the system of approved trails to increase motorized recreation opportunities.

26. Petes Hollow Trail—No FS Trail Number—2.37 miles—Add an ATV trail to the system of approved trails to increase motorized recreation opportunities and link the Front Range trails to the Willard area.

27. Grizzly Peak 4×4—FS Road Number 20091—0.57 mile—Close and obliterate a section of this road that is difficult to maintain and is a low priority for access.

28. Perry Reservoir—FS Road Number 20070—0.15 mile—Close and obliterate a section of the road at the reservoir to reduce environmental impacts.

Possible Alternatives

Three alternatives to the proposed action are currently envisioned: (1) A no action alternative, that would continue management under the existing travel plan; (2) an alternative that emphasizes the protection of wildlife values identified in the revised Wasatch-Cache Forest Plan; (3) an alternative that provides for motorized recreation opportunities for parts of the Ogden Ranger District without placing other values at substantial risk.

Responsible Official

The Responsible Official is Chip Sibbernsen, District Ranger, Ogden Ranger District, 507 25th Street, Suite 103, Ogden, UT 84401.

Nature of Decision To Be Made

The decision to be made is to identify the system of summer motorized roads and trails on the Ogden Ranger District. It will also define what types of vehicles can be used, season restrictions, other timing restrictions and those routes that are open to ''administrative use'' for a the purpose of law enforcement, infrastructure maintenance and fire protection. The decision will also include mitigation measures to reduce environmental impacts associated with the transportation system and its use.

Scoping Process

Scoping for this project was initiated on July 18, 2003, with a letter signed by Chip Sibbernsen that included a proposed action and maps. The scoping comment period was open until August 22, 2003, and nearly 60 public responses were received. As a result of this scoping several respondents felt the scope and complexity of the proposed action would require an environmental impact statement (EIS). This notice of intent reopens scoping so that the original respondents can add comments to those originally submitted, or so that other interested individuals may comment if they so desire. It is important to note that the original scoping responses received during July–August 2003 are accepted in this EIS planning process; no other action is required of those who responded to scoping in July–August 2003 to have their original comments included into and made part of this planning process.

Preliminary Issues

Several preliminary issues were identified through the public scoping process conducted in July and August 2003. These issues relate to: (1) Water quality; (2) invasion by noxious weeds; (3) sensitive fish populations, especially Bonneville cutthroat trout; (4) wildlife habitat and an important regional wildlife corridor identified in the revised Forest Plan; (5) roadless area values; and, (6) non-motorized recreation opportunities.

Comment Requested

This notice of intent reinitiates the scoping process to help guide the development of the environmental impact statement. As indicated above, scopingresponses received during July–August 2003 are accepted in this EIS planning process, and no other action is required of those who responded to scoping in July–August 2003 to have their original comments made part of this planning process. Any new comments are also welcome, either of those who commented in the past or from newly interested parties.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental

impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21)

Dated: March 24, 2004.

Chip Sibbernsen,

Ogden District Ranger.

[FR Doc. 04–7124 Filed 3–30–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Notice of Extension of Time Limit of Final Results of New Shipper Review: Honey From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of final results of antidumping duty new shipper review.

SUMMARY: The Department of Commerce is extending the time limit of the final results of the new shipper review of the antidumping duty order on honey from the People's Republic of China until no later than April 8, 2004. The period of review is February 10, 2001, through November 30, 2002. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander at (202) 482–0182 or Dena Aliadinov at (202) 482–3362; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Act requires the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. However, if the Department determines the issues are extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend the deadline for the final results to up to 150 days after the date on which the preliminary results were issued.

Background

On December 31, 2002, the Department received properly filed requests from Shanghai Xiuwei International Trading Co., Ltd. (''Shanghai Xiuwei'') and Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (''Sichuan Dubao''), in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, for a new shipper review of the antidumping duty order on honey from the People's Republic of China (PRC), which has a December anniversary date, and a June semiannual anniversary date. Shanghai Xiuwei identified itself as an exporter of processed honey produced by its supplier, Henan Oriental Bee Products Co., Ltd. (''Henan Oriental''). Sichuan Dubao identified itself as the producer of the processed honey that it exports.

On February 5, 2003, the Department initiated this new shipper review for the period February 10, 2001 through November 30, 2002. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews* (68 FR 5868, February 5, 2003). On July 21, 2003, the Department extended the preliminary results of this new shipper review 300 days until November 26, 2003. *See Honey from the People's Republic of China: Extension of Time Limits for Preliminary Results of New Shipper Antidumping Duty Review*, 68 FR 43086 (July 21, 2003). On December 4, 2003, the Department published its preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 68 FR 67832 (December 4, 2003) (*Preliminary Results*). In the preliminary results of this review, we indicated that we were unable to complete our analysis of all factors relevant to the *bona fides* of Shanghai Xiuwei's and Sichuan Dubao's U.S. sales. We described our research and contact efforts in the memorandum from Brandon Farlander and Dena Aliadinov to the file, dated November 26, 2003. We also indicated that additional time was needed to research the appropriate surrogate values to value raw honey. On February 25, 2004, the Department extended the final results of this new shipper review 30 days until March 25, 2004. *See Notice of Extension of Time Limit of Final Results of New Shipper Review: Honey from the People's Republic of China*, 69 FR 8625 (February 25, 2004).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of the final results of a new shipper review by 60 days if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated because of the issues pertaining to the *bona fides* of Shanghai Xiuwei's and Sichuan Dubao's U.S. sales. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the regulations, the Department is extending the time limit for the completion of the final results by an additional 14 days. The final results will now be due no later than April 8, 2004.

This notice is published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: March 25, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–7224 Filed 3–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Low Enriched Uranium From France: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the final results of antidumping duty administrative review.

EFFECTIVE DATE: March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Carol Henninger at (202) 482–1756 or (202) 482–3003, respectively; Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th

Street and Constitution Avenue, NW, Washington, DC 20230.

Time Limits:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

Eurodif S.A. (Eurodif), a French producer of subject merchandise, and its affiliated parties Compagnie Générale Des Matiéres Nucléaires (COGEMA) and COGEMA, Inc. (collectively, COGEMA/Eurodif), requested an administrative review of the antidumping order on low enriched uranium from France on February 3, 2003. United States Enrichment Corporation and USEC, Inc. (the petitioner), a domestic producer of subject merchandise, requested a review on February 28, 2003. On March 25, 2003, the Department published a notice of initiation of the administrative review, covering the period July 13, 2001, through January 31, 2003 (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394). On October 27, 2003, and December 16, 2003, the Department published notices extending the time limit for the preliminary results (*Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 61184 and 68 FR 69994, respectively). On January 27, 2004, the Department published the preliminary results of its review, (*Notice of Preliminary Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France*, 69 FR 3883) The final results of this review are currently due no later than May 26, 2004.

Extension of Time Limit for the Final Results of Review

This review involves complex and novel issues, such as the proper treatment of commingled merchandise, the application of the major input rule, and the appropriateness of deducting from constructed export price (CEP) an amount for countervailing duty cash deposits. In addition, the Department needs additional time to consider the arguments raised by the parties after the preliminary results of review. For these reasons, the Department has determined that it is not practicable to complete the final results within the original time limit. Therefore, the Department is extending the time limit for completion of the final results until no later than July 26, 2004.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 25, 2004.

Holly A. Kuga,

Acting Deputy Assistant Secretary for AD/CVD Enforcement II.

[FR Doc. 04–7221 Filed 3–30–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or Martin Claessens at (202) 482–5451, Office of AD/CVD Enforcement 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Time Limits:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 1, 2003, the Department published 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*, 68 FR 45218 (August 1, 2003). On August 29, 2003, in accordance with 19 CFR 351.213(b)(2), S.C. Silcotub S.A. (Silcotub), a Romanian producer/exporter of subject merchandise, requested a review. In addition, in accordance with 19 CFR 351.222(e), Silcotub requested that the Department revoke the order with regard to Silcotub, pursuant to 19 CFR 351.222(b). On September 2, 2003, United States Steel Corporation, a domestic interested party, requested reviews of Silcotub and S.C. Petrotub S.A., producers/exporters of certain small diameter carbon and alloy seamless, standard line and pressure pipe from Romania.

On September 30, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania, covering the period August 1, 2002 through July 31, 2003 (68 FR 56262). The preliminary results are currently due no later than May 3, 2004.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit due to the complex nature of this review. Specifically, on March 10, 2003, the Department reclassified Romania as a market economy effective January 1, 2003, for the purposes of antidumping and countervailing duty proceedings. Because this review covers the period August 1, 2002 through July 31, 2003, the Department has determined to conduct a simultaneous split review, applying its non–market economy methodology to the period August 1 through December 31, 2003, and its market economy methodology from January 1 through July 31, 2003. Accordingly, the Department is analyzing two separate sets of questionnaire responses and calculating dumping margins for two separate periods and expects to calculate a

single, weighted–average margin for the full 12–month review period.

Therefore, the Department is extending the time limit for completion of the preliminary results by 90 days, until August 2, 2004. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

Dated: March 25, 2004.

Holly A. Kuga,

Acting Deputy Assistant Secretary for AD/CVD Enforcement Group II.

[FR Doc. 04–7220 Filed 3–30–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–841]

Structural Steel Beams From Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the antidumping duty administrative review of structural steel beams (''SSB'') from Korea.

EFFECTIVE DATE: March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Aishe Allen, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0172.

Background

On August 1, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on SSB from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 68 FR 45218 (August 1, 2003). On August 29, 2003, petitioners [1] requested that the Department conduct an administrative review of Dongkuk Steel Mill Co., Ltd. (''DSM'') and INI Steel Company (''INI''), which are Korean producers of subject merchandise. Also, on August 29, 2003, DSM requested that the Department conduct an administrative review of their sales of subject merchandise during the period of review (''POR''). On September 30, 2003, the Department published a notice of initiation of a review of SSB from Korea covering the period August 1, 2001 through July 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 68 FR 56262 (September 30, 2003). The Department's preliminary results are currently due on May 2, 2004.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(2) of the Department's regulations, state that if it is not practicable to complete the review within the time specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days. Completion of the preliminary results of this review within the 245-day period is not practicable because the review involves affiliation issues, and a large number of transactions for each company (*i.e.*, DSM and INI). Additionally, the Department is investigating sales and cost for both companies which require the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing costs and corporate relationships.

Therefore, in accordance with section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department is extending the time period for issuing the preliminary results of review by 120 days until August 30, 2004. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations.

Dated: March 25, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–7223 Filed 3–30–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] Petitioners are Nucor Corporation, Nucor Yamato Steel Co., and TXI-Chaparral Steel Co.

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 2003 through December 31, 2003. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period October 1, 2003 through December 31, 2003.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies and additional information on

the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: March 23, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
Austria	European Union Restitution Payments	$0.09	$0.09
Belgium	EU Restitution Payments	0.01	0.01
Canada	Export Assistance on Certain Types of Cheese	0.26	0.26
Denmark	EU Restitution Payments	0.05	0.05
Finland	EU Restitution Payments	0.14	0.14
France	EU Restitution Payments	0.11	0.11
Germany	EU Restitution Payments	0.05	0.05
Greece	EU Restitution Payments	0.08	0.08
Ireland	EU Restitution Payments	0.07	0.07
Italy	EU Restitution Payments	0.06	0.06
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.04	0.04
Norway	Indirect (Milk) Subsidy	0.35	0.35
	Consumer Subsidy	0.16	0.16
		0.51	0.51
Portugal	EU Restitution Payments	0.06	0.06
Spain	EU Restitution Payments	0.05	0.05
Switzerland	Deficiency Payments	0.06	0.06
U.K.	EU Restitution Payments	0.04	0.04

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 04–7222 Filed 3–30–04; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–813]

Notice of Extension of Time Limit for the Final Results of Countervailing Duty Administrative Review: Honey From Argentina

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the countervailing duty order on honey from Argentina until no later than May 17, 2004. The period of review (POR) is January 1, 2001, through December 31, 2002. This extension is made pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Addilyn Chams-Eddine, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4236 or (202) 482–0648, respectively.

Background

On December 15, 2003, the Department published the preliminary results of the administrative review of the countervailing duty order on honey from Argentina for the period January 1, 2001 through December 31, 2002. *See Honey from Argentina: Preliminary Results of Countervailing Duty Administrative Review,* 68 FR 69660. In our notice of preliminary results, we stated our intention to issue the final results of this review no later that 120 days from the date of publication of the preliminary results, unless the final was extended. The final results of this review are currently due April 13, 2004.

Statutory Time Limits

Section 351.213(h)(1) of the regulations requires the Department to issue the preliminary results of review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of an administrative review within 120 days after the date on which notice of the preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 351.213(h)(2) allows the Department to extend the 245-day-period to 365 days and to extend the 120-day period to 180 days.

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the regulations, the Department has determined that it is not practicable to complete the final results of this administrative review by April 13, 2004. The Department must address issues unique to this first administrative review of the countervailing duty order on honey from Argentina. The issues involve the calculation of the countervailing duty assessment rate and the establishment of the cash deposit rate in light of having expanded the review period to include calendar year 2002. (*See* Memorandum from Thomas Gilgunn to Joseph A Spetrini, ''Honey from Argentina: Expansion of the Period of Review in the First Administrative Review of the Countervailing Duty Order,'' dated February 21, 2003, on file in the Central Records Unit (CRU) located in room B–099 of the Main

Commerce Building.) Therefore, the Department is extending the deadline for completion of the final results of the administrative review of the countervailing duty order on honey from Argentina by 34 days. The final results of the review will now be due no later than May 17, 2004.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: March 25, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–7225 Filed 3–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000616180–4095–08]

RIN 0648–ZA91

NOAA Climate and Global Change Program, FY 2005 Program Announcement; Correction

AGENCY: Office of Global Programs, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The Office of Global Program, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, published a document in the **Federal Register** of March 25, 2004, concerning the Climate and Global Change Program which represents a National Oceanic and Atmospheric Administration (NOAA) contribution to evolving national and international programs designed to improve our ability to observe, understand, predict, and respond to changes in the global environment. This program builds on NOAA's mission requirements and long-standing capabilities in global change research and prediction. The NOAA Program is a key contributing element of the U.S. Climate Change Science Program (CCSP), which is coordinated by the interagency Committee on Environmental and Natural Resources. NOAA's program is designed to complement other agencies' contributions to that national effort.

FOR FURTHER INFORMATION CONTACT: Diane S. Brown, Grants Manager, phone 301–427–2089, ext. 107.

Correction

In the **Federal Register** of March 25, 2004, in FR Doc. No. 000616180–4095–08, on page 15299, in the first column, correct the **DATES** caption to read:

DATES: Letters of Intent should be received by 5 p.m. Eastern Time April 22, 2004. Full proposals must be received at the Office of Global Programs no later than 5 p.m. Eastern Time June 18, 2004.

Dated: March 26, 2004.

Louisa Koch,

Deputy Assistant Administrator, OAR, National Oceanic and Atmospheric Administration.

[FR Doc. 04–7187 Filed 3–30–04; 8:45 am]

BILLING CODE 3510–KB–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032204C]

Fisheries of the Gulf of Mexico, Southeastern Data, Assessment and Review (SEDAR) Gulf of Mexico Red Snapper Workshops

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

ACTION: Notice of the SEDAR Workshops for Gulf of Mexico Red Snapper.

SUMMARY: The SEDAR process for the Gulf of Mexico red snapper will consist of a series of three workshops: a data workshop, an assessment workshop, and a review workshop.

DATES: The data workshop will take place April 19–23, 2004; the assessment workshop will take place August 16–20, 2004; and the review workshop will take place October 25–29, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The data workshop will be held at the International House Hotel, 221 Camp Street, New Orleans, LA 70130; telephone: (504)553–9550. The assessment workshop will be held at NOAA Fisheries Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149; telephone: (305) 361–4200. The review workshop will be held at the Holiday Inn Chateau Le Moyne, New Orleans, LA 70112; telephone: (504)581–1313.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran or Mr. Stu Kennedy, Gulf of Mexico Fishery Management Council (GMFMC), 3018 North U. S. Highway 301, Tampa, FL 33619. The GMFMC phone numbers are 813–228–2815 or 888–833–1844. Both Mr. Atran and Mr. Kennedy may be reached at the GMFMC e-mail address: *gulfcouncil@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The workshops will take place: April 19–23, 2004, August 16–20, 2004, and October 25–29,2004.

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the SEDAR process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) data workshop, (2) assessment workshop, and (3) review workshop. The product of the data workshop and the assessment workshop is a stock assessment report, which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment report is independently peer reviewed at the review workshop. The products of the review workshop are a Consensus Summary Report, which reports Panel opinions regarding the strengths and weaknesses of the stock assessment and input data, and an Advisory Report, which summarizes the status of the stock. Participants for SEDAR workshops are appointed by the Regional Fishery Management Councils. Participants include data collectors, database managers, stock assessment scientists, biologists, fisheries researchers, fishermen, environmentalists, Council members, International experts, and staff of Councils, Commissions, and state and Federal agencies.

Gulf of Mexico Red Snapper SEDAR Workshop Schedule

April 19–23, 2004–SEDAR Data Workshop (New Orleans)

April 19, 2004, 2 p.m.–5:30 p.m.

April 20–22, 2004, 8:30 a.m.–5:30 p.m.

April 23, 2004, 8:30 a.m.–1 p.m.

An assessment data set will be developed during the data workshop. The assessment data set will include catch statistics, discard estimates, length and age composition, fishery descriptions, biological sampling intensity, fishery dependent and fishery independent monitoring results, and life history characteristics. Workshop participants will draft preliminary Assessment Report sections.

August 16–20, 2004 – SEDAR Assessment Workshop – (Miami)

August 16, 2004, 2:00 p.m. – 5:30 p.m.

August 17–19, 2004, 8:30 a.m. – 5:30 p.m.

August 20, 2004, 8:30 a.m. – – 1:00 p.m.

Using the data set collected from the data workshop, participants will develop population models, evaluate the status of the stock, estimate population benchmarks and Sustainable Fisheries Act criteria, and complete the Assessment Report.

October 25–29, 2004 – SEDAR Review Workshop – (New Orleans)

October 25, 2004, 2 p.m. – 5:30 p.m.

October 26 – 28, 2004, 8:30 a.m. – 5:30 p.m.

October 29, 2004, 8:30 a.m. – 1 p.m.

The review workshop is an independent peer review of the assessment developed during the data and assessment workshops. Workshop Panelists will review the assessment and document their consensus opinions regarding assessment issues in a Consensus Summary Report. Panelists will summarize the assessment results in an Advisory Report.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Gulf of Mexico Fishery Management Council office (see **FOR FURTHER INFORMATION CONTACT**) at least 5 business days prior to each workshop.

Dated: March 26, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–7251 Filed 3–30–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032504C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Advisory Panel and its Groundfish Oversight Committee in April, 2004 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on April 14, 2004 and April 22, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will both be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Wednesday, April 14, 2004 at 9:30 a.m. – Groundfish Advisory Panel Meeting.

The panel will continue to work on developing advice for Framework 40 (FW 40) to the Northeast Multispecies Fishery Management Plan (FMP). The primary purpose of FW 40 is to identify opportunities for use of Category B days-at-sea (DAS). The Advisory Panel will consider opportunities to use these DAS both in Special Access Programs and outside of these programs. The Panel will develop recommendations for all of the restrictions associated with the use of Category B DAS, including requirements for gear, areas, seasons, possession limits, and reporting and monitoring requirements. The Panel may also develop advice for other provisions that are being considered in FW 40, such as changes to the DAS transfer and leasing conservation tax. The Panel's recommendations will be reported to the Groundfish Oversight Committee for consideration at a future meeting. They will consider other business as necessary.

Thursday, April 22, 2004 at 9:30 a.m. – Groundfish Oversight Committee Meeting.

The committee will continue to develop FW 40 to the Northeast Multispecies FMP. The primary purpose of FW 40 is to identify opportunities for use of Category B days-at-sea (DAS), though this framework does include provisions that will modify elements of the DAS leasing and transfer regulations and the allocation of Category B (reserve) DAS. The Committee will consider opportunities to use Category B DAS both in Special Access Programs and outside of these programs. They will consider recommendations from the Groundfish Advisory Panel for all of the restrictions associated with the use of Category B DAS, including requirements for gear, areas, seasons, possession limits, and reporting and monitoring requirements. The Committee will also develop detailed requirements for other provisions that are being considered in FW 40, such as changes to the DAS transfer and leasing conservation tax. They may also discuss other business as necessary. The Council will consider the Committee's recommendations at a future date.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 26, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–7248 Filed 3–30–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032204F]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) will meet in Seattle, WA.

DATES: The meeting will be held April 26, 2004, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center (AFSC), 7600 Sand Point Way NE, National Marine Mammal Lab Conference Room, Seattle, WA. The meeting can also be accessed by conference line at (907) 789–6622.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Bill Wilson, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The meeting agenda includes the following topics:

1. Introductions and opening remarks;
2. Council motion on Aleut Corporation Aleutian Islands pollock fishery;
3. Update on the Environmental Assessment/Regulatory Impact Review (EA/RIR) on Aleut Corporation pollock fishery;
4. Industry proposals for Steller Sea Lion (SSL) protection measure changes in the Aleutian Islands;
5. NMFS position on Aleutian Island protection measures;
6. Update on AFSC fishery interaction studies, Aleutian Island SSL counts, and other related research;
7. Discussion and recommendations from SSLMC to the Council;
8. Future activities of the SSLMC; and
9. Action items, closing remarks.

Although non-emergency issues not contained in this agenda may come before this committee for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: March 26,2004.

Alan D. Risenhoover,

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

[FR Doc. 04–7249 Filed 3–30–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032204B]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council is hosting the Regional Fishery Management Council Chairs and Executive Directors Meeting on Tuesday, April 13, 2004, through Thursday April 15, 2004, in Hawaii. The purpose of the meeting is to enable NMFS and NOAA officials and others to exchange information with and obtain the individual views of the Council Chairs and Executive Directors. See **SUPPLEMENTARY INFORMATION** for specific times, dates, and agenda items.

ADDRESSES: The meeting will be held in Salon B at the Kaua'i Marriott Hotel, Kalapaki Beach, Lihue, Hawaii, 96766 Puna B and C meeting rooms; telephone: (808) 245 5050, *http://marriotthawaii.com/kauai.html*.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION:

Dates and Times

There will be a non-public administrative session from 8 a.m. to 1 p.m. on April 13, 2004, the first general session will be from 2 p.m. to 6 p.m. on April 13, 2004. The second general session will be from 8 a.m. to 6 p.m. on April 14, 2004; and the final general session be from 8 a.m. until 6 p.m. on April 15, 2004.

The agenda during the General Session of the Regional Fishery Management Council Chairs and Executive Directors meeting will include the items listed here. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Tuesday, April 13, 2004, 2 p.m.

A. Opening Remarks by Western Pacific Council and NOAA Fisheries

B. Regional Highlights

C. Report on Managing the Nation's Fisheries Conference - and proposed Sequel Conference in March 2005

D. National Fisheries Conference II - The Future of Fisheries: Commercial, Recreational & Aquaculture, October 18–21, 2004 (Tentative)

E. Remarks - The Honorable Wayne T Gilchrest, Chair House Resources Subcommittee on Fisheries Conservation, Wildlife and Oceans.

F. MSA Reauthorization and other legislative initiatives.

1. Briefing from Congressional Staff
2. Review NOAA Fisheries position document, and proposed bill language (if available)
3. Review of Chairmen's positions on old and new issues

Wednesday, April 14, 2004, 8 a.m.

G. Federal Advisory Committee Act (FACA): Proceedings for Council Chairs and Executive Directors (CCED) meetings

H. Budget Issues

1. Council Funding Necessities
2. 2004 Budget - NOAA Matrix Management Coral Reef & Marine Protected Areas (MPAs) (National Ocean Service) & Ecosystem (NMFS)
3. Availability of 2004 National Environmental Policy Act (NEPA), Habitat and Ecosystem Funding for Councils
4. 2005 Budget Request
5. 2006 and Beyond
6. Council Grant Relationships with Regions and NOAA Office of Grants Management

I. Enforcement issues:

1. U.S. Coast Guard Report
2. NOAA Fisheries Office of Law Enforcement
3. NOAA Fisheries VMS Policy

J. National Constituent Meetings: Continuing the Dialogue

K. Management Issues:

1. Marine Protected Areas
a. National MPA Federal Advisory Committee and MPA Center Activities
b. National Marine Sanctuary Program and Regional Fishery Management Council (RFMC) Mandates
c. Regional Councils
2. Ecosystem Based Management
a. Science
b. Policy
3. National Standard 1
4. Stock Assessments

Thursday, April 15, 2004, 8 a.m.

L. Management Issues (Continued)

5. Regulatory Streamlining - Multi-year versus Annual Actions, NEPA Umbrella, etc.
6. Essential Fish Habitat
7. Research
8. Fish Consumption and Health Issues
9. Litigation
10. Bycatch
a. Observer: Implications of National Policy upon Labour Standard Act
b. Technology and Gear (including Private Fish Aggregating Devices)
11. Latent Effort/Overcapacity
12. International Issues
13. Protected Resources

M. Summary of Meeting

N. Next Meeting

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Dated: March 26, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–7250 Filed 3–30–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032204E]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Coral Reef Ecosystem Plan Team (CREPT) and Crustaceans Plan Team (CPT) meetings in Honolulu, HI.

DATES: The CREPT meeting will be held from April 20 through April 22, 2004. The CPT meeting will be held on April 23, 2004. All meetings will begin at 8:30 a.m. and are expected to end at 5 p.m.

ADDRESSES: The meetings will be held at the Council Office Conference Room, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The CREPT will meet from April 20–22, 2004, at the Council Office Conference Room to discuss the following agenda items:

Tuesday, April 20, 2004

1. Introductions
2. Island Reports
3. Essential Fish Habitat and Habitat Areas of Particular Concern
a. Refinement of Essential Fish Habitat (EFH) Designations
b. Review of Habitat Areas of Particular Concern
c. EFH Review for Annual Report
4. Report on Coral Reef Fish Stock Assessment Workshop and Review of Recommendations
5. National Ocean Service Northwest Hawaiian Islands (NOS NWHI) Sanctuary Designation Process
6. Archipelagic-based Fishery Ecosystem Plan

Wednesday and Thursday, April 21–22, 2004

7. Status of Coral Reef Ecosystem Fishery Management Plan (FMP) and Plan Implementation
8. Development of Annual Reports for Western Pacific Coral Reef Fisheries
a. Review of Trophic-level Species Assignment
b. Organization of Annual Report
9. Other Business

The CPT will meet April 23, 2004, at the Council Office Conference Room to discuss the following agenda items:

Tuesday, April 23, 2004

1. Introductions
2. Review of Last Meeting and Recommendations
3. MultiFAN-CL NWHI Lobster Population Model
4. 2004 Plans for NWHI Lobster Cruise and Charter
5. Main Hawaiian Islands (MHI) Lobster Stock Assessment
6. Crustaceans Annual Report
7. Crustaceans FMP Compliance Issue
8. Essential Fish Habitat and Habitat Areas of Particular Concern
9. NOS NWHI Sanctuary Designation Process
10. Archipelagic-based Fishery Ecosystem Plan
11. Other Business

The order in which agenda items are addressed may change. Public comment periods will be provided throughout the agenda.

The CREPT and CPT will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the CREPT and CPT for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Dated: March 26,2004.

Alan D. Risenhoover,

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

[FR Doc. 04–7252 Filed 3–30–04; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49469]

Joint Order Excluding Indexes Comprised of Certain Index Options From the Definition of Narrow-Based Security Index Pursuant to Section 1a(25)(B)(vi) of the Commodity Exchange Act and Section 3(a)(55)(C)(vi) of the Securities Exchange Act of 1934

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint order.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (collectively, ''Commissions'') by joint order under the Commodity Exchange Act (''CEA'') and the Securities Exchange Act of 1934 (''Exchange Act'') are excluding certain security indexes from the definition of ''narrow-based security index.'' Specifically, the Commissions are excluding from the definition of the term ''narrow-based security index'' certain indexes comprised of series of options on broad-based security indexes.

EFFECTIVE DATE: March 25, 2004.

FOR FURTHER INFORMATION CONTACT:

CFTC: Thomas Leahy, Assistant Branch Chief, Market and Product Review Section, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581. Telephone (202) 418–5278.

SEC: Elizabeth K. King, Associate Director, at (202) 942–0140, or Theodore R. Lazo, Senior Special Counsel, at (202) 942–0745, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

Futures contracts on single securities and on narrow-based security indexes (collectively, ''security futures'') are jointly regulated by the CFTC and the SEC.[1] To distinguish between security futures on narrow-based security indexes, which are jointly regulated by the Commissions, and futures contracts on broad-based security indexes, which are under the exclusive jurisdiction of the CFTC, the CEA and the Exchange Act each includes an objective definition of the term ''narrow-based security index.'' A futures contract on an index that meets the definition of a narrow-based security index is a security future. A futures contract on an index that does not meet the definition of a narrow-based security index is a futures contract on a broad-based security index.[2]

Section 1a(25) of the CEA [3] and section 3(a)(55)(B) of the Exchange Act [4] provide that an index is a ''narrow-based security index'' if, among other things, it meets one of the following four criteria:

(i) The index has nine or fewer component securities;

(ii) Any component security of the index comprises more than 30 percent of the index's weighting;

(iii) The five highest weighted component securities of the index in the aggregate comprise more than 60 percent of the index's weighting; or

(iv) The lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

The first three criteria evaluate the composition and weighting of the securities in the index. The fourth criterion evaluates the liquidity of an index's component securities.

Section 1a(25)(B)(vi) of the CEA and section 3(a)(55)(C)(vi) of the Exchange Act provide that, notwithstanding the initial criteria, an index is not a narrow-based security index if a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commissions. Pursuant to that authority, the Commissions may jointly exclude an index from the definition of the term narrow-based security index.[5]

In September 2003, CBOE Futures Exchange, LLC (''CFE''), a designated contract market approved by the CFTC, announced plans to trade futures contracts on certain ''volatility indexes'' created by the Chicago Board Options Exchange, Inc. (''CBOE'').[6] Each of these volatility indexes is designed to measure the variability of daily returns on a security index (''Underlying Broad-Based Security Index''), as reflected in the prices of options on the Underlying Broad-Based Security Index. Accordingly, the component securities of a volatility index are put and call options on a security index.[7] In light of CFE's announcement, the Commissions have considered whether volatility indexes are narrow-based security indexes.

II. Discussion

The statutory definition of the term narrow-based security index is designed to distinguish among indexes comprised of individual stocks. As a result, certain aspects of that definition are designed to take into account the trading patterns of individual stocks rather than those of other types of exchange-traded securities, such as options. However, the Commissions believe that the definition is not limited to indexes on individual stocks. In fact, section 1a(25)(B)(vi) of the CEA and section 3(a)(55)(C)(vi) of the Exchange Act give the Commissions joint authority to make determinations with respect to security indexes that do not meet the specific statutory criteria without regard to the types of securities that comprise the index.

Subject to the conditions set forth below, the Commissions believe that it is appropriate to exclude certain indexes comprised of options on broad-based security indexes from the definition of the term narrow-based security index. An index must satisfy all of the following conditions to qualify for the exclusion.

The first condition limits the exclusion to indexes that measure

[1] *See* section 1a(31) of the CEA and section 3(a)(55)(A) of the Exchange Act, 7 U.S.C. 1a(31) and 15 U.S.C. 78c(a)(55)(A).

[2] *See* 17 CFR 41.1(c).

[3] 7 U.S.C. 1a(25).

[4] 15 U.S.C. 78c(a)(55)(B).

[5] *See, e.g., Joint Order Excluding from the Definition of Narrow-Based Security Index those Security Indexes that Qualified for the Exclusion from that Definition under Section 1a(25)(B)(v) of the Commodity Exchange Act and Section 3(a)(55)(C)(v) of the Securities Exchange Act of 1934* (May 31, 2002), 67 FR 38941 (June 6, 2002).

[6] *See* CBOE News Release, ''CBOE Announces Launch of Futures on VIX: First Tradable Volatility Product Will be Offered on New CBOE Futures Exchange'' (September 5, 2003). The news release is available at *www.cboe.com*.

[7] CBOE has published a White Paper describing the calculation and methodology of its volatility indexes, which is available at *www.cboe.com/micro/vix/vixwhite.pdf*.

changes in the level of an Underlying Broad-Based Security Index over a period of time using the standard deviation or variance of price changes in options on the Underlying Broad-Based Security Index. The Commissions believe this condition is necessary to limit the exclusion to indexes calculated using one of two commonly recognized statistical measurements that show the degree to which an individual value tends to vary from an average value. The second, third, and fourth conditions provide that the exclusion applies to indexes that qualify as broad-based security indexes under the statutory criteria that evaluate the composition and weighting of the securities comprising an index. The fifth condition provides that the exclusion applies only if the Underlying Broad-Based Security Index qualifies as a broad-based security index under the statutory criterion that evaluates the liquidity of the securities comprising an index. The Commissions believe at this time that this condition is appropriate so that any such Underlying Broad-Based Security Index, including those that are not narrow-based under any of the exclusions to the definition under sections 1(a)(25)(B) of the CEA and 3(a)(55)(C) of the Exchange Act, meets the statutory liquidity criterion. The sixth condition provides that the exclusion applies if the options comprising the index are listed and traded on a national securities exchange. Given the novelty of volatility indexes, the Commissions believe at this time that it is appropriate to limit the component securities to those index options that are listed for trading on a national securities exchange where the Commissions know pricing information is current, accurate and publicly available. Finally, the seventh condition provides that the exclusion applies only if the options comprising the index have an aggregate average daily trading volume of 10,000 contracts. The Commissions believe that this condition limits the exclusion to indexes for which there is a liquid market on a national securities exchange for the options on the Underlying Broad-Based Security Index, which contributes to the Commissions' view that futures on such indexes should not be readily susceptible to manipulation.

The Commissions believe that indexes satisfying these conditions are appropriately classified as broad based because they measure the magnitude of changes in the level of an underlying index that is a broad-based security index. In addition, the Commissions believe that futures contracts on indexes that satisfy the conditions of this exclusion should not be readily susceptible to manipulation because of the composition, weighting, and liquidity of the securities in the Underlying Broad-Based Security Index and the liquidity that the options comprising the index must have to qualify for the exclusion. Specifically, these factors should substantially reduce the ability to manipulate the price of a future on an index satisfying the conditions of the exclusion using the options comprising the index or the securities comprising the Underlying Broad-Based Security Index.

Accordingly,

It is ordered, pursuant to section 1a(25)(B)(vi) of the CEA and Section 3(a)(55)(C)(vi) of the Exchange Act, that an index is not a narrow-based security index, and is therefore a broad-based security index, if:

(1) The index measures the magnitude of changes in the level of an Underlying Broad-Based Security Index that is not a narrow-based security index as that term is defined in Section 1(a)(25) of the CEA and Section 3(a)(55) of the Exchange Act over a defined period of time, which magnitude is calculated using the prices of options on the Underlying Broad-Based Security Index and represents (a) an annualized standard deviation of percent changes in the level of the Underlying Broad-Based Security Index; (b) an annualized variance of percent changes in the level of the Underlying Broad-Based Security Index; or (c) on a non-annualized basis either the standard deviation or the variance of percent changes in the level of the Underlying Broad-Based Security Index;

(2) The index has more than nine component securities, all of which are options on the Underlying Broad-Based Security Index;

(3) No component security of the index comprises more than 30% of the index's weighting;

(4) The five highest weighted component securities of the index in the aggregate do not comprise more than 60% of the index's weighting;

(5) The average daily trading volume of the lowest weighted component securities in the Underlying Broad-Based Security Index upon which the index is calculated (those comprising, in the aggregate, 25% of the Underlying Broad-Based Security Index's weighting) has a dollar value of more than $50,000,000 (or $30,000,000 in the case of a Underlying Broad-Based Security Index with 15 or more component securities), except if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25% of the Underlying Broad-Based Security Index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security;

(6) Options on the Underlying Broad-Based Security Index are listed and traded on a national securities exchange registered under section 6(a) of the Exchange Act; and

(7) The aggregate average daily trading volume in options on the Underlying Broad-Based Security Index is at least 10,000 contracts calculated as of the preceding 6 full calendar months.

By the Commodity Futures Trading Commission.

Dated: March 25, 2004.

Jean Webb,

Secretary.

By the Securities and Exchange Commission.

Dated: March 25, 2004.

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 04–7141 Filed 3–30–04; 8:45 am]

BILLING CODE 6351–01–P, 8010–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Educational Advisory Committee

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), announcement is made of the following committee meeting:

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: April 29, 2004 and April 30, 2004.

Place of Meeting: Command Conference Room, Root Hall, U.S. Army War College, 122 Forbes Avenue, Carlisle Barracks, Pennsylvania.

Time of Meeting: 8:30 a.m.–5 p.m.

Proposed Agenda: Receive information briefings; conduct discussions with the Commandant and staff and faculty; table and examine online College issues; assess resident and distance education programs, self-study techniques, assemble a working group for the concentrated review of institutional policies and a working group to address committee membership and charter issues; propose

strategies and recommendations that will continue the momentum of Federal accreditation success and guarantee compliance with regional accreditation standards.

FOR FURTHER INFORMATION CONTACT: To request advance approval or obtain further information, contact Colonel Kevin T. Connelly, Director of Joint Education, Department of Academic Affairs, U.S. Army War College, 122 Forbes Avenue, Attn: DAA, Carlisle, PA 17013 or telephone (717) 245–3907 or Mary Jo Weishaupt at (717) 245–3044.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, make a presentation, or file statements with the Committee after receiving advance approval for participation. To request advance approval for participation or obtain further information, please contact Colonel Kevin T. Connelly prior to April 7, 2004 at the above address or phone number.

Kevin T. Connelly,

Colonel, U.S. Army, Designated Federal Official.

[FR Doc. 04–7192 Filed 3–30–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Artemisinins With Improved Stability and Bioavailability for Therapeutic Drug Development and Application

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 10/376,387 entitled ''Artemisinins with Improved Stability and Bioavailability for Therapeutic Drug Development and Application,'' filed February 27, 2003. Foreign rights are also available (PCT/US03/06283). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A stable form of artemisinin wherein an artelinic acid or artesunic acid is complexed with cyclodextrin analogs, preferably, β-cyclodextrin. The complexed cyclodextrin artemisinin formulation shields the peroxide portion of the artemisinin backbone from hydrolytic decomposition rendering it stable in solution. Artelinic acid and cyclodextrin are placed into contact with one another to yield a 2:1 molecular species. Artesunic acid and cyclodextrin yield a 1:1 molecular species. The complexed cyclodextrin artemisinin formulation is effective for the treatment of malaria and is stable in solution for long periods of time.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–7193 Filed 3–30–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability for the Draft Feasibility Report and Environmental Impact Statement/Environmental Impact Report for the Hamilton City Flood Damage Reduction and Ecosystem Restoration, Glenn County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (Corps), in coordination with The Reclamation Board of the State of California and the Hamilton City Community Services District, have prepared a Draft Feasibility Report and Environmental Impact Statement/Environmental Impact Report (DFR/DEIS–EIR) for the Hamilton City Community Flood Damage Reduction and Ecosystem Restoration, Glenn County, CA.

DATES: The DFR/DEIS–EIR is being made available for a 45-day public comment period. All comments should be submitted on or before May 17, 2004.

ADDRESSES: Send written comments to U.S. Army Corps of Engineers, Sacramento District, ATTN: Mrs. Erin Taylor/Environmental Analysis Section, 1325 J Street, Sacramento, CA 95814–2922.

FOR FURTHER INFORMATION CONTACT: To obtain additional information related to this report, interested persons are invited to contact the following: Mrs. Erin Taylor, Environmental Manager. U.S. Army Corps of Engineers, 1225 J Street, Sacramento, CA 95814–2922, (916) 557–5140 or fax (916) 557–7202, e-mail *compstudy@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Report Availability.* Printed copies of the DFR/EIS–EIR are available for public inspection and review at the following locations:

a. U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, CA 95814–2922.

b. Hamilton City Library, Reference Section, P.O. Box 1055, Hamilton City, CA 95951–1055.

C. Bayliss Library, Reference Section, 7830 County Road 39, Glenn, CA 95943.

d. Corning Library, Reference Section, 740 3rd Street, Corning, CA 96021.

e. Orland City Library, Reference Section, 333 Mill Street, Orland, CA 95963.

f. Willows Public Library, Reference Section, 201 North Lassen Street, Willows, CA 95988.

The entire DFR/DEIS–EIR may also be viewed on the U.S. Army Corps of Engineers, Sacramento District website at the following address: *http://www.compstudy.org.*

2. *Commenting.* Comments received in response to this report, including names and addresses of those who comment, will be considered part of the public record on this proposed action. Comments submitted anonymously will be accepted and considered. Pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Corps will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without the name and address.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–7194 Filed 3–30–04; 8:45 am]

BILLING CODE 3710–E2–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of a Final Supplemental Environmental Impact Statement (FSEIS), for Phipps Ocean Park Beach Restoration Project, FSEIS—Department of the Army (DA) Permit Application Number 200000380(IP–PLC), Town of Palm Beach, Palm Beach County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE or Corps) Jacksonville District, announces the availability of a Regulatory Program Final SEIS for the proposed Phipps Ocean Park Beach Restoration Project. The Town of Palm Beach, Florida (Applicant) is seeking Corps regulatory authorization for the proposed project pursuant to Section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). In accordance with 40 CFR 1506.5 and Appendix B, 33 CFR part 325, the Applicant has prepared the Final SEIS on the requested permit action under the direct supervision of the Corps pursuant to a ''third party contract.''

The general environmental impacts of beach restoration and erosion control activities on the Southeast Atlantic Coast of Florida were previously evaluated in the ''Coast of Florida, Erosion and Storm Effects Study—Region III, with Final Environmental Impact Statement, U.S. Army Corps of Engineers, Jacksonville District,'' October 1996. The Applicant's proposed project is located within a segment of the Region III area evaluated in the Coast of Florida FEIS and the Phipps Ocean Park Final SEIS is a supplement to the Coast of Florida FEIS. The Applicant's proposed project is consistent with the Town's ''Comprehensive Coastal Management Plan Update—Palm Beach Island, Florida'' (June 1998).

As required by NEPA, the Final SEIS describes the Applicant's preferred alternative and other alternatives evaluated to provide alternative and other alternatives evaluated to provide shore protection for Phipps Ocean Park within the Town of Palm Beach, FL. In response to comments on the Draft SEIS, the FSEIS includes: (1) An expanded analysis of the No Action Alternative; (2) the addition of Appendix N, which includes additional data and analysis regarding potential storm associated with the No Action Alternative as compared to the Applicant's Preferred Alternative; (3) the addition of Appendix M, which describes and evaluates a new alternative designated the ''T–Head Groin and Reduced Fill Alternative;'' and (4) new data regarding the location and height of nearshore hardbottom features under the existing Project area beach, along with an expanded analysis and revised modeling of how these features would impact future shoreline conditions if the No Action Alternative is selected.

The Applicant's preferred alternative is intended to: (1) Mitigate the long-term erosion impacts of Lake North Inlet and armored coastline north of the Project area; (2) provide and maintain storm protection to upland improvements; (3) restore and maintain the beach for public recreational use; and (4) restore and maintain the beach for marine turtle nesting habitat.

The Applicant's preferred alternative includes placement of approvimately 1.5 million cubic yards of fill over approximately 1.9 miles of beach, between DEP Monuments R–116a nd R–126. Sand compatible with the existing beach has been identified and would be obtained from borrow areas located approximately 3,500 feet offshore and between 1.5 and 2.6 miles south of the fill area. The proposed borrow areas have been designed with buffer zones to avoid impacts to hardbottom communities in the vicinity of the borrow areas.

The Final SEIS also identifies and evaluates the potential direct, indirect, and cumulative environmental consequences of the Applicant's preferred alternative, including potential impacts to Essential Fish Habitat, hardbottom resources and other specific issues identified during the scoping process.

DATES: The public comment period on the Final SEIS shall end on April 30, 2004. Written comments must be received at the address listed below no later than 5 p.m.

ADDRESSES: Send written comments and questions concerning this proposal to Ms. Penny Cutt, Phipps SEIS Project Manager, Department of the Army, Jacksonville District Corps of Engineers, Palm Beach Gardens Regulatory Office, 4400 PGA Boulevard, Suite 500, Palm Beach Gardens, FL 33410–6557; telephone 561–472–3505, facsimile 561–626–6971, or e-mail at *penny.cutt@saj02.usace.army.mil.* Copies of the Final SEIS document may be obtained by contacting Lois Edwards, SEIS Public Involvement Coordinator/Third Party Contractor, Coastal Technology Corp., 3625 20th Street, Vero Beach, FL 32960, telephone (888) 562–8580; facsimile (772) 562–8432 or by e-mail to *ledwards@coastaltechcorp.com.* Copies may be requested in either hard copy or in digital format on CD. This document may also be found on the Corps' Web site by accessing the following address: *www.saj.usace.army.mil/permit/hot_topics/PhippsEIS/phippsindex.htm.* Requests to be placed on the mailing list should be sent to Mrs. Edwards at the Vero Beach address.

FOR FURTHER INFORMATION CONTACT: Penny Cutt at the above address or Peter A. Ravella, SEIS Project Manager/Third Party Contractor, Coastal Technology Corp., 2306 Lake Austin Blvd., Austin, TX 78703; telephone (512) 236–9494; facsimile (800) 321–9673, or e-mail at *pravella@coastaltechcorp.com.*

SUPPLEMENTARY INFORMATION: The Final SEIS examines potential impacts to Essential Fish Habitat (EFH) and also includes a comprehensive examination of potential cumulative impacts of the project and other projects from Lake Worth Inlet to South Lake Worth Inlet. In accordance with the NEPA, the Final SEIS evaluates reasonable alternatives for the USACE's decision-making process, including the ''no action'' alternative as a baseline for gauging potential impacts.

The Florida Department of Environmental Protection (FDEP) has designated all of the Project area from R–116 to R–126 as an area of ''critical erosion.'' This designation is based on (a) the erosion attributable to the influence of Lake Worth Inlet and the adjacent armored shoreline and (b) the existing headland features surrounding the Project area.

Shoreline conditions and structures updrift of the Project area exacerbate erosion in the Project area and the shoreline further south. Net longshore sand transport in the region is to the south. Construction of the Lake Worth Inlet and its jetties interrupt the longshore flow of sand and starves the Project area and regions south of the inlet and have led to the construction of seawalls, groins, and eventually a rock revetment constructed by the Florida Department of Transportation (FDOT) north of Sloan's Curve in 1987. The revetment has cut-off the sand supply from the dune landward of the revetment and contributed to the diminishment of sediment transport into the Project area. These conditions are expected to continue to contribute to

the erosion within the Project area in the future.

The three miles of shoreline immediately north of Sloan's Curve are fronted by numerous armoring structures including rock revetments, seawalls, and groins. The existing groins north of Phipps Ocean Park deter southerly longshore transport to Phipps Ocean Park and the Project area. The Mid-Town Beach Restoration Project (unrelated to the project for which the Applicant seeks authorization) is located to the north of this three-mile segment; the groins and armoring have impeded the southerly migration of the Mid-Town sand. In combination with the effects of Lake Worth Inlet, armoring structures have caused a longshore transport and sediment deficit to the Project area, resulting in erosion, loss of the recreational beach, increase in the storm damage risk to upland property, and loss of sea turtle nesting habitat.

Copies of the Final SEIS are also available for inspection at the following locations:

(1) Town of Palm Beach Clerk's Office, Town Hall, 360 South county Road, Palm Beach, FL 33480.
(2) Town of Palm Beach Public Works Department, 951 Old Okeechobee Road, West Palm Beach, FL 33401.
(3) Town of Palm Beach Fire Rescue Station 3, 2185 South Ocean Blvd., Palm Beach, FL 33480.
(4) USACE Palm Beach Gardens Regulatory Office, 4400 PGA Boulevard, Suite 500, Palm Beach Gardens, FL 33410.
(5) Palm Beach County Government Center, Front Lobby Information Desk, 215 North Olive Avenue, West Palm Beach, FL 33401.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–7195 Filed 3–30–04; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement and General Reevaluation Report for the Blue River Basin in the Kansas City Metropolitan Area in Jackson and Cass Counties in Missouri, and Johnson, Wyandotte, and Miami Counties in Kansas

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Kansas City District, intends to prepare a Draft Environmental Impact Statement (DEIS) and General Reevaluation Report (GRR) for the Blue River Basin to evaluate flood damage reduction, environmental resource restoration, recreational resource development, and water quality improvement in the watershed. The Blue River drainage basin is approximately 272 square miles located in the Kansas City Metropolitan Area in Jackson and Cass counties of Missouri, and Johnson, Wyandotte, and Miami counties in Kansas. The GRR is a reanalysis of a previously authorized plan for the Blue River Basin using updated planning criteria and policies. The results of this study may affirm the previous plan; reformulate and modify the existing plan, as appropriate; or find that no plan is currently justified. The purpose of this DEIS is to analyze both beneficial and adverse impacts to the natural, physical and human environment as a result of implementing any of the proposed project alternatives that may be developed from the GRR analysis and the EIS process.

FOR FURTHER INFORMATION CONTACT: John D. Holm, Planning, Programs, & Project Management Division or Mr. Matthew D. Vandenberg, Environmental Resource Section, Attn: CENWK–PM–PR, U.S. Army Engineer District, Kansas City, 601 East 12th Street, Kansas City, MO 64106–2896, Phone 816–983–3100 or e-mail to: *John.D.Holm@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Background:* Public Law 91–611, River and Harbor Act of 1970 (1970 Flood Control Act), authorized the project for ''flood protection and other purposes in the Blue River Basin, vicinity of Kansas City, MO and Kansas.'' ''The project for flood protection and other purposes in the Blue River Basin * * * is hereby authorized substantially in accordance with the recommendations of the Chief Engineers in House Document, Numbered 91–332, except that not to exceed $40,000,000 is authorized for initiation and partial accomplishment of the project.'' House Document 91–332, in the Report of the Chief of Engineers, on page 6 states: ''The major problem in the basin is the widespread and damaging floods which destroy property and cause hazards to life, particularly in the highly industrialized lower basin area. Only slightly less acute is the need for streamflow supplementation to alleviate the poor quality from unsightliness of low-flow condictions. There are definite needs for water-based recreation and enhancement of the fish and wildlife resources. Any plan of improvement should provide for the preservation and enhancement of parks, parkways, and historical sites.''

2. *Scoping Process:* Scoping meetings will be held during 2004 in the Blue River Basin to obtain comments and input concerning the proposed Blue River basin reevaluation study. The scoping meetings will be advertised in the local papers and a mailing list will be used to notify the public and other interested parties of these meetings. The public, native American tribes, and affected government agencies at the local, State, and federal level are encouraged to participate in the scoping process by forwarding written comments to the above noted address. Interested parties may also request to be included on the mailing list for public distribution of meeting announcements and the status of EIS document preparation. Environmental consultation and review will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as per regulations of the Council of Environmental Quality (40 CFR parts 1500–1508), and other applicable laws, regulations, and guidelines.

3. *Availability of EIS Documents:* The availability of the Draft and Final EIS will be presented in the **Federal Register** and by notices in the local papers. The mailing list will also be used to notify interested parties of the availability and location of the Draft and Final EIS for public review.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–7196 Filed 3–30–04; 8:45 am]

BILLING CODE 3710–KN–M

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Meeting Notice

AGENCY: Uniformed Services University of the Health Sciences, DoD.

TIME AND DATE: 8 a.m. to 4 p.m., May 14, 2004.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8 a.m. Meeting—Board of Regents

(1) Approval of Minutes—February 3, 2004

(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Approval of Degrees—School of Medicine, Graduate School of Nursing
(9) Comments—Chairman, board of Regents
(10) New Business

FOR FURTHER INFORMATION CONTACT: Dr. Barry Wolcott, Executive Secretary, Board of Regents, (301) 295–3981.

Dated: March 29, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–7396 Filed 3–29–04; 3:07 pm]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On March 23, 2004, the Department of Education published a 30-day public comment period notice in the **Federal Register** (Page 13510, Column 1) for the information collection, ''eZ-Audit: Electronic Submission of Financial Statements and Compliance Audits''. The following is a corrected notice:

Federal Student Aid

Type of Review: New.

Title: eZ-Audit Electronic Submission of Financial Statements and Compliance Audits.

Frequency: Annually, and as otherwise required under the Title IV, Higher Education Act (HEA) program regulations.

Affected Public: Not-for-profit, proprietary, and public postsecondary institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 5,900.

Burden Hours: 4,251.

Abstract: eZ-Audit is a web-based process designed to facilitate the submission of compliance and financial statement audits, expedite the review of those audits by the Department, and provide more timely and useful information to institutions regarding the Department's review. EZ-Audit establishes a uniform process under which all institutions submit directly to the Department any audit required under the Title IV, HEA program regulations.

Requests for copies of the proposed information collection request may be accessed from *http://dedicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2217. When you access the information collection, click on ''Download Attachments'' to view. You may also view the updated user guides and data input screens for non-profit and public institutions on the Department's Web site at: *http://ifap.ed.gov/eannouncements/attachments/031204NotforProfitGuide.pdf* and *http://ifap.ed.gov/eannouncements/attachments/031204PublicSchoolGuide.pdf.*

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

FOR FURTHER INFORMATION CONTACT: Joseph Schubart at his e-mail address: *Joe.Schubart@ed.gov.*

Dated: March 26 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 04–7167 Filed 3–30–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Proposed Collection; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On March 12, 2004, the Department of Education published a 60-day public comment period notice in the **Federal Register** (Page 11846, Column 3) for the information collection, ''Free Application for Federal Student Aid (FAFSA) for the 2005–2006 award year''. Due to the extent of public interest in changes proposed to the 2005–2006 FAFSA, the public is asked to submit electronic comments to a mailbox established at *fafsa0506@ed.gov.*

DATES: Interested persons are invited to submit comments on or before May 11, 2004.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests may be submitted by regular mail and should be addressed to Joseph Schubart, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651.

Interested persons can access this document on the Internet:

(1) Go to IFAP at *http://ifap.ed.gov;*
(2) Scroll down to ''Publications'';
(3) Click on ''FAFSAs and Renewal FAFSAs'';
(4) Click on ''By 2005–2006 Award Year'';
(5) Click on ''Draft FAFSA Form/Instructions''.

Please note that the free Adobe Acrobat Reader software, version 4.0 or greater, is necessary to view this file. This software can be downloaded for free from Adobe's Web site: *http://www.adobe.com.*

FOR FURTHER INFORMATION CONTACT: Joseph Schubart (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: March 26, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 04–7168 Filed 3–30–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: Thursday, April 29, 2004.

TIME: 8:30 a.m.–3 p.m.

ADDRESSES: The Board will meet in Atlanta, GA at the Morehouse School of Medicine, National Center for Primary Care—Room 456, 720 Westview Drive,

SW., Atlanta, GA 30310, Phone: 404–756–6700, Fax: 404–752–1847.

FOR FURTHER INFORMATION CONTACT: Dr. Leonard Dawson, Deputy Counselor, White House Initiative on Historically Black Colleges and Universities, 1990 K Street, NW., Washington, DC 20202; telephone: (202) 502–7889.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 13256, dated February 12, 2002, and Executive Order 13316 of September 17, 2003. The Board is established (a) to report to the President annually on the results of the participation of historically black colleges and universities (HBCUs) in Federal programs, including recommendations on how to increase the private sector role, including the role of private foundations, in strengthening these institutions, with particular emphasis on enhancing institutional planning and development, strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the President and the Secretary of Education (Secretary) on the needs of HBCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of an annual Federal plan for assistance to HBCUs in increasing their capacity to participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity of HBCUs to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist HBCUs.

The purpose of the meeting is to discuss plans for submission of the Board's 2002–2003 Annual Report; to receive an update on the Ayers desegregation case and its implications for HBCUs; and to plan activities to be held during National Historically Black Colleges and Universities Week.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify ReShone Moore at (202) 502–7893 no later than Thursday, April 22, 2004. We will attempt to meet requests for accommodations after this date, but, cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Thursday, April 29, 2004, between 2 p.m.–3 p.m. Those members of the public interested in submitting written comments may do so at the address indicated above by Thursday, April 22, 2004.

Records are kept of all Board proceedings and are available for public inspection at the Office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006, during the hours of 8 a.m. to 5 p.m.

Dated: March 18, 2004.

Rod Paige,

Secretary of Education, U.S. Department of Education.

[FR Doc. 04–7212 Filed 3–30–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the American Statistical Association Committee on Energy Statistics, a utilized Federal Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 22, 2004, 8:30 a.m.–4:50 p.m., Friday, April 23, 2004, 8:30 a.m.–12:30 p.m.

ADDRESSES: U.S. Department of Energy, Room 8E–089, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 287–1709. Alternately, Mr. Weinig may be contacted by email at *william.weinig@eia.doe.gov* or by FAX at (202) 287–1705.

Purpose of the Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's experience concerning other energy-related statistical matters.

Tentative Agenda

Thursday, April 22, 2004

A. Opening Remarks by the ASA Committee Chair, the EIA Administrator and the Director, Statistics and Methods Group, EIA. Room 8E–089

B. Major Topics (Room 8E–089 unless otherwise noted)

1. Short-Term Energy Forecasting:
   a. Natural Gas Prices and Industrial Sector Responses: An Experimental Module for the Short-Term Integrated Forecasting System
   b. Issues in Short-Term Energy Modeling: Adding Regional Components to EIA's Short-Term Energy Model
2. Reducing Bias and Variability in Texas Natural Gas Production Estimates (Room 5E–069)
3. EIA's Frames: How Do We Know if They Are Sufficient? (Room 5E–069)
4. Public Questions and Comments
5. Electricity Transmission
   a. Electricity 2005
   b. Electricity Transmission Data Needs Focus Group Results
   c. Transmission Data for Public Policy
6. Estimating Weekly Other Oils Stock
7. EIA Survey Testing Methods (Room 5E–069)
8. Natural Gas Production Monthly Survey
9. Public Questions and Comments

Friday, April 23, 2004

C. Major Topics

1. Improving EIA's Web site: Creating a Vision for the Future
2. Revising Data Together Across EIA: Issues and Opportunities
3. Survey Quality Assessments at EIA (5E–069)
4. Measuring and Quantifying the Quality of EIA Analysis: A Revised Approach
5. Public Questions and Comments

D. Closing Remarks by the ASA Committee Chair

Public Participation: The meeting is open to the public. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above.

A Meeting Summary and Transcript will subsequently be available through Mr. Weinig who may be contacted at (202) 287–1709 or by email at *william.weinig@eia.doe.gov.*

Issued at Washington, DC on March 24, 2004.

Rachel M. Samuel,

Deputy Committee Management Officer.

[FR Doc. 04–7204 Filed 3–30–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–538–000; FERC–538]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

March 24, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by May 28, 2004.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–30, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 and refer to Docket No. IC04–538–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form No. –538 ''Gas Pipeline Certificates: Initial Service (OMB No. 1902–0061) is used by the Commission to implement the statutory provisions of sections 7(a), 10(a), and 16 of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w). The reporting requirements contained in this collection of information are used by the Commission to determine whether a distributor applicant can economically construct and manage its facilities. Requests are made to the Commission by individuals or entities to have the Commission, by order, direct a natural gas pipeline to extend or improve its transportation facilities, and sell gas to an individual, entity or municipality for the specific purpose indicated in the order, and to extend the pipeline's transportation facilities to communities immediately adjacent to the municipality's facilities or to territories served by the natural gas company. In addition, the Commission reviews the supply data to determine if the pipeline company can provide the service without curtailing certain of its existing customers. The flow data and market data are also used to evaluate existing and future customer requirements on the system to find if sufficient capacity will be available. Likewise, the cost of facilities and the rate data are used to evaluate the financial impact of the cost of the project to both the pipeline company and its customers. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 156.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
1	1	240	240

The estimated total cost to respondents is $12,368 (240 hours divided by 2,080 hours per employee per year times $107,185 per year average salary (including overhead) per employee = $12,368 (rounded off)).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be

collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–707 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–224–000]

B–R Pipeline Company; Notice of Tariff Filing

March 24, 2004.

Take notice that on March 19, 2004, B–R Pipeline Company (B–R) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets attached as Appendix A to the filing, with an effective date of May 1, 2004.

B–R states that the purpose of this filing is to comply with the Commission's Orders issued on October 3, 2003, in Docket No. CP01–418–000, and on February 18, 2004, in Docket No. CP01–418–001. B–R Pipeline Company, 105 FERC ¶ 61,025 (2003) and 106 FERC ¶ 61,166 (2004).

B–R states that complete copies of this filing are being provided to all parties listed on the official service list in Docket No. CP01–418–000 and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–701 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP94–2–013]

Columbia Gas Transmission Corporation; Notice of Refund Report

March 24, 2004.

Take notice that on March 17, 2004, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Commission its Refund Report made to comply with the April 17, 1995 Settlement in Docket No. GP94–02, *et al.* as approved by the Commission on June 15, 1995 (Columbia Gas Transmission Corp., 71 FERC ¶ 61,337 (1995)).

On January 20, 2004 Columbia states that it made refunds, as billing credits and with checks, in the amount of $312,572.88. Columbia states that the refunds represent deferred tax refunds received from Trailblazer Pipeline Company and Overthrust Pipeline Company. These refunds were made pursuant to Article VIII, section E of the Settlement using the allocation percentages shown on Appendix G, Schedule 5 of the Settlement. The refunds include interest at the Commission rate, in accordance with the Code of Federal Regulations, subpart F, section 154.501(d).

Columbia states that copies of its filing have been mailed to all affected customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: March 31, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–704 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP94–2–013]

Columbia Gas Transmission Corporation; Notice of Refund Report

March 24, 2004.

Take notice that on March 17, 2004, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Commission its Refund Report made to comply with the April 17, 1995, Settlement in Docket No. GP94–02, *et al.* as approved by the Commission on June 15, 1995 (Columbia Gas Transmission Corp., 71 FERC ¶ 61,337 (1995)).

On January 20, 2004, Columbia states that it made refunds, as billing credits and with checks, in the amount of $312,572.88. Columbia states that the refunds represent deferred tax refunds received from Trailblazer Pipeline Company and Overthrust Pipeline Company. Columbia asserts that these refunds were made pursuant to Article VIII, section E of the Settlement using the allocation percentages shown on Appendix G, Schedule 5 of the Settlement. Columbia explains that the refunds include interest at the Commission rate, in accordance with the Code of Federal Regulations, subpart F, section 154.501(d).

Columbia states that copies of its filing have been mailed to all affected customers and State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: March 31, 2004.

Linda Mitry

Acting Secretary

[FR Doc. E4–706 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–82–000]

El Paso Natural Gas Company; Notice of Petition for Abandonment of Service

March 24, 2004.

Take notice that on March 16, 2004, El Paso Natural Gas Company (El Paso), filed an application, pursuant to section 7(b) of the Natural Gas Act (NGA) and Section 157.5, *et seq.*, of the Commission's regulations under the NGA, requesting permission and approval to abandon the firm transportation service provided to North Bailey Gas Farmers' Cooperative Society of Muleshoe, Texas (North Bailey) under the Transportation Service Agreement (TSA) dated September 1, 1992, between El Paso and North Bailey.

In its application, El Paso states that by letter dated December 11, 2003, North Bailey, an FT–2 shipper on El Paso's system, gave El Paso notification of its intention to terminate its TSA with El Paso. Consistent with the termination provisions of the TSA, El Paso acknowledged and concurred with North Bailey's request to terminate the TSA and notified North Bailey that upon securing the necessary authorization from the Commission, El Paso would terminate the aforementioned TSA. Accordingly, El Paso is seeking Commission permission and approval to abandon the firm transportation service provided to North Bailey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: April 8, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–702 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–222–000]

Florida Gas Transmission Company Notice of Proposed Changes in FERC Gas Tariff

March 24, 2004.

Take notice that on March 19, 2004, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective April 1, 2004:

3rd Revised Sixty-First Revised Sheet No. 8A
3rd Revised Fifty-Third Revised Sheet No. 8A.01
3rd Revised Fifty-Third Revised Sheet No. 8A.02
Fourteenth Revised Sheet No. 8A.04
3rd Revised Fifty-Sixth Revised Sheet No. 8B
3rd Revised Forty-Ninth Revised Sheet No. 8B.01
3rd Revised Sixth Revised Sheet No. 8B.02

FGT states that the tariff sheets listed above are being filed pursuant to section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. FGT explains that pursuant to the terms of section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than 60 and at least seven days before the proposed effective date. FGT asserts that the instant filing comports with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–714 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–223–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

March 24, 2004.

Take notice that on March 19, 2004, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 the following tariff sheets, to become effective April 18, 2004:

Sixth Revised Sheet No. 1415
Fourth Revised Sheet No. 1416
First Revised Sheet No. 1417

Gulf South states that it proposes to modify section 7.7(a) of its FERC Gas Tariff to add two types of discounted transactions that would not be considered material deviations from its *pro forma* Service Agreements.

Gulf South states that copies of this filing have been served upon Gulf South's customers, State commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–715 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–374–000 and ER04–374–001]

Invenergy TN LLC; Notice of Issuance of Order

March 24, 2004.

Invenergy TN LLC (Invenergy) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity and energy at market-based rates. Invenergy also requested waiver of various Commission regulations. In particular, Invenergy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the Invenergy.

On March 23, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Invenergy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 22, 2004.

Absent a request to be heard in opposition by the deadline above, Invenergy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Invenergy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Invenergy's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–705 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–7–004]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

March 24, 2004.

Take notice that on March 19, 2004, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective June 27, 2003.

Natural states that the purpose of this filing is to comply with the Commission's Order on Rehearing and Compliance Filing issued herein on February 18, 2004 (Order). Natural states that the Order addressed Natural's prior compliance filing of April 30, 2003. Natural further states that this proceeding involves Natural's credit procedures and no tariff changes other than those required by the Order are reflected in this filing.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP03–7.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at

http://www.ferc.gov using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–711 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–220–000]

North Baja Pipeline, LLC; Notice of Tariff Filing

March 24, 2004.

Take notice that on March 18, 2004, North Baja Pipeline, LLC (NBP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 4, with an effective date of March 18, 2004.

NBP states that First Revised Sheet No. 4 was submitted in order to correct its tariff by reflecting the recourse rates that were previously approved by the Commission when NBP was granted a certificate of public convenience and necessity in Docket Nos. CP01–22–000, *et al.*

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–712 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–85–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Application

March 24, 2004.

Take notice that on March 18, 2004, Southern Star Central Gas Pipeline, Inc. (Southern Star), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP04–85–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon compression facilities located in Kiowa County, Kansas.

Southern Star states that it proposes to abandon seven 1600 horsepower engines, appurtenant facilities and auxiliary equipment at the Greensburg compressor station in Kiowa County, Kansas. Southern Star states that the Greensburg station was constructed in 1951 and used to compress gas on the Kansas-Hugoton 26-inch pipeline to Kansas City, Missouri. Southern Star states that the engines are now obsolete and no longer needed since the compression currently available at the Hugoton compressor station in Grant County, Kansas, is more than sufficient to move current contractual volume obligations as well as any anticipated future volumes. Southern Star proposes to abandon above-ground facilities by reclaim with the exception of wells, well houses and a microwave tower. Southern Star further states that below-ground piping will be abandoned in place. Southern Star asserts that the station site is and will continue to be owned and maintained by Southern Star.

Any questions concerning this application may be directed to David N. Roberts, Manager, Regulatory Affairs, at (270) 852–4654.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 14, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–703 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–221–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

March 24, 2004.

Take notice that on March 18, 2004, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with an effective date of April 25, 2004.

Tennessee states that the purpose of this filing is to establish the recourse rates applicable to incrementally priced lateral facilities to be constructed in Middlesex and Essex Counties, Massachusetts, (the Tewksbury-Andover Lateral Project), as described in Docket No. CP04–60, and to implement the

appropriate changes to Tennessee's Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–713 Filed 3–30–04; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–4–000]

Panel Member List for Hydropower Licensing Study Dispute Resolution; Errata Notice

March 24, 2004.

On March 12, 2004, the Commission issued a Notice Requesting Applications for Panel Member List for Hydropower Licensing Study Dispute Resolution. Footnote 1 is revised to read as follows:

See § 5.14 of the final rule, which may be viewed on the Commission's Web site at *http://www.ferc.gov/industries/hydropower/indus-act/ilp.asp*, and *see* excerpted attachment describing the formal dispute resolution process.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–716 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–78–000, et al.]

Mesquite Investors, L.L.C., et al.; Electric Rate and Corporate Filings

March 23, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Mesquite Investors, L.L.C., Dartmouth Power Holding Company, L.L.C., Mesquite Colorado Holdco, L.L.C., Vandolah Holding Company, L.L.C., and Northern Star Generation, L.L.C.

[Docket No. EC04–78–000]

Take notice that on March 19, 2004, Mesquite Investors, L.L.C., Dartmouth Power Holding Company, L.L.C., Mesquite Colorado Holdco, L.L.C., Vandolah Holding Company, L.L.C. and Northern Star Generation L.L.C. (jointly, Applicants) filed with the Commission an application pursuant to section 203 of the Federal Power Act for authorization to effectuate an indirect change of control over the facilities owned by Dartmouth Power Associates Limited Partnership, Front Range Power Company, L.L.C. and Vandolah Power Company, L.L.C. that are subject to the Commission's jurisdiction under the Federal Power Act. Applicants also requested authorization for an internal reorganization. Applicants also requested expedited consideration of the Application and privileged treatment for certain exhibits pursuant to 18 CFR 33.9 and 388.112.

Comment Date: April 9, 2004.

2. Williams Energy Marketing & Trading Company California Independent System Operator, et al. v. Cabrillo Power I L.L.C., et al.

[Docket Nos. ER02–91–001, ER02–303–001, and EL02–15–001]

Take notice that on March 19, 2004, Williams Energy Marketing & Trading Company, submitted a Compliance Refund Report, in response to the Commission's Order issued October 31, 2003 in Docket Nos. ER02–91–000, ER02–303–000, and EL02–15–000, 105 FERC ¶ 61,165 (2003).

Comment Date: April 9, 2004.

3. Public Service Company of Colorado

[Docket No. ER03–971–003]

Take notice that on March 18, 2004, Public Service Company of Colorado (PS Colorado) submitted a compliance filing pursuant to the order issued February 27, 2004, in Docket Nos. ER03–971–000, 001 and 002, 106 FERC ¶ 61,189 (2004).

PS Colorado states that a copy of this filing has been served on each person designated on the official service list in Docket No. ER03–971–000.

Comment Date: April 8, 2004.

4. Duke Energy Corporation

[Docket Nos. ER04–455–001 and ER04–506–001]

Take notice that on March 19, 2004, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing revised Network Integration Service Agreements (NITSAs) with (1) North Carolina Electric Membership Corporation and (2) Western Carolina Energy, LLC, as agent for Energy United Electric Membership Corporation, Piedmont Electric Membership Corporation, Blue Ridge Electric Membership Corporation, and Rutherford Electric Membership. Duke seeks an effective date for the revised NITSAs of January 1, 2004.

Comment Date: April 9, 2004.

6. Lowell Power LLC

[Docket No. ER04–557–001]

Take notice that on March 19, 2004, Lowell Power LLC (Seller) submitted to the Commission a revised electric rate schedule reflecting its name change from UAE Lowell Power LLC to Lowell Power LLC.

Comment Date: April 9, 2004.

7. California Independent System Operator Corporation

[Docket No. ER04–609–001]

Take notice that on March 19, 2004, the California Independent System Operator Corporation (ISO) submitted an errata filing concerning Amendment No. 58 to the ISO Tariff, which the ISO filed for acceptance by the Commission on March 2, 2004, in the Docket No. ER04–609–001.

The ISO states that the filing has been served on the California Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, all parties in the Amendment No. 54 proceeding (Docket No. ER03–1046), and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff.

Comment Date: April 9, 2004.

8. Reliant Energy Aurora, LP

[Docket No. ER04–662–000]

Take notice that on March 18, 2004, Reliant Energy Aurora, LP (Aurora) submitted for filing its FERC Rate

Schedule No. 1, pursuant to which Aurora will provide black start service to Commonwealth Edison Company. Aurora requests an effective date of May 19, 2004.

Comment Date: April 8, 2004.

9. Alabama Power Company

[Docket No. ER04–664–000]

Take notice that on March 19, 2004, Alabama Power Company (APCo) filed an amendment to the Amended and Restated Agreement for Partial Requirements and Complementary Services Between APCo and the Alabama Municipal Electric Authority (AMEA). The amendment sets forth APCo's and AMEA's agreement regarding the connection and parallel operation of an AMEA resource to APCo's electric system. An effective date of February 19, 2004 is requested.

Comment Date: April 9, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing 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). 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–717 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–41–000, et al.]

PECO Energy Power Company, et al.; Electric Rate and Corporate Filings

March 24, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PECO Energy Power Company

[Docket No. EG04–41–000]

On March 22, 2004, PECO Energy Power Company (PEPCo), 300 Exelon Way, Kennett Square, Pennsylvania 19348, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations 18 CFR 365 (2003).

PEPCo states that copies of the application have been served upon the Illinois Commerce Commission, the Pennsylvania Public Service Commission, and the Securities and Exchange Commission.

Comment Date: April 12, 2004.

2. Susquehanna Electric Company

[Docket No. EG04–42–000]

On March 22, 2004, Susquehanna Electric Company (Susquehanna Electric), 300 Exelon Way, Kennett Square, Pennsylvania 19348, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations 18 CFR 365 (2003).

Susquehanna Electric states that copies of the application have been served upon the Illinois Commerce Commission, the Pennsylvania Public Service Commission, and the Securities and Exchange Commission.

Comment Date: April 12, 2004.

3. Susquehanna Power Company

[Docket No. EG04–43–000]

On March 22, 2004, Susquehanna Power Company (Susquehanna Power), 300 Exelon Way, Kennett Square, Pennsylvania 19348, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations 18 CFR 365 (2003).

Susquehanna Power states that copies of the application have been served upon the Illinois Commerce Commission, the Pennsylvania Public Service Commission, and the Securities and Exchange Commission.

Comment Date: April 12, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing 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). 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov,* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–718 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of application for amendment of license and soliciting Comments, Protests, and Motions To Intervene

March 24, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project Number:* P–1494–269.

c. *Date Filed:* March 12, 2003.

d. *Applicant:* Grand River Dam Authority (GRDA).

e. *Name of Project:* Pensacola Project.

f. *Location:* The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. The project does not occupy any Federal or tribal lands. The proposed non-project use would occupy project lands and waters on Grand Lake O' the Cherokees in section 25, Township 25 North, Range 23 East in Delaware County at the mouth of Wolf Creek Cove near Grove, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contacts:* Mary Von Drehle or Teresa Hicks, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301. Phone: (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Steve Naugle at (202) 502–6061, or by e-mail: *steven.naugle@ferc.gov*.

j. *Deadline for Filing Comments and or Motions:* April 26, 2004.

k. *Description of the Application:* GRDA, the project licensee, requests Commission approval to permit Bill Goldner, d/b/a North Beach Development (North Beach), to install five floating docks with 250 covered boat slips and one boat ramp on Grand Lake. The boat-dock and boat-ramp facilities would be used by homeowners in a new residential community being developed by North Beach. GRDA has waived the dock-placement requirements of its lake rules and regulations for this commercial-use application.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, or for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–1494–269). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–708 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

March 24, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–2107–016.

c. *Date Filed:* December 16, 2003.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Poe Hydroelectric Project.

f. *Location:* On the North Fork Feather River in Butte County, near Pulga, California. The project includes 144 acres of lands of the Plumas National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Tom Jereb, Project Manager, Pacific Gas and Electric Company, P.O. Box 770000, N11D, San Francisco, California 94177, (415) 973–9320.

i. *FERC Contact:* John Mudre, (202) 502–8902 or *john.mudre@ferc.gov*.

j. *Deadline for Filing Motions to Intervene and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The project consists of: (1) The 400-foot-long, 60-foot-tall Poe Diversion Dam, including four 50-foot-wide by 41-foot-high radial flood gates, a 20-foot-wide by 7-foot-high small radial gate, and a small skimmer gate that is no longer used; (2) the 53-acre Poe Reservoir; (3) a concrete intake structure located on the shore of Poe Reservoir; (4) a pressure tunnel about 19 feet in diameter with a total length of about 33,000 feet; (5) a differential surge chamber located near the downstream end of the tunnel; (6) a steel underground penstock about 1,000 feet in length and about 14 feet in diameter;

(7) a reinforced concrete powerhouse, 175-feet-long by 114-feet-wide, with two vertical-shaft Francis-type turbines rated at 76,000 horsepower connected to vertical-shaft synchronous generators rated at 79,350 kVA with a total installed capacity of 143 MW and an average annual generation of 584 gigawatt hours; (8) the 370-foot-long, 61-foot tall, concrete gravity Big Bend Dam; (9) the 42-acre Poe Afterbay Reservoir; and (10) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–709 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

March 24, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-project use of project lands.

b. *Project No.:* 2146–104.

c. *Date Filed:* February 12, 2004.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Project.

f. *Location:* The project is located on the Coosa River, in Elmore County, Alabama and Floyd County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Alan Peeples 600 N. 18th Street, P.O. Box 2641, Birmingham, AL 35291–8180, (205) 257–1401.

i. *FERC Contact:* Hillary Berlin at 202–502–8915.

j. *Deadline for Filing Comments, Motions to Intervene and Protest:* April 26, 2004.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* The Alabama Power Company (applicant) is requesting authorization to allow the Shelby County Commission to withdraw up to 17.8 million gallons-per-day from the Lay Reservoir to meet municipal water supply demands. The proposal includes constructing two submerged ductile iron raw water mains, two air backwash mains, and two intake screens on Lay development project lands and waters. The applicant has consulted with the appropriate resource agencies, and their application includes a summary of the permits obtained for this proposal.

l. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the (eLibrary(link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–710 Filed 3–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Jim Woodruff Project

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of proposed rate adjustment.

SUMMARY: Southeastern proposes new rate schedules JW–1–H and JW–2–E to replace Wholesale Power Rate Schedules JW–1–G and JW–2–D for a five-year period from September 20, 2004 to September 19, 2009. Rate schedule JW–1–H is applicable to Southeastern power sold to existing preference customers in the Florida Power Corporation Service area. Rate schedule JW–2–E is applicable to Florida Power Corporation (Progress Energy).

Opportunities will be available for interested persons to review the present rates, the supporting studies and to participate in a hearing and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before June 29, 2004. A public information and public comment forum will be held at the Doubletree Hotel, in Tallahassee, Florida, at 10:00 a.m. on May 6, 2004. Persons desiring to speak at the forum must notify Southeastern at least seven (7) days before the forum is scheduled so that a list of forum participants can be prepared. Others present may speak if time permits. Persons desiring to attend the forum should notify Southeastern at least seven (7) days before the forum is scheduled. If Southeastern has not been notified by close of business on April 29, 2004, that at least one person intends to be present at the forum, the forum will be canceled with no further notice.

ADDRESSES: Written comments should be submitted to: Charles Borchardt, Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711. The public comment Forum will meet at the Doubletree Hotel Tallahassee, 105 South Adams Street, Tallahassee, Florida, 32301 Phone (850) 224–5000.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance and Marketing Division, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3800.

SUPPLEMENTARY INFORMATION: Existing rate schedules are supported by a July 2002 Repayment Study and other supporting data contained in FERC Docket No. EF02–3031–000. A repayment study prepared in March 2004 shows that the existing rates are not adequate to meet repayment criteria. A revised repayment study with a revenue increase of $2,182,000, or 35.5 percent, for Fiscal Years 2004 to 2007 and $190,000, or 3.1 percent, for fiscal year 2008 through the end of the study, demonstrates that all costs are paid within their repayment life. The increase is primarily due to purchased power expenses associated with higher support capacity requirements and Southeastern's obligation to repay all of the original investment and associated interest for the project within the time period covered by the proposed repayment study. Southeastern is proposing to raise rates to recover this additional revenue.

In the proposed rate schedule JW–1–H, which is available to preference customers, the capacity charge has been raised from $5.79 per kilowatt per month to $7.75 per kilowatt per month for Fiscal Years 2005, 2006, and 2007, and $5.87 in Fiscal Year 2008 and thereafter. The energy charge has been increased from 16.25 mills per kilowatt-hour to 22.25 mills per kilowatt-hour for Fiscal Years 2005, 2006, and 2007, and 16.85 mills per kilowatt-hour in Fiscal Years 2008 and thereafter. Rate schedule JW–2–E, available to Florida Power Corporation, raises the rate from 70 percent of the Company's fuel cost to 95 percent of the Company's fuel cost for Fiscal Years 2005, 2006, and 2007, and 75 percent for Fiscal Year 2008 and thereafter.

The studies are available for examination at 1166 Athens Tech Road, Elberton, Georgia, 30635–6711, as is the March 2004 repayment study and the proposed Rate Schedules.

Dated: March 18, 2004

Charles A. Borchardt,

Administrator.

[FR Doc. 04–7203 Filed 3–30–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0017, FRL–7639–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Recordkeeping Requirements for Producers of Pesticides under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA ICR Number 0143.08, OMB Control Number 2070–0028

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 1, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0017, to EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov*, or by mail to: Enforcement and Compliance Docket and Information Center, Environmental Protection Agency, Mail Code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stephen Howie, tel: (202) 564–4146; fax: (202) 564–0085; e-mail: *howie.stephen@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OECA–2004–0017, which is available for public viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 564–1927. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://*

www.epa.gov/edocket. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are those which produce pesticides.

Title: Recordkeeping Requirements for Producers of Pesticides under section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (FIFRA). ICR Number 0143.08. OMB Control Number 2070–0028. Expires 10/31/04.

Abstract: Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) states that the Administrator of the Environmental Protection Agency may prescribe regulations requiring producers, registrants and applicants for registration to maintain such records with respect to their operations and the effective enforcement of this Act as the Administrator determines are necessary for the effective enforcement of FIFRA and to make such records available for inspection and copying as specified in the statute. The regulations at 40 CFR part 169 (Books and Records of Pesticide Production and Distribution) specify the following records that producers must keep and the disposition of those records: Production data for pesticides, devices, or active ingredients (including pesticides produced pursuant to an experimental use permit); receipt by the producer of pesticides, devices, or active ingredients used in producing pesticides; delivery, moving, or holding of pesticides; inventory; domestic advertising for restricted use pesticides; guarantees; exports; disposal; human testing; and tolerance petitions. Additionally, section 8 gives the Agency inspectional authority to monitor the validity of research data (including raw data), including data developed in accordance with Good Laboratory Practice Standards, and used to support pesticide registration. The EPA or States/Indian Tribes operating under Cooperative Enforcement Agreements make use of the records required by section 8 through periodically inspecting them to help determine FIFRA compliance of those subject to the provisions of the Act. In addition, producers themselves make use of such records in order to comply with reporting requirements under FIFRA section 7 and 40 CFR 167.85. (Those reporting requirements are addressed in the ICR entitled ''Pesticide Report for Pesticide-Producing Establishments,'' OMB Docket Number 2000–0029.)

Since most of the records required to be maintained are likely to be collected and maintained in the course of good business practice, the records are generally stored on site at either the establishment producing the pesticide or at the place of business of the person holding the registration. However, the registrant may decide to transfer records relating to disposal of pesticides and human testing to EPA for storage because of a twenty year retention requirement for the records. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

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

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden: The average annual burden to the industry over the next three years is estimated to be 2 person hours per response.

Respondents/affected entities: 12,953.

Estimated number of respondents: 12,953.

Frequency of responses: 1.

Estimated total annual hour burden: 25,906.

There are no capital/startup costs or operating and maintenance (O&M) costs associated with this ICR since all equipment associated with this ICR is present as part of ordinary business practices.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 19, 2004.

Richard Colbert,

Director, Agriculture Division, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 04–6694 Filed 3–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0357; FRL–7340–6]

Certification of Pesticide Applicators; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Certification of Pesticide Applicators (EPA ICR No. 0155.08, OMB Control No. 2070–0029). This is a request to renew an existing ICR that is currently approved and due to expire on August 31, 2004. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPP–2003–0357, must be received on or before June 1, 2004.

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

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you run an EPA-approved certified pesticide applicator program for restricted use pesticides or are a certified pesticide applicator using restricted use pesticides that must comply with requirements of section 11 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 CFR part 171. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., Establishments growing crops mainly for food and fiber.
- Animal production (NAICS 112), e.g., Establishments primarily engaged in keeping, grazing, breeding, or feeding animals.
- Exterminating and pest control services (NAICS 561710), e.g., Establishments primarily engaged in exterminating and controlling birds, mosquitoes, rodents, termites, and other insects and pests. Establishments providing fumigation services are included in this industry.
- Environmental protection program administration (NAICS 924110), e.g., Government establishments primarily engaged in the administration, regulation, enforcement, and coordination of solid waste management, water and air pollution control and prevention, flood control, drainage development and water resource consumption, or toxic waste removal and cleanup programs and coordination of these activities at intergovernmental levels.
- Regulation of agricultural marketing and commodities (NAICS 926140), e.g., Government establishments primarily engaged in the planning, administration, and coordination of agricultural programs for production, marketing, and utilization.
- Nursery, garden center, and farm supply stores (NAICS 444220), e.g., Establishments primarily engaged in retailing nursery and garden products, such as trees, shrubs, plants, seeds, bulbs, and sod that are predominantly grown elsewhere.
- Farm supplies merchant wholesalers (NAICS 4224910), e.g., Establishments primarily engaged in the merchant wholesale distribution of farm supplies, such as animal feeds, fertilizers, agricultural chemicals, pesticides, plant seeds, and plant bulbs.

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 above 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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in sections 3(d) and 11 of FIFRA and 40 CFR part 171. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Copies of this Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0357. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

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

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 II.A. 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.

III. How Can I Respond to this Action?

A. 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 III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0357. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0357. 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 III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0357.

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, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0357. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

B. 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**.

C. What Should I Consider when 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 collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits

comments and information to enable it to:

1. Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

5. EPA's Office of Pesticide Programs is specifically looking for comments related to states' requirements for commercial applicator recordkeeping. To determine if the Agency has correctly calculated the respondent burden estimated for this business sector, the Agency would like information which indicates whether or not states would require the following recordkeeping regardless of the Agency's requirements contained in 40 CFR 171.11(c)(7)(i)(A)–(H) (see list under question 6 below). In the absence of a federal requirement, would states continue to require this recordkeeping?

6. In addition, the Agency would like information about the business activities of the commercial pesticide applicators and firms sector. Specifically, EPA is looking for information related to ''usual and customary'' business practices for commercial pesticide applicators. To determine if the Agency has correctly calculated the respondent burden estimated for this business sector, the Agency would like information which identifies whether or not commercial applicators would collect the following information regardless of the Agency's or states' reporting requirements, as contained in 40 CFR 171.11(c)(7)(i)(A)–(H). This information includes:

a. Name and address of the person for whom the pesticide was applied.

b. Location of the pesticide application.

c. Target pest(s).

d. Specific crop or commodity, as appropriate, and site to which the pesticide was applied.

e. Year, month, day, and time of application.

f. Trade name and EPA registration number of the pesticide applied.

g. Amount of the pesticide applied and percentage of active ingredient per unit of pesticide used.

h. Type and amount of the pesticide disposed of, method of disposal, date(s) of disposal, and location of the disposal site.

Commenters should identify whether or not they are a commercial pesticide applicator or firm and identify by letter, e.g., a., b., c., d., e., f., g., and/or h., which records the commenter considers to be retained as part of usual and customary business practices.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Certification of Pesticide Applicators.

ICR numbers: EPA ICR No. 0155.08, OMB Control No. 2070–0029.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire on August 31, 2004.

Abstract: This information collection request is designed to provide EPA with the authority to administer and oversee training and certification programs for pesticide applicators in accordance with FIFRA and to enable EPA to collect certain data regarding these programs from states, Indian tribes, and Federal Agencies with EPA-approved certification plans.

FIFRA allows EPA to classify a pesticide as ''restricted use'' if the pesticide meets certain toxicity or risk criteria. Restricted use pesticides, because of their potential to harm persons of the environment, may be applied only by a certified applicator or by a person under their direct supervision. A person must meet certain standards of competency to become a certified applicator. Participating states develop certified applicator programs which must be approved by the Agency before they can be implemented. In non-participating states, EPA administers the certification program.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''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. For this collection it includes the time needed for reading the regulations, planning the necessary data collection activities, analyzing data, generating reports and completing other required paperwork, and storing, filing, and maintaining the data.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 1,311,368 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: States, Federal Agencies, and Indian tribes; pesticide dealers, applicators in Colorado and commercial pesticide applicators and firms.

Estimated total number of potential respondents: 424,398.

Frequency of response: On occasion or annually, depending on the category of respondent.

Estimated total/average number of annual responses for each respondent: 1–3.

Estimated total annual burden hours: 1,311,368.

Estimated total annual burden costs: $25,108,623.

VI. Are There Changes in the Estimates from the Last Approval?

The previous ICR included substantial federal burden for implementing significant changes to the regulation. Those changes were not realized; therefore, the anticipated increases in the federal burden are not included in this ICR.

The burden compared to the previous ICR has increased slightly, from 1,285,865 to 1,311,368 hours, due to a small increase in the number of certified commercial applicators. Burden from programs administered by EPA increased, as the Navajo Indian Country plan for applicators is expected to initiate soon, and the number of applicators certifying has increased in the counts. The cost burden has increased as well, as a result of the increased numbers of certified commercial applicators and from increased labor rates and inflation, from $21,456,058 to $25,108,623.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: March 18, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–6698 Filed 3–30–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0070; FRL–7348–4]

Carfentrazone-ethyl; Notice of Filing Pesticide Petitions 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 pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket indentification (ID) number OPP–2004–0070, must be received on or before April 30, 2004.

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

FOR FURTHER INFORMATION CONTACT: 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)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0070. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

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

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that

is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0070. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0070. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0070.

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, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0070. 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 pesticide petitions 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 these petitions contain 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 petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

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

Dated: March 22, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

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

FMC Corporation and IR–4

PP 2F6468 and 3E6746

EPA has received pesticide petitions (2F6468 and 3E6746) from FMC Corporation and IR–4, 1735 Market

Street, Philadelphia, PA 19103, and Technology Center, of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzene-propanoate) and the metabolite carfentrazone-ethyl chloropropionic acid (alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on the raw agricultural commodities: Grape at 0.1 part per million (ppm); tuberous and corm vegetables, crop subgroup 1C at 0.1 ppm; citrus, crop group 10 at 0.1 ppm; pome fruit, crop group 11 at 0.1 ppm; stone fruit, crop group 12 at 0.1 ppm; tree nut, crop group 14 at 0.1 ppm; vegetable, root and tuber, crop group 1 at 0.1 ppm; vegetable, leaves of root and tuber, crop group 2 at 0.1 ppm; vegetable, bulb, group 3 at 0.1 ppm; vegetable, leafy, except brassica, group 4 at 0.1 ppm; vegetable, brassica, leafy, group 5 at 0.1 ppm; vegetable, legume, group 6 at 0.1 ppm; vegetable, foliage of legume, group 7 at 0.1 ppm; vegetable, cucurbit group 9 at 0.1 ppm; berry group 13 at 0.1 ppm; herbs and spice group 19 at 0.1 ppm; rapeseed, seed at 0.1 ppm; rapeseed, Indian at 0.1 ppm; mustard seed, Indian at 0.1 ppm; mustard seed, field at 0.1 ppm; mustard seed, black at 0.1 ppm; flax, seed at 0.1 ppm; sunflower, seed at 0.1 ppm; safflower, seed at 0.1 ppm; crambe, seed at 0.1 ppm; borage, seed at 0.1 ppm; strawberry at 0.1 ppm; sugarcane at 0.1 ppm; peanut at 0.1 ppm; grass, forage, fodder, and hay, group 17 at 0.1 ppm; vegetables, crop group 8 at 0.1 ppm; okra at 0.1 ppm; tropical tree fruit at 0.1 ppm; pistachio at 0.1 ppm; lingonberry at 0.1 ppm; juneberry at 0.1 ppm; salal at 0.1 ppm; kiwi fruit at 0.1 ppm; pomegranate at 0.1 ppm; fig at 0.1 ppm; olive at 0.1 ppm; date at 0.1 ppm; banana at 0.1 ppm; persimmon at 0.1 ppm; pawpaw at 0.1 ppm; cacao at 0.1 ppm; palm heart at 0.1 ppm; tea at 0.1 ppm; Indian mulberry at 0.1 ppm; vanilla at 0.1 ppm; coconut at 0.1 ppm; coffee at 0.1 ppm; ti at 0.1 ppm; wasabi at 0.1 ppm; stevia at 0.1 ppm; cactus at 0.1 ppm; strawberry pear at 0.1 ppm; guayule at 0.1 ppm; kava at 0.1 ppm; sweet sorghum at 0.1 ppm; and horseradish at 0.1 ppm; almond hulls at 0.2 ppm; and grass, forage, fodder, and hay, group 17 at 12 ppm. EPA has determined that the petitions contain 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 petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of carfentrazone-ethyl in plants is adequately understood. Corn, wheat, radish, and soybean metabolism studies with carfentrazone-ethyl have shown uptake of material into plant tissue with no significant movement into grain, root, or seeds. All four plants extensively metabolized carfentrazone-ethyl and exhibited a similar metabolic pathway. The residues of concern are the combined residues of carfentrazone-ethyl and carfentrazone-ethyl-chloropropionic acid.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of carfentrazone-ethyl and its metabolites in or on food with a limit of quantitation (LOQ) that allows monitoring of food with residues at or above the levels set or proposed in the tolerances. The analytical method for carfentrazone-ethyl involves separate analyses for the parent and its metabolites. The parent is analyzed by gas chromatography/electron capture detector (GC/ECD). The metabolites are derivatized with boron trifluoride and acetic anhydride for analysis by gas chromatography/mass spectrometry (GC/MSD) using selective ion monitoring.

3. *Magnitude of residues.* Trials were conducted on several crop groups listed above. Carfentrazone-ethyl (Aim effective concentration (EC), Aim estimated water (EW), or Aim herbicide) was applied as a broadcast application to soil at a target rate of 0.032 lb active ingredient/acre 24–48 hours prior to planting. The second application was a post-emergent banded application at a target rate of 0.064 lb active ingredient/acre within 12–24 hours of harvest with a hooded sprayer to the row middles with the hood riding along the soil surface. Treated and untreated mature samples were collected at crop maturity. Additional samples from one trial each of several crops were collected to establish a residue decline pattern. Additional samples from one trial each of several crops were collected for processing studies for subsequent analysis of processed parts. Residues of carfentrazone-ethyl and its metabolites in the crop group samples were detected in low levels ranging from not detected (ND) to 0.06 ppm with a pre-harvest interval (PHI) of 1–day. Residues were not found in the exaggerated rate samples, and therefore, processing was not conducted for most of the crops. Residue values <0.05 ppm are estimated values less than the LOQ and greater than the limit of detection (LOD) (0.01–0.02 ppm).

For berries, trials were conducted as follows: For blueberry, the first application of carfentrazone-ethyl (aim EC, Aim EW or Aim herbicide), was a dormant post-direct application to the base of tree trunks at a targeted rate of 0.032 lb active ingredient/acre and the second application was an indirect hooded sprayer application at a target banded rate of 0.064 lb active ingredient/acre 12–24 hours prior to harvest for a total of 0.096 lb active ingredient/acre. For blackberry (Aim EC) and raspberry (Aim EW) carfentrazone-ethyl was applied four times as a post-direct application each at a target rate of 0.1 lb active ingredient/acre for a total of 0.4 lb active ingredient/acre with a PHI of 15 days. Treated and untreated mature samples were collected at crop maturity. Additional samples from one blueberry trial were collected to establish a residue decline pattern. Residues were not detected (<0.01 ppm) in any of the samples.

For grape, tuberous, and corm vegetables, citrus fruits, pome fruits, stone fruits, tree nuts, and grass, trials were conducted as follows: Carfentrazone-ethyl (aim EC, Aim EW or aim herbicide) was applied three times as a broadcast foliar application at a target rate of 0.031 lb active ingredient/acre for a total target rate of 0.093 lb active ingredient/acre. Additional samples were collected from one trial each to establish a residue decline pattern and for processing studies. For grass, forage samples were collected on 0 day, hay was cut on 0 day and dried for 0–14 days after the third application of the test substance. The maximum total residue for carfentrazone-ethyl and its major metabolites in/on forage and hay was 5.59 and 10.64 ppm, respectively. Low level residues were found in the control samples in 7 of the 12 trials ranging from an estimated 0.02 ppm to 0.07 ppm. Residues of carfentrazone-ethyl and its metabolites in the crop/group samples were detected in low levels ranging from ND to <LOQ except for residues of almond hulls. Residue values <0.05 ppm are estimated values less than the LOQ and greater than the LOD (0.01–0.04 ppm). Raw agricultural commodities were harvested at the appropriate time and subsequent analyses determined that the residues of carfentrazone-ethyl and its

metabolites would not exceed the proposed tolerances.

B. Toxicological Profile

1. *Acute toxicity*. Carfentrazone-ethyl demonstrates low oral, dermal, and inhalation toxicity. The acute oral lethal dose $(LD)_{50}$ value in the rat was greater than 5,000 milligrams/kilogram (mg/kg), the acute dermal LD_{50} value in the rat was greater than 4,000 mg/kg and the acute inhalation lethal concentration $(LC)_{50}$ value in the rat was greater than 5.09 milligrams/Liter (mg/L/4h). Carfentrazone-ethyl is non-irritating to rabbit skin and minimally irritating to rabbit eyes. It did not cause skin sensitization in guinea pigs. An acute neurotoxicity study in the rat had a systemic no observed adverse effect level (NOAEL) of 500 mg/kg based on clinical signs and decreased motor activity levels; the NOAEL for neurotoxicity was greater than 2,000 mg/kg highest dose tested (HDT) based on the lack of neurotoxic clinical signs or effects on neuropathology.

2. *Genotoxicity*. Carfentrazone-ethyl did not cause mutations in the Ames assay with or without metabolic activation. There was a positive response in the chromosome aberration assay without activation but a negative response with activation. The mouse micronucleus assay (an *in vivo* test which also measures chromosome damage), the chinese hampster ovary/hypoxanthine guanine phophoribosyl transferase (CHO/HGPRT) forward mutation assay and the unscheduled deoxyribonucleic acid (DNA) synthesis assay were negative. The overwhelming weight of the evidence supports the conclusion that carfentrazone-ethyl is not genotoxic.

3. *Reproductive and developmental toxicity*. Carfentrazone-ethyl is not considered to be a reproductive or a developmental toxin. In the 2–generation reproduction study, the no observe effect level (NOEL) for reproductive toxicity was greater than 4,000 ppm (greater than 323 to greater than 409 mg/kg/day). In the developmental toxicity studies, the rat and rabbit maternal NOELs were 100 mg/kg/day and 150 mg/kg/day, respectively. The developmental NOEL for the rabbit was greater than 300 mg/kg/day, which was the HDT and for the rat the NOEL was 600 mg/kg/day based on increased litter incidences of thickened and wavy ribs at 1,250 mg/kg/day. These two findings (thickened and wavy ribs) are not considered adverse effects of treatment but related delays in rib development which are generally believed to be reversible.

4. *Subchronic toxicity*. The 90–day feeding studies were conducted in mice, rats, and dogs with carfentrazone-ethyl. The NOEL for the mouse study was 4,000 ppm (571 mg/kg/day), for the rat study was 1,000 ppm (57.9 mg/kg/day for males; 72.4 mg/kg/day for females) and for dogs was 150 mg/kg/day. A 90–day subchronic neurotoxicity study in the rat had a systemic NOEL of 1,000 ppm (59.0 mg/kg/day for males; 70.7 mg/kg/day for females) based on decreases in body weights, body weight gains and food consumption at 10,000 ppm; the neurotoxicity NOEL was greater than 20,000 ppm (1,178.3 mg/kg/day for males; 1,433.5 mg/kg/day for females) which was the HDT.

5. *Chronic toxicity*. Carfentrazone-ethyl is not carcinogenic to rats or mice. A 2–year Combined Chronic Toxicity/Oncogenicity study in the rat was negative for carcinogenicity and had a chronic toxicity NOEL of 200 ppm (9 mg/kg/day) for males and 50 ppm (3 mg/kg/day) for females based on red fluorescent granules consistent with porphyrin deposits in the liver at the 500 and 200 ppm levels, respectively. An 18–month oncogenicity study in the mouse had a carcinogenic NOEL that was greater than 7,000 ppm (>1,090 mg/kg/day for males; >1,296 mg/kg/day for females) based on no evidence of carcinogenicity at the HDT. A 1–year oral toxicity study in the dog had a NOEL of 50 mg/kg/day based on isolated increases in urine porphyrins in the 150 mg/kg/day group (this finding was not considered adverse). Using the Guidelines for Carcinogen Risk Assessment, carfentrazone-ethyl should be classified as group ''E'' for carcinogenicity--no evidence of carcinogenicity--based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18–month feeding study in mice and a 2–year feeding study in rats at the dosage levels tested. The doses tested are adequate for identifying a cancer risk. Thus, a cancer risk assessment is not necessary.

6. *Animal metabolism*. The metabolism of carfentrazone-ethyl in animals is adequately understood. Carfentrazone-ethyl was extensively metabolized and readily eliminated following oral administration to rats, goats, and poultry via excreta. All three animals exhibited a similar metabolic pathway. As in plants, the parent chemical was metabolized by hydrolytic mechanisms to predominantly form carfentrazone-ethyl- chloropropionic acid, which was readily excreted.

7. *Endocrine disruption*. An evaluation of the potential effects on the endocrine systems of mammals has not been determined; however, no evidence of such effects was reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that carfentrazone-ethyl causes endocrine effect.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Acute dietary*. Based on the available toxicity data, EPA has established an acute reference dose (RfD) for carfentrazone-ethyl of 5 mg/kg/day. The acute RfD for carfentrazone-ethyl is based on acute neurotoxicity study in rats with a threshold NOEL of 500 mg/kg/day and an uncertainty factor (UF) of 100.

ii. *Chronic dietary*. Based on the available toxicity data, EPA has established a RfD for carfentrazone-ethyl of 0.03 mg/kg/day. The RfD for carfentrazone-ethyl is based on a 2–year chronic toxicity/carcinogenicity study in rats with a threshold NOEL of 3 mg/kg/day and an UF of 100. For purposes of assessing the potential chronic dietary exposure, a Tier I dietary risk assessment was conducted based on the Theoretical Maximum Residue Contribution (TMRC) from the established and proposed tolerances for carfentrazone-ethyl. The tolerances are as follows: 0.1 ppm in or on caneberry subgroup; 0.20 ppm in or on corn, field, forage; 0.20 ppm in or on corn, sweet, forage; 0.1 ppm corn, sweet, kernel, plus cob with husk removed; 10 ppm in or on cotton, gin by products; 0.20 ppm in or on cotton, undelinted seed; 0.60 ppm in or on cotton, hulls; 0.35 ppm in or on cotton, meals; 1.0 ppm in or on cotton, refined oil; 1.0 ppm in or on grain, cereal, forage (excluding corn and sorghum); 0.30 ppm in or on grain, cereal, hay; 0.10 ppm in or on grain, cereal, group; 0.30 ppm in or on grain, cereal, stover; 0.1 ppm in or on grain, cereal, straw (excluding rice); 1.0 ppm in or on rice, straw; 0.20 ppm in or on sorghum, forage and 0.1 ppm in or on soybean, seed. (The TMRC is a ''worse case'' estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that pesticide residues are present at the tolerance levels). In conducting this exposure assessment, the following very conservative assumptions were made - 100% of soybean, cotton, caneberry, and cereal grains will contain carfentrazone-ethyl residues and those residues would be at the level of the tolerance which result in an over estimate of human exposure.

2. i. *Food*. Dietary exposure from the proposed uses would account for 1.0% or less of the acute population adjusted

dose (PAD) in subpopulations (including infants and children). Dietary exposure from the proposed uses would account for 15% or less of the chronic PAD in subpopulations (including infants and children).

ii. *Drinking water*. Acute drinking water levels of concern (DWLOC) are estimated at 175,000 mg/kg/day, surface water estimated environmental concentration (EEC) at 21.4 parts per billion (ppb) and ground water EEC at 13.4 ppb for U.S. subpopulations - all seasons. Chronic DWLOC is estimated at 998 mg/kg/day, surface water EEC at 20.2 ppb, and ground water EEC at 13.4 ppb for U.S. subpopulations - all seasons.

3. *Non-dietary exposure*. No specific worker exposure tests have been conducted with carfentrazone-ethyl. The potential for non-occupational exposure to the general population has not been fully assessed.

D. Cumulative Effects

EPA is also required to consider the potential for cumulative effects of carfentrazone-ethyl and other substances that have a common mechanism of toxicity. EPA consideration of a common mechanism of toxicity is not appropriate at this time since EPA does not have information to indicate that toxic effects produced by carfentrazone-ethyl would be cumulative with those of any other chemical compounds; thus only the potential risks of carfentrazone-ethyl are considered in this exposure assessment.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions described and based on the completeness and reliability of the toxicity data, the aggregate exposure to carfentrazone-ethyl will utilize less than 1% of the acute PAD and less than 15% of the chronic PAD for the U.S. subpopulations. EPA generally has no concern for exposures below 100% of the acute PAD or chronic PAD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result from aggregate exposure to residues of carfentrazone-ethyl, including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of carfentrazone-ethyl, EPA considers data from developmental toxicity studies in the rat and rabbit and the 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects on the reproductive capacity of males and females exposed to the pesticide. Developmental toxicity was not observed in developmental toxicity studies using rats and rabbits. In these studies, the rat and rabbit maternal NOELs were 100 mg/kg/day and 150 mg/kg/day, respectively. The developmental NOEL for the rabbit was greater than 300 mg/kg/day, which was the HDT and for the rat was 600 mg/kg/day based on increased litter incidences of thickened and wavy ribs. These two findings are not considered adverse effects of treatment but related delays in rib development, which are generally believed to be reversible.

In a 2–generation reproduction study in rats, no reproductive toxicity was observed under the conditions of the study at 4,000 ppm, which was the HDT.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base relative to prenatal and postnatal effects for children is complete and an additional UF is not warranted. Therefore at this time, the RfD of 0.03 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

F. International Tolerances

There are no Codex Alimentarius Commission (Codex) maximum residue levels (MRLs) for carfentrazone-ethyl on any crops at this time. However, MRLs for small grains in Europe have been proposed which consist of carfentrazone-ethyl and carfentrazone-ethyl-chloropropionic acid.

[FR Doc. 04–7078 Filed 3–30–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0006; FRL–7342–4]

Reynoutria Sachalinensis; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

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

DATES: Comments, identified by docket identification (ID) number OPP–2004–0006, must be received on or before April 30, 2004.

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

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; e-mail address: *benmhend.driss@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0006. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the

official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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 EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0006. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0006. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0006.

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, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0006. 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: March 24, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

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

Interregional Research Project Number 4 (IR–4)

PP 3E6751

EPA has received a pesticide petition (3E6751) from Interregional Research Project Number 4 (IR–4), New Jersey Agricultural Experiment Station, Technology Center of New Jersey, Technology Centre of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, on behalf of KHH BioSci Inc., 920 Campus Drive, Suite 101, Raleigh, NC 27606 proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d) to establish a tolerance exemption for the biochemical pesticide *Reynoutria sachalinensis* in all food commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, the aforesaid IR–4, on behalf of KHH BioSci Inc., has submitted the following summary of information, data, and arguments in support of the pesticide petition. This summary was prepared by IR–4 on behalf of KHH BioSci Inc., and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Reynoutria sachalinensis, is an extract of a naturally occurring plant of that botanical name, and is proposed for use to reduce the incidence of plant diseases. When applied just prior to disease incidence, *Reynoutria sachalinensis* induces plant defenses making treated plants more resistant to certain diseases. *Reynoutria sachalinensis* is applied to ornamental and food crops in a 0.5 to 1% solution at a rate of up to 100 gallons of solution per acre. The pesticide is registered for use in non-food crops (EPA Registration # 72179–2). This petition proposes to establish a permanent exemption from the requirement of a tolerance for residues of *Reynoutria sachalinensis* in or on all food commodities.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The pesticide and corresponding residues are identified as *Reynoutria sachalinensis*, a plant extract. Residues resulting from the use of *Reynoutria sachalinensis* extract on food crops could be difficult to characterize since many of the same phenolic compounds promoted by *Reynoutria sachalinensis* extract, are already present in vegetables. A waiver has been requested for nature of the residue studies on *Reynoutria sachalinensis* extract.

2. *Magnitude of residue at the time of harvest and method used to determine the residue. Reynoutria sachalinensis* is a plant extract. An analytical method for detecting residues was not submitted as this petition proposes an exemption from the requirement of a tolerance.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method for enforcement purposes to detect residues was not submitted as this petition proposes an exemption from the requirement of a tolerance.

C. Mammalian Toxicological Profile

Acute toxicity studies on the technical active ingredient (manufacturing use product) and formulated material have been submitted and reviewed in support of the existing product registration for

greenhouse, non-food use. These studies and EPA's conclusions are summarized below.

An acute oral toxicity test was performed using the manufacturing use product, Milsana Bioprotectant (technical active ingredient). Based on a lack of mortality observed in albino rats, the oral lethal dose $(LD)_{50}$ of the technical active ingredient product, was >5,000 milligrams/kilogram (mg/kg); toxicity category IV.

An acute oral toxicity study of Milsana Bioprotectant Concentrate (Milsana®, a formulated end-use product) was conducted. Based on a lack of mortality observed in albino rats, the oral LD_{50} of the end-use product was >5,000 mg/kg; toxicity category IV.

An acute dermal toxicity study was conducted using the manufacturing use product, Milsana Bioprotectant (technical active ingredient). Based on a lack of mortality observed in albino rabbits, the LD_{50} was >2,000 mg/kg; toxicity category III.

An acute dermal toxicity study of Milsana Bioprotectant Concentrate (Milsana®, formulated end-use product) was conducted. Based on a lack of mortality observed in albino rabbits, the LD_{50} was >2,000 mg/kg; toxicity category III.

An acute inhalation toxicity study of Milsana®, a formulated end-use product was conducted in albino rats. The conclusion was that the lethal concentration $(LC)_{50}$ is >2.6 milligram/Liter (mg/L); toxicity category IV.

An acute eye irritation study of Milsana Bioprotectant Concentrate Milsana®, a formulated end-use product) was conducted. The study demonstrated that a dose of 0.1 milliliter (mL) resulted in the highest average ocular irritation index was 23.3, recorded 1–hour after instillation of the test substance into the eyes of albino rabbits. This classifies Milsana® as moderately irritating with a toxicity category II. However, when the technical grade of the active ingredient (TGAI) was used as a test material, the highest average ocular irritation recorded was 12.2, toxicity category III. Therefore, it is reasonable to conclude that the formulated end use product contains an eye irritant.

An acute dermal irritation study of Milsana Bioprotectant Concentrate (Milsana®, formulated end-use product) was conducted in albino rabbits. The conclusion was that dermal application of 0.5 gram (g) of liquid product did not cause any dermal irritation symptoms up to 72 hours post dosing; toxicity category IV.

A skin sensitization study of Milsana Bioprotectant Concentrate (Milsana ®, formulated end-use product) was conducted with albino guinea pigs. The conclusion was that the test substance is not considered to be a contact sensitizer in guinea pigs by the Buehler method.

Based on these studies, we concluded that *Reynoutria sachalinensis* does not present an acute toxicity risk to mammals. Since no adverse effects were observed in the Tier I acute toxicity studies, data waivers were requested for the following toxicology studies: Genotoxicity study, immune response, mutagenicity, chronic toxicity, and developmental toxicity. In addition, the following rationales were used as a basis for the data waiver requests:

1. Researchers, manufacturers, and other workers have worked with *Reynoutria sachalinensis* and it is currently used in greenhouse production without report of any adverse health effects.

2. *Reynoutria sachalinensis* is widely distributed in the environment.

3. The label will require applicators and other handlers to wear personal protective equipment (PPE), to mitigate against exposure.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Dietary exposure to *Reynoutria sachalinensis*, should not be of concern due to the low toxicity shown in the acute toxicity studies previously submitted. In addition, *Reynoutria sachalinensis* is widespread throughout the United States, Europe, and Asia and is already found in foods, animals feeds, and medicines (MRID 44821916). *Reynoutria sachalinensis* activates phenolics in plants which can be found in a wide variety of commonly consumed vegetables and herbs. No adverse health issues for man, animals, or plants have been associated with the plant. Exposure to the active ingredient from its pesticidal use is anticipated to be very low due to the low application rate which results in negligible residues compared to consumption of *Reynoutria sachalinensis* as a food.

ii. *Drinking water. Reynoutria sachalinensis* is a naturally occurring plant that is already widespread in the environment. It commonly grows along rivers and is not considered to be a risk to drinking water. Percolation through soil and municipal treatment of drinking water would reduce the possibility of exposure of *Reynoutria sachalinensis* through the drinking water. The formulated end use product is an extract of this plant, and any residues that may result from its pesticidal use would be expected to behave similarly to leachates of leaf litter and plant exudates in the environment.

2. *Non-dietary exposure.* The potential for non-occupational, non-dietary exposure to the general population is not expected to be significant and is not expected to present any risk of adverse health effects.

E. Cumulative Exposure

There are no other products-registered for food use containing *Reynoutria sachalinensis* as the active ingredient, so dietary exposure from other pesticidal uses is not likely. The plant has been consumed in the human diet in Japan for generations without any known adverse effects. Researchers, manufacturers, and other workers have applied *Reynoutria sachalinensis* under greenhouse production without report of any adverse health effects to greenhouse workers. In addition, the label will require pesticide applicators and other handlers to wear personal protective equipment (PPE), to mitigate exposure.

F. Safety Determination

1. *U.S. population. Reynoutria sachalinensis* is a naturally occurring plant. This plant has low toxicity as demonstrated by the acute oral toxicity study in rats. Based on this information, IR–4 is of the opinion that the aggregate exposure to *Reynoutria sachalinensis* over a lifetime should not change with application of *Reynoutria sachalinensis*. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to *Reynoutria sachalinensis*. The data requirements for granting the greenhouse nonfood use registration under section 3(c)(5) of FIFRA has been reviewed by BPPD. The mammalian toxicology and ecological effects data requirements for *Reynoutria sachalinensis* extract have been fulfilled for the nonfood greenhouse use. Additional waivers have been developed for the food use. Product analysis data requirements have adequately satisfied EPA registrations for the greenhouse, nonfood use of the end use product, (EPA Registration # 72719–2) and the manufacturing use product (EPA Registration # 72719–1) which were approved on September 29, 2000. The composition of the products in the existing registration and this registration are identical.

2. *Infants and children.* Based on the lack of toxicity and low exposure, there is reasonable certainty that no harm to infants, children, or adults will result from aggregate exposure to *Reynoutria sachalinensis*. In addition, *Reynoutria sachalinensis* is widespread throughout

the United States, Europe, and Asia and is already found in foods, animals feeds, and in medicines (MRID 44821916). The plant has been consumed in the human diet in Japan for generations without any known adverse effects. The active components stimulated by *Reynoutria sachalinensis* are phenolics which have health benefits and are already present in vegetables. Exempting *Reynoutria sachalinensis* from the requirement of a tolerance should pose no significant risk to humans or the environment.

G. Effects on the Immune and Endocrine Systems

To date there is no evidence to suggest that *Reynoutria sachalinensis* functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

H. Efficacy

When applied to certain crop plants, this product raises the plants natural defense system by increasing the existing phenolic compounds in the leaf tissue. Current research indicates that the plant diseases affected by these natural phytoalexins are powdery mildews, gray mold, and fire blight. These diseases are economically important problems in both ornamental and food crop plants.

I. Existing Tolerances

There are no existing tolerances of any type for the extract of *Reynoutria sachalinensis* in the United States.

J. International Tolerances

The IR–4 program and the registrant, KHH BioSci, Inc., are not aware of any tolerances, exemptions from tolerance or maximum residue levels (MRLs) issued for the extract of *Reynoutria sachalinensis* outside of the United States. No MRLs have been established for the extract of *Reynoutria sachalinensis* by the Codex Alimentarius Commission.

[FR Doc. 04–7200 Filed 3–30–04; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 61]

Agency Information Collection Activities; Comment Request

AGENCY: Export-Import Bank of the United States (Ex-Im Bank).

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995. The purpose of the survey is to fulfill a statutory mandate (The Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635) which directs Ex-Im Bank to report annually to the U.S. Congress any action taken toward providing export credit programs that are competitive with those offered by official foreign export credit agencies. The Act further stipulates that the annual report on competitiveness should include the results of a survey of U.S. exporters and U.S. commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with U.S. exporters.

Accordingly, Ex-Im Bank is requesting that the proposed survey (EIB N. 00–02) be sent to approximately 120 respondents that use Ex-Im Bank's medium- and long-term programs. The revised survey is similar to the previous survey, as it asks bankers and exporters to evaluate the competitiveness of Ex-Im Bank's programs *vis-á-vis* foreign export credit agencies. However, it has been modified in order to account for newer policies and to capture enough information to provide a better analysis of our competitiveness. In addition, the survey will be available on Ex-Im Bank's Web site, *www.exim.gov*, with recipients encouraged to respond on-line as well.

DATES: Written comments should be received on or before June 1, 2004, to be assured of consideration.

ADDRESSES: Direct all requests for additional information to Alan Jensen, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., room 1279, Washington, DC 20571, (202) 565–3767.

SUPPLEMENTARY INFORMATION: With respect to the proposed collection of information, Ex-Im Bank invites comments as to:

—Whether the proposed collection of information is necessary for the proper performance of the functions of Ex-Im Bank, including whether the information will have a practical use;

—The accuracy of Ex-Im Bank's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

—Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Title and Form Number: 2003 Exporter & Banker Survey of Ex-Im Bank Competitiveness, EIB Form 00–02.

OMB Number: 3048–0004.

Type of Review: Revision of a currently approved collection.

Annual Number of Respondents: 120.

Annual Burden Hours: 120.

Frequency of Reporting or Use: Annual Survey.

Dated: March 24, 2004.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

COMPETITIVENESS REPORT SURVEY 2003

The survey has been submitted to Exim. You no longer can update the submission information. Below is a snapshot of the information you provided. If you any questions, please email crsurvey03@exim.gov.

Competitiveness Report Survey

PART 1 - EXPORTER/LENDER COMPANY PROFILE

Years in Business
Years in Exporting/Trade Finance
Have you used Ex-Im Bank's medium-term or long-term program in the previous calendar year?
○ Yes
○ No
Which medium/long-term programs did you use? Check all that apply:
☐ Insurance
☐ Loan
☐ Guarantee
Compared to 2002, my 2003 volume of exports/trade finance was:
○ Higher
○ Same
○ Lower

You are ○ **-Please Select-** ○ **Lender**
○ **Exporter**

Competitiveness Report Survey

PART 2-EXPERIENCE WITH FOREIGN EXPORT CREDIT AGENCIES (ECAs)
Please indicate your experience in the previous calendar year in using, receiving support from or working with other official ECAs. Please select the appropriate answer for each ECA listed.

Canada (EDC)	○ Frequent	○ Regular	○ Rare	○ None
France (Coface)	○ Frequent	○ Regular	○ Rare	○ None
Germany (Hermes)	○ Frequent	○ Regular	○ Rare	○ None
Italy (SACE)	○ Frequent	○ Regular	○ Rare	○ None
Japan (JBIC)	○ Frequent	○ Regular	○ Rare	○ None
Japan (NEXI)	○ Frequent	○ Regular	○ Rare	○ None
UK (ECGD)	○ Frequent	○ Regular	○ Rare	○ None
Other (Identify)	○ Frequent	○ Regular	○ Rare	○ None
Other (Identify)	○ Frequent	○ Regular	○ Rare	○ None
Other (Identify)	○ Frequent	○ Regular	○ Rare	○ None

Please indicate your experience in the previous calendar year in facing competitors that received support from foreign official ECAs. Please select the appropriate answer for each ECA listed.

Canada (EDC)	○ Frequent	○ Regular	○ Rare	○ None
France (Coface)	○ Frequent	○ Regular	○ Rare	○ None

Germany (Hermes)	◯ Frequent	◯ Regular	◯ Rare	◯ None
Italy (SACE)	◯ Frequent	◯ Regular	◯ Rare	◯ None
Japan (JBIC)	◯ Frequent	◯ Regular	◯ Rare	◯ None
Japan (NEXI)	◯ Frequent	◯ Regular	◯ Rare	◯ None
UK (ECGD)	◯ Frequent	◯ Regular	◯ Rare	◯ None
Other (Identify)	◯ Frequent	◯ Regular	◯ Rare	◯ None
Other (Identify)	◯ Frequent	◯ Regular	◯ Rare	◯ None
Other (Identify)	◯ Frequent	◯ Regular	◯ Rare	◯ None

Why did you approach Ex-Im Bank for support? Please indicate the approximate frequency with which each of the following challenges or needs arise, as well as a typical region or situation that presents such a challenge/need.

Challange / Need	Frequency				Typical Region or Situation
Face competition from companies that receive ECA support	◯ Frequent	◯ Regular	◯ Rare	◯ None	
Find a lack of useful private market financing available	◯ Frequent	◯ Regular	◯ Rare	◯ None	
Need continuing U.S. government involvement	◯ Frequent	◯ Regular	◯ Rare	◯ None	
Other (Identify)	◯ Frequent	◯ Regular	◯ Rare	◯ None	
Other (Identify)	◯ Frequent	◯ Regular	◯ Rare	◯ None	

PART 3 - EXPERIENCE WITH EX-IM BANK AS COMPARED TO FOREIGN ECAs

Using the guide below, please grade Ex-Im Bank as it compares to other ECAs in the following categories:

A+	= Fully competitive. Consistently equal to the (or is the sole) ECA offering the most competitive position on this element. Levels the playing field on this element with the most competitive offer from any of the major ECAs.
A	= Generally competitive. Consistently offers terms on this element equal to the average terms of the typical major ECA. Levels the playing field on this element with the typical offer from the major ECAs.
A-/B+	= In between A and B
B	= Modestly competitive. Consistently offers terms on this element equal to the least competitive of the major ECAs. Does not quite level the playing field on this element with most of the major ECAs.
B-/C+	= In between B and C
C	= Barely competitive. Consistently offers terms on this element that are a notch below = Barely competitive. Consistently offers terms on this element that are a notch below element that may, to a certain extent, be compensated for in other elements or by exporter concessions.
D	Uncompetitive. Consistently offers terms on this element that are far below those offered by other major ECAs. Puts exporter at financing disadvantage on this element so significant that it is difficult to compensate for and may be enough to lose a deal.
F	=Does not provide program or element

Core Business Policies and Practises

Ex-Im Bank's Cover Policy

Scope of Country Risk
- ◯ -Select-
- ◯ A
- ◯ B
- ◯ C
- ◯ D
- ◯ -N/A-
- ◯ A+
- ◯ A-/B+
- ◯ B-/C+
- ◯ C-/D+
- ◯ F

Depth of Non-Sovereign Risk
- ◯ -Select-
- ◯ A+
- ◯ A
- ◯ A-/B+
- ◯ B
- ◯ B-/C+
- ◯ C
- ◯ C-/D+
- ◯ D
- ◯ F
- ◯ -N/A-

Breadth of availability
- ◯ -Select-
- ◯ A+
- ◯ A
- ◯ A-/B+
- ◯ B
- ◯ B-/C+
- ◯ C
- ◯ C-/D+
- ◯ D
- ◯ F
- ◯ -N/A-

Interest Rates Provided by Ex-Im Bank

Loans (CIRR)
- ◯ -Select-
- ◯ A+
- ◯ A
- ◯ A-/B+
- ◯ B
- ◯ B-/C+
- ◯ C
- ◯ C-/D+
- ◯ D
- ◯ F
- ◯ -N/A-

Insurance Cover
- ◯ -Select-
- ◯ A+
- ◯ A
- ◯ A-/B+
- ◯ B
- ◯ B-/C+
- ◯ C
- ◯ C-/D+
- ◯ D
- ◯ F
- ◯ -N/A-

Guarantee Cover

○ -Select-
○ A+
○ A
○ A-/B+
○ B
○ B-/C+
○ C
○ C-/D+
○ D
○ F
○ -N/A-

Ex-Im Bank's Risk Premia on

Sovereign
○ -Select-
○ A+
○ A
○ A-/B+
○ B
○ B-/C+
○ C
○ C-/D+
○ D
○ F
○ -N/A-

Non-Sovereign
○ -Select-
○ A+
○ A
○ A-/B+
○ B
○ B-/C+
○ C
○ C-/D+
○ D
○ F
○ -N/A-

Do you have any comments on Ex-Im Bank's cover policy, interest rates or risk premia as they compare to those offered by other ECAs For example, what core business policies and practices, if changed, would impact your competitiveness? Please be as specific as possible.

Major Programs and Performance

Ex-Im Banks' Large Aircraft Program

Interest Rate

	◯ -Select-
	◯ A+
	◯ A
	◯ A-/B+
	◯ B
	◯ B-/C+
	◯ C
	◯ C-/D+
	◯ D
	◯ F
	◯ -N/A-
	◯ -Select-
	◯ A+
	◯ A
	◯ A-/B+
	◯ B
	◯ B-/C+
	◯ C
	◯ C-/D+
	◯ D
	◯ F
	◯ -N/A-
Risk Capacity	◯ -Select-
	◯ A+
	◯ A
	◯ A-/B+
	◯ B
	◯ B-/C+
	◯ C
	◯ C-/D+
	◯ D
	◯ F
	◯ -N/A-
Ex-Im Bank's Project Finance	
Core Program features	◯ -Select-
	◯ A+
	◯ A
	◯ A-/B+
	◯ B
	◯ B-/C+
	◯ C
	◯ C-/D+
	◯ D
	◯ F
	◯ -N/A-
Repayment Flexibilities	

○ -Select-
○ A+
○ A
○ A-/B+
○ B
○ B-/C+
○ C
○ C-/D+
○ D
○ F
○ -N/A-

Ex-Im Bank's Co-Financing

and utility of bilateral agreements

○ -Select-
○ A+
○ A
○ A-/B+
○ B
○ B-/C+
○ C
○ C-/D+
○ D
○ F
○ -N/A-

Flexibility in One-Off deal

○ -Select-
○ A+
○ A
○ A-/B+
○ B
○ B-/C+
○ C
○ C-/D+
○ D
○ F
○ -N/A-

Ex-Im Bank's Foreign Currency Guarantee

Availability of Hard Currency Cover

○ -Select-
○ A+
○ A
○ A-/B+
○ B
○ B-/C+
○ C
○ C-/D+
○ D
○ F
○ -N/A-

Availability of Local Currency Cover

	◯ -Select- ◯ A+ ◯ A ◯ A-/B+ ◯ B ◯ B-/C+ ◯ C ◯ C-/D+ ◯ D ◯ F ◯ -N/A-
Pricing	◯ -Select- ◯ A+ ◯ A ◯ A-/B+ ◯ B ◯ B-/C+ ◯ C ◯ C-/D+ ◯ D ◯ F ◯ -N/A-
Ex-Im Bank's Support for Service Exports	
Availability	◯ -Select- ◯ A+ ◯ A ◯ A-/B+ ◯ B ◯ B-/C+ ◯ C ◯ C-/D+ ◯ D ◯ F ◯ -N/A-
Repayment Terms	◯ -Select- ◯ A+ ◯ A ◯ A-/B+ ◯ B ◯ B-/C+ ◯ C ◯ C-/D+ ◯ D ◯ F ◯ -N/A-

Do you have any comments on Ex-Im Bank's programs for large aircraft, project finance, co-financing or foreign currency guarantees as compared to those of other ECAs? Do you have any comments on the support Ex-Im Bank offers for services exports as compared to that offered by other ECAs? What programs or performance, if changed, would impact your competitiveness? Please be as specific as possible.

+	Positive	Philosophy, policy or program has a positive impact on Ex-Im Bank's competitiveness (moves Ex-Im Bank's competitiveness grade up one notch)
*	Neutral	Philosophy, policy or program has a neutral impact on Ex-Im Bank's competitiveness (no impact on Ex-Im Bank's competitiveness grade)
-	Negative	Philosophy, policy or program has a negative impact on Ex-Im Bank's competitiveness (moves Ex-Im Bank's competitiveness grade down one notch)

Economic Philosophy

Tied Aid
- ◯ -Please Select-
- ◯ Positive
- ◯ Neutral
- ◯ Negative

Market Window
- ◯ -Please Select-
- ◯ Positive
- ◯ Neutral
- ◯ Negative

Do you have any comments on Ex-Im Bank's competitiveness with regard to tied aid or market windows? For example, have you seen competition supported by market windows or tied aid financing? Please be as specific as possible. You may also provide case specific data in Part 4.

Public Policies

Economic Impact
- ◯ -Please Select-
- ◯ Positive
- ◯ Neutral
- ◯ Negative

PR 17/Shipping
- ◯ -Please Select-
- ◯ Positive
- ◯ Neutral
- ◯ Negative

Foreign Content
- ◯ -Please Select-
- ◯ Positive
- ◯ Neutral
- ◯ Negative

Environment
- ◯ -Please Select-
- ◯ Positive
- ◯ Neutral
- ◯ Negative

Local costs
- ◯ -Please Select-
- ◯ Positive
- ◯ Neutral
- ◯ Negative

Do you have any comments on Ex-Im Bank's policies as they compare with other ECAs concerning economic impact, foreign content, local costs, shipping or the environment? Where other ECAs do not have a comparable public policy, such as economic impact and shipping, do you have comments on the impact of these public policies to Ex-Im Bank's competitiveness? For example, what public policies, if changed, would impact your competitiveness? Please be as specific as possible.

COMPETITIVENESS WEIGHTING

Now that you have graded Ex-Im Bank in several areas, please weight the overall importance of each of the four broad categories listed above to Ex-Im Bank's overall competitiveness. Please ensure that the sum of your weights equals 100%.

Core Business Policies and Practices _____

Major Programs and Performance _____

Economic Philosophy _____

Public Policies _____

Total % _____

PART 4 - EXIM BANK PROJECTS

This template is provided as an opportunity for you to flesh out some of the grades that you gave in Part 3 by detailing any adverse impacts of Ex-Im Bank program features in specific transactions.

	Cost/ Policy/ Program	ECA	Market	Project Description	Describe the competition you faced and the effect it had on your business (e.g. forced to change sourcing, lost jobs, lower exports) If possible, please quantify.
Ex.	Cover	EDC	Iran	Power Plant	As a result of Ex-Im Bank's lack of cover for Iran, we were forced to source from outside the U.S. This resulted in a loss of over $100 million in U.S. Export Sales.
1					
2					
3					
4					
5					

PART 5 -GENERAL COMMENTS

This space is provided for you to express your views on the general competitive environment, trends of specific competitors, etc. You may also use this space to comment on aspects of Ex-Im Bank programs, particularly those not addressed in the above questions.

[FR Doc. 04–6990 Filed 3–30–04; 8:45 am]
BILLING CODE 6690–01–C

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010099–040.

Title: International Council of Containership Operators.

Parties: A.P. Moller-Maersk Sealand; ANL Limited; American President Lines, Ltd.; APL Co. PTE Ltd.; Atlantic Container Line AB; Australia-New Zealand Direct Line; Canada Maritime Limited; Cast Line Limited; CMA CGM, S.A.; Companhia Libra de Navegacao; Compania Sud-Americana de Vapores S.A.; Contship Containerlines; Cosco

Container Lines Company Limited; CP Ships; Crowley Maritime Corporation; Evergreen Marine Corporation, Ltd.; Hamburg-Sud; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co., Ltd.; Italia di Navigazione, S.p.A.; Kawasaki Kisen Kaisha, Ltd.; Lykes Lines Limited, LLC; Malaysian International Shipping Company S.A.; Mediterranean Shipping Company S.A.; Mitsui O.S.K. Lines, Ltd.; Montemar Maritima S.A.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Norasia Container Lines Limited; Orient Overseas Container Line, Limited; Pacific International Lines (PTE) Ltd.; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Senator Lines GmbH; TMM Lines Limited, LLC; United Arab Shipping Company; Wan Hai Lines Ltd.; Zim Israel Navigation Co., Ltd.

Synopsis: The amendment adds Delmas SAS as a party to the agreement.

Agreement No.: 011515–009.

Title: Steamship Line Cooperative Chassis Pool Agreement

Parties: Atlantic Container Line AB; Columbus Line; Mediterranean Shipping Company, S.A.; United Arab Shipping Company; Safbank Line, Ltd.; The National Shipping Company of Saudi Arabia; Hapag-Lloyd Container Linie GmbH; Cho Yang Shipping Co., Ltd.; Senator Lines GmbH; Empresa de Navegacao Alianca, S.A.; Hyundai Merchant Marine Co., Ltd.; COSCO Container Lines Company, Ltd.; Yangming Marine Transport Corporation; Kawasaki Kisen Kaisha, Ltd.; Farrell Lines Incorporated; Lykes Lines Limited, LLC; Evergreen Marine Corporation (Taiwan) Ltd.; CMA CGM S.A.; Italia di Navigazione, S.p.A.

Synopsis: The amendment deletes Columbus Line, United Arab Shipping, The National Shipping Company of Saudi Arabia, Hapag-Lloyd, Cho Yang, Senator, Alianca, Hyundai, Farrell, Lykes, Evergreen, and Italia from the list of members. It adds American President Lines, Ltd.; China Shipping Container Lines Co., Ltd.; Compania Sud Americana de Vapores, S.A.; Hanjin Shipping Co., Ltd.; and Zim-Israel Navigation Co., Ltd. In addition, it adds Safmarine Container Lines, NV in place of Safbank, and corrects Atlantic Container Line's address and COSCO's name.

Agreement No.: 011527–008.

Title: Independent Carrier Service Agreement.

Parties: Hanjin Shipping Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Zim Israel Navigation Company Ltd.

Synopsis: The amendment would remove CMA CGM, S.A. and Montemar Maritima S.A. as parties to the agreement; add Mitsui O.S.K. Lines and K-Line as parties; and adjust the parties' space allocations and vessel contributions under the agreement. The parties request expedited review.

Agreement No.: 011547–016.

Title: Eastern Mediterranean Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; COSCO Container Lines Company, Ltd.; Farrell Lines, Inc.; Hapag-Lloyd Container Linie GmbH; Mediterranean Shipping Company S.A.; P&O Nedlloyd Limited; Turkon Container Transportation and Shipping, Inc.; and Zim Israel Navigation Co., Ltd.

Synopsis: The amendment adds China Shipping Container Lines as a party to the agreement and updates Maersk's corporate name.

Agreement No.: 011801–001

Title: Maersk Sealand/P&O Nedlloyd U.S. East Coast/Indian Subcontinent Slot Charter Agreement

Parties: A.P. Moller-Maersk A/S and P&O Nedlloyd Limited/P&O Nedlloyd B.V.

Synopsis: The proposed amendment would revise the geographic scope to add Dammam, Saudi Arabia, and Bahrain and delete Colombo, Sri Lanka; add the provision that Maersk Sealand may transport P&O Nedlloyd's cargo on feeder vessels to Bahrain, Jebel Ali, and Dammam via Salalah, Oman; and add a provision on Customs and Compliance.

Agreement No.: 011852–004

Title: Maritime Security Discussion Agreement

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; China Shipping Container Lines, Co., Ltd.; CMA-CGM S.A.; COSCO Container Lines Company, Ltd.; Evergreen Marine Corp.; Hanjin Shipping Company, Ltd.; Hapag Lloyd Container Linie GmbH; Kawasaki Kisen Kaisha Ltd.; A.P. Moller-Maersk A/S, trading under the name of Maersk Sealand; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Yang Ming Marine Transport Corp.; Safmarine Container Line, NV; Zim Israel Navigation Co., Ltd.; Alabama State Port Authority; APM Terminals North America, Inc.; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Eagle Marine Services Ltd.; Global Terminal & Container Services, Inc.; Howland Hook Container Terminal, Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Lambert's Point Docks Inc.; Long Beach Container Terminal, Inc.; Maersk Pacific Ltd.; Maher Terminals, Inc.; Marine Terminals Corp.; Maryland Port Administration; Massachusetts Port Authority (MASSPORT); Metropolitan Stevedore Co.; P&O Ports North American, Inc.; Port of Tacoma; South Carolina State Ports Authority; Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc. TraPac Terminals; Universal Maritime Service Corp.; and Virginia International Terminals

Synopsis: The amendment adds Safmarine Container Line NV; China Shipping Container Lines, Co., Ltd.; Alabama State Port Authority; and Lambert's Point Docks Inc. as parties to the agreement.

Dated: March 26, 2004.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–7253 Filed 3–30–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 002713F.
Name: All-Points Forwarding, Inc.
Address: 3515 NW 114th Avenue, Miami, FL 33178.
Date Revoked: February 29, 2004.
Reason: Failed to maintain a valid bond.

License Number: 003402N.
Name: Customs Services International, Inc.
Address: 7425 NW 48th Street, Miami, FL 33166.
Date Revoked: February 19, 2004.
Reason: Failed to maintain a valid bond.

License Number: 004101F.
Name: Distribution Support Management, Inc.
Address: 75 Northcrest, Newman, GA 30265.
Date Revoked: March 6, 2004.
Reason: Failed to maintain a valid bond.

License Number: 016779F.
Name: EAFF (USA), Inc.
Address: 8840 NW 102nd Street, Medley, FL 33178.
Date Revoked: March 5, 2004.
Reason: Failed to maintain a valid bond.

License Number: 002371F.
Name: Emmett I. Sindik dba Emmett I. Sindik, Customs Broker.
Address: 2311 World Trade Center, New Orleans, LA 70130.
Date Revoked: February 19, 2004.
Reason: Failed to maintain a valid bond.

License Number: 016007N.
Name: Harv Trans, Inc.
Address: 184–45 147th Avenue, Suite 101, Springfield Garden, NY 11413.
Date Revoked: March 9, 2004.
Reason: Failed to maintain a valid bond.

License Number: 001897NF.
Name: International Service Group, Inc. dba ISG Maritime.
Address: P.O. Box 280440, San Francisco, CA 94128-0440.
Date Revoked: February 23, 2004.
Reason: Surrendered license voluntarily.

License Number: 017309N.
Name: Italian Seaways International Inc.
Address: 9253 NW 100th Street, Suite B, Miami, FL 33178.
Date Revoked: March 5, 2004.
Reason: Failed to maintain a valid bond.

License Number: 004634NF.
Name: Next Generation Logistics, Inc.
Address: 1611 Colonial Parkway, Inverness, IL 60067.
Date Revoked: March 4, 2004.
Reason: Surrendered license voluntarily.

License Number: 010572N.
Name: Perfect Trans-Global Inc.
Address: 8050 Florence Avenue, Suite #30, Downey, CA 90240.
Date Revoked: March 6, 2004.
Reason: Surrendered license voluntarily.

License Number: 003187N.
Name: Professional Export Services, Inc. dba Castle Shipping Line.
Address: 4225 Nicols Road, Eagan, MN 55122.
Date Revoked: February 25, 2004.
Reason: Failed to maintain a valid bond.

License Number: 015360N.
Name: Sansu International, Inc.
Address: 2076 20th Lane, Fifth Floor, Brooklyn, NY 11214.
Date Revoked: March 6, 2004.
Reason: Failed to maintain a valid bond.

License Number: 013565NF.
Name: Sino-Zen International Co., Inc. dba Zencon Logistics, Inc.
Address: 15200 Downey Avenue, Paramount, CA 90723.
Date Revoked: February 23, 2004.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–7256 Filed 3–30–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as an Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant:

Promptus, LLC, 3345 NW. 116th Street, Miami, FL 33167. Officers: Milton Tejada, Operating Manager, (Qualifying Individual), Julio Desangles, Secretary.

Dated: March 26, 2004.

Bryant L. VanBrakle,
Secretary.

[FR Doc. 04–7254 Filed 3–30–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
002132N	Seaflet, Inc. 5475 N.W. 72nd Avenue, Miami, FL 33166	December 5, 2003.
000108F	The Bartel Shipping Co., Inc. 7 Dey Street, New York, NY 10007	January 8, 2004.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–7255 Filed 3–30–04; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0312]

Animal Feed Safety System: A Comprehensive Risk-Based Safety Program for the Manufacture and Distribution of Animal Feeds; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA, we) held a public meeting in Herndon, VA on September 22 and 23, 2003, to discuss the potential development of a comprehensive, risk-based animal feed safety system (AFSS). The AFSS is intended to describe how animal feeds (individual ingredients and mixed feeds) should be manufactured and distributed to minimize risks to animals consuming the feed and humans consuming food products from animals. During the meeting, we stated we would be keeping the public informed of our progress on this initiative and would be seeking comments and continued participation as we proceed.

To that end, we have placed in FDA's docket for public comment numerous work products of the meeting, along with documents we drafted following the meeting to show our tentative thoughts on an AFSS.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written comments concerning this document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: George Graber, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6651, FAX 301–594–4512, or e-mail: *george.graber@fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The public meeting held in Herndon, VA included active participation of people representing consumers, animal feed processors, animal producers and State and other Federal Government agencies. Following the meeting, we placed a number of documents in FDA's docket at *http://www.fda.gov/ohrms/dockets/dockets/dockets.htm*. These include a transcript of the meeting, summaries of break out discussion groups, presentations of invited speakers, and a summary of the meeting. We stated our view that an AFSS should be comprehensive and risk-based, and we have since drafted definitions for these terms and placed them in the docket. Likewise, we have created a listing of elements we currently feel would be essential to an AFSS and added them to the docket. As additional material is generated, it will also be posted. We welcome your comments on these materials. For convenience, you may visit FDA's Center for Veterinary Medicine home page at *http://www.fda.gov/cvm/index/animalfeed/animalfeed_info.htm#biotechnology*, and click on ''FDA Animal Feed Safety System (AFSS) Public Meeting'' under the ''Additional Information'' section for links to documents in FDA's docket.

II. Comments

Interested persons may submit comments to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m.and 4 p.m., Monday through Friday. You can also view received comments on the Internet at *http://www.fda.gov/ohrms/dockets/dockets/dockets.htm*.

Dated: March 24, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–7188 Filed 3–30–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Project Narrative Correction

AGENCY: Substance Abuse and Mental Health Services Administration.

ACTION: Correction of Project Narrative page limitations for the grant program, Projects to Deliver and Evaluate Peer-to-Peer Recovery Support Services (RCSP III)—[TI 04–008].

SUMMARY: This notice is to inform the public that the page limitations for the Project Narrative that were published on March 23, 2004, in the announcement for the grant program, *Projects to Deliver and Evaluate Peer-to-Peer Recovery Support Services (RCSP III)*—[TI 04–008], were inconsistent. The correct page limitation for the Project Narrative (Sections A through E) is 30 pages.

FOR FURTHER INFORMATION CONTACT: For questions about the page limitations for the Project Narrative or other issues relating to this program, contact: Catherine D. Nugent, M.S.; CSAT/SAMHSA; Recovery Community Services Program; Rockwall II, Room 7–213; 5600 Fishers Lane; Rockville, MD 20857; (301) 443–2662; E-mail: *cnugent@samhsa.gov.*

Dated: March 25, 2004.

Margaret Gilliam,

Acting Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–7189 Filed 3–30–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Approval of Commercial Gaugers and Accreditation of Commercial Laboratories

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 70283) on December 17, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 30, 2004.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collections 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.

Title: Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers.

OMB Number: 1651–0053.

Form Number: None.

Abstract: The Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers are used by individuals or businesses desiring CBP approval to measure bulk products or analyze importations. This recognition is required of businesses wishing to perform such work on imported merchandise.

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 1 hour and 48 minutes.

Estimated Total Annual Burden Hours: 450.

Estimated Total Annualized Cost on the Public: $5,500.

If additional information is required contact: Daryl Joyner, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–0529.

Dated: March 23, 2004.

Daryl Joyner,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–7236 Filed 3–30–04; 8:45 am]

BILLING CODE 4820–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–23]

Notice of Submission of Proposed Information Collection to OMB: Section 108 Loan Guarantee Program Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

HUD is requesting reinstatement of approval to collect information in the form of applications for guarantees of Section 108 Loans.

DATES: *Comments Due Date:* April 30, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0161) should be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Melanie_Kadlic@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web page at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the contact information of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Section 108 Loan Guarantee Program Application.

OMB Approval Number: 2506–0161.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The information collection is necessary to render judgment on the eligibility of the activities proposed to be financed with Section 108 loan guarantee assistance and to ensure that the loan guarantee does not pose a financial risk to the Federal government. Information collected pursuant to the application requirements will be reviewed and analyzed to determine compliance with statutory requirements on eligibility, compliance with national objectives requirements of the Community Development Block Grant program, and whether the loan guarantee constitutes and acceptable financial risk to the Federal government.

Respondents: Units of general local government eligible to apply for loan guarantee assistance under Section 108.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	90	90		125		11,250

Total Estimated Burden Hours: 11,250.

Status: Reinstatement, without change, or a previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 25, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–7214 Filed 3–30–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–22]

Notice of Submission of Proposed Information Collection to OMB: Financial Statement of Corporate Applicants for Cooperative Housing Mortgages

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

Information provided is a critical element and the source document by which HUD determines the cooperative member and group capacity to meet the financial requirements of a HUD-insured cooperative project.

DATES: *Comments Due Date:* April 30, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0058) should be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; fax number (202) 395–6974; e-mail *Melanie_Kadlic@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web page at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the contact information of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Financial Statement of Corporate Applicants for Cooperative Housing Mortgages.

OMB Approval Number: 2502–0058.

Form Numbers: HUD–93232–A.

Description of the Need for the Information and its Proposed Use: Information provided is a critical element and the source document by which HUD determines the cooperative member and group capacity to meet the financial requirements of a HUD-insured cooperative project.

Respondents: Individuals or households, not-for-profit institutions.

Frequency of Submission: On occasion.

	No. of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	100	100		1		100

Total Estimated Burden Hours: 100.

Status: Reinstatement, without change, or a previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 25, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–7215 Filed 3–30–04; 8:45 am]

BILLING CODE 4210–72–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, May 20, 2004.

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 May 20, 2004, at 7 p.m. at the Blackstone River Theatre located at 549 Broad Street, Cumberland, RI 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 25 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: Michael Creasey, 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 Michael Creasey, Executive Director of the

Commission at the aforementioned address.

Michael Creasey,

Executive Director, BRVNHCC.

[FR Doc. 04–7199 Filed 3–30–04; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to Delist the Preble's Meadow Jumping Mouse in Colorado and Wyoming and Initiation of a 5-Year Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review for the 12-month finding and 5-year review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the Preble's Meadow Jumping Mouse (Preble's) (*Zapus hudsonius preblei*) from the Federal List of Threatened and Endangered Wildlife and Plants pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). We find that the petition and additional information in our files presents substantial information that delisting Preble's may be warranted and are initiating a status review. We are requesting submission of any new information on the Preble's since its original listing as an endangered species in 1998. Following this status review, we will issue a 12-month finding on the petition to delist. Because a status review is also required for the 5-year review of listed species under section 4(c)(2)(A) of the Act, we are electing to prepare these reviews simultaneously. At the conclusion of these simultaneous reviews, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act, and make the requisite finding under section 4(c)(2)(B) of the Act based on the results of the 5-year review.

DATES: The 90-day finding announced in this document was made on March 18, 2004. To be considered in the 12-month finding on this petition, comments and information must be submitted to us by June 1, 2004.

ADDRESSES: Questions or information concerning this petition should be sent to the Field Supervisor, Colorado Fish and Wildlife Office, Ecological Services, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215. The separate petition finding, supporting data, and comments are available for public review, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Linner at 303–275–2370 (*see* **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

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 information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find substantial information exists to support the petitioned action, we are required to promptly commence a review of the status of the species (50 CFR 424.14). ''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.'' 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 and adequacy of the information supporting the action advocated by the petition.

When considering an action for listing, delisting, or reclassifying a species, we are required to determine whether a species is endangered or threatened based on one or more of the five listing factors as described at 50 CFR 424.11. Delisting may be warranted as a result of (1) extinction; (2) recovery; and/or (3) a determination that the original data used for classification of the species as endangered or threatened, were in error.

On May 13, 1998, we listed the Preble's meadow jumping mouse (Preble's) (*Zapus hudsonius preblei*) was listed as threatened under the Act (63 FR 26517). On June 23, 2003, we published the Final Rule to Designate Critical Habitat for the Preble's (68 FR 37275). We recently responded to a petition on December 18, 2003, in which we found that there was not substantial information to indicate that delisting may be warranted (68 FR 70523). Some of the most pertinent information available to the current petitioners, as discussed below in Review of Petitions, was not available to the Service at the time of the December 18, 2003, finding.

Biology and Distribution

The Preble's is a small rodent in the family *Zapodidae* and is 1 of 12 recognized subspecies of the species *Zapus hudsonius,* the meadow jumping mouse. This largely nocturnal mouse is 20 to 23 centimeters (8 to 9 inches) long (its tail accounts for 60 percent of its length), with hind feet adapted for jumping. The large hind feet can be one-third again as large as those of other mice of similar size. The Preble's is found in both the North and South Platte River basins, generally, from the eastern flank of the Laramie Mountains in southeastern Wyoming, southward along the eastern flank of the Front Range of Colorado and into the Arkansas River basin (Long 1965; Hall 1981; Clark and Stromberg 1987; Fitzgerald et al. 1994; Clippinger 2002). Elevation appears to mark the western boundary of the Preble's distribution. The Preble's is generally found between approximately 1,400 meters (4,600 feet) and 2,300 meters (7,600 feet). Typical habitat for the Preble's comprises well-developed plains riparian vegetation with adjacent, undisturbed grassland communities and a nearby water source. Well-developed plains riparian vegetation typically includes a dense combination of grasses, forbs, and shrubs; a taller shrub and tree canopy may be present (Bakeman 1997). The species hibernates near these riparian zones, usually, from September or October to May (Shenk and Sivert 1999; Schorr 2001).

The Preble's is closely associated with riparian ecosystems that are relatively narrow and represent a small percentage of the landscape. The decline in the extent and quality of Preble's habitat is considered the main factor threatening the subspecies (63 FR 26517; Hafner et al. 1998, Shenk 1998). Habitat alteration, degradation, loss, and fragmentation resulting from urban development, flood control, water development, agriculture, and other human land uses have adversely impacted Preble's populations (68 FR 37275; Ryon 1996). Habitat destruction may harm individual Preble's directly or indirectly by destroying nest sites, food resources, and hibernation sites, by disrupting behavior, or by forming a barrier to movement. Additional background information is available in the May 13, 1998, Final Rule to List the Preble's as a Threatened Species (63 FR 26517) and the Final Rule to Designate Critical Habitat for the Preble's meadow jumping mouse (68 FR 37275).

Review of Petitions

We received two similar petitions, both dated December 17, 2003, requesting us to remove the Preble's meadow jumping mouse from the Federal List of Threatened and Endangered Wildlife and Plants pursuant to the Act. Both the first petition, from Coloradans for Water Conservation and Development, and the second, from the State of Wyoming's Office of the Governor, maintain that *Z. hudsonius preblei* (Preble's) is not a valid subspecies, and therefore, based on ''data error'' (*i.e.*, new information discovered) and ''taxonomic revision,'' Preble's should be delisted. As explained in our 1996 Petition Management Guidance (Service 1996), subsequent petitions are treated separately only when they are greater in scope than or broaden the area of review of the first petition. In this case, as both petitions are almost identical, the State of Wyoming's petition will therefore be treated as a comment on the first petition received.

The petition provided information on abundance and distribution, the five listing factors examined in a threats analysis, recent phylogenetic analysis and a review of the genetic and morphmetric analysis completed prior to listing, and suggests there may be connectivity between *Z. hudsonius preblei* (Preble's) and *Z. h. campestris* (Bear Lodge meadow jumping mouse), which is not threatened.

While most of the information presented in the petition is duplicative of information contained in the Service's files, particularly with regard to distribution, abundance, and threats, the petition does raise novel taxonomic questions not considered in our most recent 90-day finding (68 FR 70523).

The petition maintains that *Z. hudsonius preblei* is not a valid subspecies. Central to the petition's assertion is a phylogenetic and population genetic analysis of mitochondrial deoxyribonucleic acid (mtDNA) sequence data recently completed by the Denver Museum of Nature and Science. This study, jointly funded by the State of Wyoming and the Service, concluded that ''*Z. h. preblei* was not a unique relative to *Z. h. campestris*'' (Ramey *et al.* 2003). Ramey suggested that ''the lack of genetic, morphological, or published ecological evidence for distinctiveness of *Z. h. preblei* from *Z. h. campestris,* means that these subspecies should be synonymized (considered the same subspecies—*Z. h. campestris*).'' This study questions the accepted taxonomic classifications established by Krutzsch (1954) and should be evaluated for significance to the validity of *Z. h. preblei.*

The petition also presents information on the appropriateness of a Distinct Vertebrate Population Segment (DPS) designation. The petition states that, should the Service determine that Preble's is taxonomically not a valid subspecies, Preble's should be delisted and not considered further as a possible DPS. A DPS is defined in our February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment endangered or threatened?). Distinct population segments of vertebrate species, as well as subspecies of all listed species, may be proposed for separate reclassification or for removal from the list.

We will address the appropriate application of the DPS policy during the status review of the listed species as it is required by the DPS policy.

Finding

We have reviewed the petition and the supporting documents, as well as other information in our files. We find that the petitioner and other information in our files present substantial information to indicate that delisting of the Preble's may be warranted, and are initiating a status review. We will issue a 12-month finding in accordance with section 4(b)(3)(B) of the Act as to whether or not delisting is 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. We are then, under section 4(c)(2)(B), 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 Preble's meadow jumping mouse.

Public Information Solicited

We are requesting information for both the 12-month finding and the 5-year review, as we are conducting these reviews simultaneously. When we make a finding that substantial information exists to indicate that listing or delisting a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on Preble's. This includes information on genetics and taxonomic classification, the abundance and distribution of the subspecies, and the threats faced by Preble's in relation to the five listing factors (as defined in section 4(a)(1) of the Act). We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry or environmental entities, or any other interested parties concerning the status of Preble's.

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 have 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;

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.

Because in the 5-year review we will review the appropriateness of a DPS designation, we are particularly interested in information about the distribution and range of *Z. h. preblei* and *Z. h. campestris,* including information on the degree to which ranges overlap. Additionally, we are seeking information on any ecological, behavioral, or other differences *that may indicate marked separation or a lack thereof* between *Z. h. preblei* and *Z. h. campestris.*

If you wish to comment for either the 12-month finding or the 5-year review, you may submit your comments and

materials to the Field Supervisor of the Colorado Fish and Wildlife 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 at the Lakewood address (*see* **ADDRESSES** section).

References Cited

A complete list of all references cited in this finding is available, upon request, from the Colorado Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority: The authority for this action is section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 18, 2004.

Marshall Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 04–7165 Filed 3–30–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–PO]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices.

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) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held May 6, 2004 in Sidney, MT beginning at 8 a.m. When determined, the meeting place will be announced in a News Release. The public comment period will begin at approximately 11 a.m. and the meeting will adjourn at approximately 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana, 59301. Telephone (406) 233–2831.

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 Montana. At this meeting, topics to discuss include:

Field Manager Updates;
Weatherman Draw subcommittee update;
Billings shooting area subcommittee update;
Access subcommittee update; and
Other topics the council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time 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, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: March 22, 2004.

David McIlnay,

Field Manager.

[FR Doc. 04–7125 Filed 3–30–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–; HAG04–0131]

Notice of Medford District Resource Advisory Committee Meetings; OR110 5882 HD

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meetings.

SUMMARY: The Medford District Resource Advisory Committee will meet in Medford to tour project sites and to discuss proposed 2005 projects. Agenda topics include on-site inspections of 2004 projects and proposed 2005 projects, review of last meeting minutes, presentations on proposed fiscal year 2005 Title II projects, and discussion regarding proposed projects.

DATES:

1. July 15, 2004, 7 a.m. to 4 p.m.
2. July 29, 2004, 7 a.m. to 4 p.m.
3. August 12, 2004, 10 a.m. to 4 p.m.
4. August 19, 2004, 10 a.m. to 4 p.m.

ADDRESSES: The field trips will start from, and the meetings will be held at, the Medford District Office, located at 3040 Biddle Road, Medford, Oregon.

FOR FURTHER INFORMATION CONTACT: Karen Gillespie, Medford District Office (541) 618–2424.

SUPPLEMENTARY INFORMATION: The field trips on July 15, 2004 and July 29, 2004 will begin at 7 a.m. The meetings on August 12, 2004 and August 19, 2004 will begin at 10 a.m.

A public comment period will be held from 2 to 2:30 p.m. on August 12, 2004 and August 19, 2004.

The field trips and meetings are expected to adjourn at 4 p.m.

(Authority: 43 CFR Subpart 1784/Advisory Committees)

Lance E. Nimmo,

Acting Medford District Manager.

[FR Doc. 04–7130 Filed 3–30–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Final Wilderness Study/Final Environmental Impact Statement, Apostle Islands National Lakeshore

AGENCY: National Park Service, U.S. Department of the Interior.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(C), the National Park Service (NPS) announces the availability of a final wilderness study/environmental impact statement (EIS) for Apostle Islands National Lakeshore, Wisconsin.

DATES: The draft wilderness study/environmental impact statement was on public review from July 11, 2003, through October 17, 2003. As required under § 3(d)(1) of the Wilderness Act (Act), a public hearing was held on the draft wilderness study on August 27, 2003, near Ashland, Wisconsin. Responses to substantive public comments are addressed in the final EIS. The NPS will execute a record of decision (ROD) no sooner than 30 days following publication of the Environmental Protection Agency's notice of availability of the final environmental impact statement in the **Federal Register**.

ADDRESSES: Copies of the final EIS are available upon request by writing Mr.

Jim Nepstad, Wilderness Study Coordinator, Apostle Islands National Lakeshore, Route 1, Box 4, Bayfield, Wisconsin 54814, by calling (715) 779–3398, extension 102, or by e-mail message at *apis_comments@nps.gov.* The document can be picked-up in person at the park's headquarters at 415 Washington Avenue, Bayfield, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Nepstad, Wilderness Study Coordinator, Apostle Islands National Lakeshore, Route 1, Box 4, Bayfield, Wisconsin 54814, or by calling (715) 779–3198, extension 102.

SUPPLEMENTARY INFORMATION: The Act and the NPS management policies require that all lands administered by the NPS be evaluated for their suitability for inclusion within the national wilderness preservation system. The purpose of this wilderness study is to determine if and where lands and waters within the Apostle Islands National Lakeshore should be proposed for wilderness designation. The study identifies four possible wilderness configurations within the park, including a no wilderness alternative, and evaluates their effects. Based on the findings of this study, a formal wilderness proposal will be submitted to the Director of the NPS for approval and subsequent consideration by the Department of the Interior, President, and Congress under the provisions of the Act.

Dated: February 12, 2004.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. 04–7136 Filed 3–30–04; 8:45 am]

BILLING CODE 4312–97–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Availability, etc: Arrowhead-Weston Transmission Line Right-of-Way Crossing of the Saint Croix National Scenic Riverway, WI

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the Draft Environmental Impact Statement for the Arrowhead-Weston Transmission Line Right-of-Way Crossing of the Saint Croix National Scenic Riverway, Wisconsin.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the draft environmental impact statement (EIS) for the Arrowhead-Weston Transmission Line Right-of-Way Crossing of the Saint Croix National Scenic Riverway (Riverway), Wisconsin.

DATES: There will be a 60-day public review period for comments on this document. Comments on the Draft EIS must be received no later than 60-days after the Environmental Protection Agency publishes its notice of availability in the **Federal Register**. A public open house for information about, or to make comment on, the Draft EIS will be announced in the local media and the Riverway's Web site when they are scheduled. Information about meeting time and place will also be available by contacting the Riverway at (715) 483–3284 or by visiting the Riverway's Web site at *http://www.nps.gov/sacn/management/planning_docs.html.*

ADDRESSES: Copies of the draft EIS will be sent to over 100 interested parties, as well as to public libraries throughout the project area. Please check our Web site for a listing of the libraries to which the draft EIS will be sent. The draft EIS is approximately 500 pages long with many figures and oversize color plates. Due to the size of the document, it was not possible to provide it over the Internet. A limited number of hardcopies are available upon request for individuals or organizations with special needs. Additional copies are available on compact disk. To request a hardcopy of the draft EIS or a copy on compact disk, please contact the Superintendent, Saint Croix National Scenic Riverway, P.O. Box 708, St. Croix Falls, WI 54024, Attention: Jill Medland, or phone at (715) 483–3284 Ext 609.

FOR FURTHER INFORMATION CONTACT: Jill Medland, Planning and Compliance Specialist, Saint Croix National Scenic Riverway, P.O. Box 708, 401 Hamilton Street, St. Croix Falls, WI 54024, or by phone (715) 483–3284 Ext 609.

SUPPLEMENTARY INFORMATION: The Arrowhead-Weston Project (Project) is a 345 kilovolt (kV) electric transmission line proposed by Minnesota Power, Wisconsin Public Service Corporation, and American Transmission Company (the Applicant's) that would run 220 miles from Duluth, Minnesota to Wausau, Wisconsin. The governmental entity with approval authority for the overall Project is the Public Service Commission of Wisconsin (PSCW). The PSCW approved the Project in 2001 and re-approved it in 2003. According to the Applicants, and as reflected in the PSCW decision, the purpose of the overall Project is to (1) strengthen the bulk transmission system by providing a second high-capacity connection across the Minnesota-Wisconsin interface and (2) to transmit electricity from the upper Midwest to markets in the eastern Wisconsin area.

The State-approved route of the Project would cross the Namekagon River, which is part of Riverway, at a location approximately 10 miles downstream of the city of Hayward in Washburn County, Wisconsin. The NPS has received a right-of-way (ROW) request from the Applicants to cross the Riverway with the State-approved Project. To reach a decision about the right-of-way request to cross the Riverway, the NPS is preparing an EIS. The Corps of Engineers (Corps) is a cooperating agency on the EIS, since the Corps would also need to issue a permit for the river crossing.

The Applicant's propose to cross the Riverway and the Namekagon River at an existing 161kV electric transmission line corridor granted to Xcel Energy as an easement by private landowners prior to NPS land acquisition in the area. All alternatives (except no action) would require additional right-of-way from the NPS. The following alternatives are under consideration for crossing the Namekagon River:

No Action (Deny ROW Request): The existing 161kV line would remain as it is on 70-foot wood poles (this alternative would require the Applicants to go around the Riverway and reopen of the State approval process);

Alternative 1: This alternative would double circuit the 345kV and 161kV lines overhead on 145–150 foot-tall single steel poles (Applicant's preferred);

Short-span Option: This option calls for the use of 130 to 150 foot-tall steel structures to carry each of three electrical phases, using bundled conductors for each circuit, with a pair of overhead shield wires, for the entire crossing.

Long-span Option: This option calls for much the same equipment for the right-of-way except at the actual crossing of the Namekagen River. At the river crossing, the Project will use shorter (125 foot-tall) steel structures set further back from the river, use of special long-span conductors which allows fewer conductors and longer span lengths, and the elimination of the two overhead shield wires.

Alternative 2: This alternative would have a single circuit 345kV overhead on 120–130 foot-tall single steel poles, underground the existing 161kV, and use transition structures at the overhead-to-underground changeover;

Alternative 3: This alternative would upgrade the existing 161kV to 85–95-foot tall steel poles, place the 345kV underground, and use transition structures at the underground-to-overhead changeover;

Alternative 4: This alternative would place both 345kv and 161kV underground, and use transition structures at the underground-to-overhead changeover.

The NPS preferred alternative is alternative 1, the long-span option. The NPS believes the no action alternative is the environmentally preferred alternative because this alternative would result in no changes to the river corridor.

Persons wishing to comment on the draft EIS may do so by any one of several methods. They may attend the open house noted above. They may mail comments to Superintendent, Saint Croix National Scenic Riverway, P.O. Box 708, 401 Hamilton Street, St. Croix Falls, WI 54024, Attention: Jill Medland. They, also, may comment via e-mail to *sacn_aw_row_eis@nps.gov* (include name and return address in the e-mail message). Finally, they may hand-deliver comments to Riverway Headquarters, Saint Croix National Scenic Riverway, 401 Hamilton Street, St. Croix Falls, WI 54024.

The NPS practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There, also, may be circumstances in which we would withhold from the record a respondent's identify, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

The responsible official is Mr. Ernest Quintana, Midwest Regional Director, National Park Service.

Dated: February 17, 2004.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 04–7134 Filed 3–30–04; 8:45 am]

BILLING CODE 4310–DE–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Coronado National Memorial, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Final Environmental Impact Statement/General Management Plan, Coronado National Memorial.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (C) the National Park Service announces the availability of a Final Environmental Impact Statement and General Management Plan (FEIS/GMP) for Coronado National Memorial, Arizona.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the notice of availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public inspection in the office of the Superintendent, and at the following location, Coronado National Memorial Visitor Center, Coronado National Memorial, 4101 East Montezuma Road, Hereford, AZ 85615, Telephone: (520) 366–5515.

FOR FURTHER INFORMATION CONTACT: John Paige, National Park Service, Denver Service Center–Planning Division, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2356.

Dated: February 12, 2004.

Michael D. Synder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 04–7132 Filed 3–30–04; 8:45 am]

BILLING CODE 4312–DP–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Draft General Management Plan and Draft Environmental Impact Statement for the Fallen Timbers Battlefield and Fort Miamis National Historic Site, Ohio

AGENCY: National Park Service, U.S. Department of the Interior.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the Draft General Management Plan and Environmental Impact Statement (GMP/EIS) for the Fallen Timbers Battlefield and Fort Miamis National Historic Site (the park).

DATES: The GMP/EIS will remain available for public review for 60 days following the publishing of the notice of availability in the **Federal Register** by the Environmental Protection Agency. Public meetings will be announced in the local media.

ADDRESSES: Copies of the GMP/EIS are available by request by writing to the Fallen Timbers Battlefield and Fort Miamis National Historic Site, c/o Director of Planning, Metropolitan Park District of the Toledo Area, 5100 West Central Avenue, Toledo, Ohio 43615–2100, by telephoning (419) 535–3050 or by e-mail *james.speck@metroparkstoledo.com.* The document is also available to be picked-up in person at Metropolitan Park District offices, 5100 West Central Avenue, Toledo, Ohio. The document can be found on the Internet in the NPS Planning Web site at: *http://planning.nps.gov/plans.cfm.*

FOR FURTHER INFORMATION CONTACT: Mr. James Speck, Director of Planning, Metropolitan Park District of the Toledo Area, 5100 West Central Avenue, Toledo, Ohio, telephone 419–535–3050.

SUPPLEMENTARY INFORMATION: The Fallen Timbers Battlefield and Fort Miamis National Historic Site is an affiliated area of the national park system, managed by the Metropolitan Park District of the Toledo Area. The park consists of three units, the Fallen Timbers Battlefield, the Fallen Timbers State Monument, and Fort Miamis. The park commemorates an important period in the development of the United States and the opening of the northwest frontier. It represents the culminating event that demonstrated the tenacity of the American people in their quest for western expansion and the struggle for dominance in the Old Northwest Territory.

The purpose of the general management plan is to set forth the basic management philosophy for the park and to provide strategies for addressing issues and achieving identified management objectives. The GMP/EIS describes and analyzes the environmental impacts of the proposed action and two other action alternatives for the future management direction of the park. A no action alternative is also evaluated.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may

request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may also be circumstances where we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

Dated: February 23, 2004.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. 04–7133 Filed 3–30–04; 8:45 am]

BILLING CODE 4310–DE–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Notice of Intent: Elkmont Historic District, TN

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Prepare a General Management Plan Amendment/ Draft Environmental Impact Statement for the Elkmont Historic District in Great Smoky Mountains National Park.

SUMMARY: This notice is being published in accordance with 40 CFR 1506.6. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service announces the preparation of a General Management Plan Amendment/ Environmental Impact Statement (GMPA/EIS) to analyze alternatives for resolving issues related to the Elkmont Historic District. The purpose of the planning initiative for which the EIS is being written is to reevaluate the current management strategy for the Elkmont Historic District as articulated in the Park's General Management Plan (GMP), written in 1982. The public scoping process for the EIS has been initiated with issuance of this notice. The purpose of the scoping process is to elicit public comment regarding the full spectrum of public issues and concerns, including a suitable range of alternatives, the nature and extent of potential environmental impacts and appropriate mitigation strategies which should be addressed in the GMPA/EIS process.

DATES: Beginning on March 8, 2004, public information meetings will be conducted in the vicinity of Great Smoky Mountains National Park. The location, date, and time of the meetings and deadlines for written comments will be announced via local and regional media as follows: The Knoxville News-Sentinel, Knoxville, Tennessee; The Mountain Press, Sevierville, Tennessee; The Daily Times, Maryville, Tennessee; The Smoky Mountain Times, Bryson City, North Carolina; The Mountaineer, Waynesville, North Carolina; Asheville Citizen Times, Asheville, North Carolina and other major newspapers in Raleigh, North Carolina, Charlotte, North Carolina, Atlanta, Georgia, and Nashville, Tennessee. Announcements will also be placed on the following Web sites: *http://www.nps.gov/grsm* and *http://www.elkmont-gmpa-ea.com/*. All interested individuals, organizations and agencies are invited to attend these meetings to comment orally and/or provide written comments or suggestions during the scoping period.

ADDRESSES: Any comments or requests for information should be addressed to Elkmont Historic District EIS, Attn: Superintendent, Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, Tennessee 37738.

FOR FURTHER INFORMATION CONTACT: Superintendent, Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, TN 37738. Telephone: (865) 436–1207 or Fax: (865) 436–1220.

SUPPLEMENTARY INFORMATION: The public is advised that individual names and addresses may be included as part of the public record. Names and addresses will be available for public review during regular business hours. There may be circumstances in which a person prefers to have their name and other information withheld from the public record. Any person wishing to do this must state this prominently at the beginning of any correspondence or comment, and the request will be honored to the extent allowable by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be placed on the public record and will be made available for public inspection in their entirety.

There are 74 cottages, outbuildings and a hotel in the Elkmont Historic District (District) of Great Smoky Mountains National Park, which until December 1992, were under the lease of the Elkmont Preservation Committee (EPC). The District is located in Sevier County, Tennessee, within the Park and is approximately 7 miles west on Little River Road, from the Sugarlands Visitor Center. It is critical that Great Smoky Mountains National Park continues the planning process for the Elkmont Historic District. With the exception of two buildings vacated in late 2001, all of the structures in the District have been vacant since 1992. The structures have deteriorated and the Park has been forced to expend emergency funding to stabilize the structures.

Under guidelines described in the National Historic Preservation Act (NHPA), the Park has been in consultation with the Tennessee Historical Commission (State Historic Preservation Office—SHPO) and the Advisory Council on Historic Preservation, as well as other longstanding stakeholders as Consulting Parties. Many of the issues regarding the eventual management of the district are yet unresolved. Based upon a decision in its 1982 GMP, the Park had planned to remove all of the structures once their leases expired and then allow the area to revert to a natural condition. One of the natural communities found at Elkmont was identified as a ''montane alluvial forest.'' This particular natural community is ranked as ''rare and highly threatened.'' In 1994, the Elkmont community was listed on the National Register of Historic Places as an historic district, so any action affecting it would require consultation with the SHPO. Consequently, discussion of any action upholding or diverging from the direction provided by the current GMP has generated controversy among the various stakeholders and any decision by the Park could further enflame deep passions among these stakeholders. Current Elkmont planning effectively combines NEPA and NHPA guidelines as a joint process in an effort to streamline the overall planning process. As part of the 106 process under the NHPA defined in 36 CFR, part 800.8, the Park formed a Consulting Parties group that represents various public interest groups. This public group was formed to consult and advise the Park on issues concerning the eventual management of the District. Public expectation and time sensitive concerns will ensure the planning process is conducted in a timely manner.

As part of the evaluation process, a range of reasonable management actions will be identified/analyzed in context with agency mission and the public interest. The planning effort will result in a defined management prescription for Elkmont. This undertaking is in response to new information and additional resource knowledge

unknown at the time the GMP was approved in 1982. National Park Service planning is intended to bring logic, natural and cultural resource analysis, public involvement, and accountability into its decision-making. Public participation will ensure the NPS fully understands and considers the public's interest as part of the national heritage, cultural traditions, and community surroundings.

Recognizing that the National Environmental Policy Act (NEPA) requires the consideration of a reasonable range of options that will address the project purpose and need, the EIS will include a full range of alternatives for detailed study. The alternatives will consist of a no-action alternative, as well as a variety of action alternatives. These alternatives will be developed, screened and subjected to detailed analysis in the draft GMPA/EIS based on their ability to address the purpose and need, while attempting to avoid known and sensitive resources.

Prior to deciding to enter into the EIS process, the NPS had been preparing an environmental assessment (EA) for the Elkmont Historic District. Through this EA process, the NPS held numerous public meetings and workshops to ascertain public concerns and suggested uses for the District. This extensive public input resulted in a high level of controversy over the use of the resources. Due to this high level of controversy, a sense of urgency regarding the condition of the Elkmont structures, and to be better positioned for decision making, the NPS elevated the process to a GMPA/EIS level.

All past public input will be incorporated into the GMPA/EIS process and will continue to serve as the basis on which detailed alternatives are formulated. It is anticipated that the next set of public information meetings will be held on March 8 and 9, 2004, as part of the NEPA process to facilitate local, state, and federal agency involvement and to inform and to solicit input from the public regarding the range of proposed detailed alternatives being carried forward into the GMPA/EIS. Private organizations, citizens, and interest groups will have an opportunity to provide input into the development of the GMPA/EIS and identify issues that should be addressed at the public information meetings.

A comprehensive public participation plan will be undertaken to involve the public throughout the project development process. This public involvement plan includes the initial set of formal scoping public meetings as well as other formats for input at key stages throughout the process, including public review of the draft GMPA/EIS. The plan will also include dissemination of current information on the project Web site, with newsletters, and meetings with the Consulting Parties.

The draft GMPA/EIS will be available for public and agency review and comment prior to the second set of public meetings/hearings. Its availability will be announced by Federal Register notice, regional and local media, Web site, and direct mailings to all those on the formal project mailing list developed and maintained throughout the NEPA/Public Involvement process. At this time, the draft GMPA/EIS is anticipated to be available for public review in late 2004.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning this notice of proposed action, and when the draft GMPA/EIS is available, should be directed to the NPS at the address provided under the caption **FOR FURTHER INFROMATION CONTACT**.

Dated: January 15, 2004.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 04–7135 Filed 3–30–04; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting of the National Park of American Samoa Federal Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the National Park of American Samoa Federal Advisory Commission will be held from 10 a.m. to 12 p.m., Saturday, April 10, 2004, in the village of Olosega, Manua, American Samoa. The agenda for the meeting will include:

Roll call, welcome and introductions;
Superintendent report and discussion;
Other Board issues;
Public comments.

The meeting is open to the public and opportunity will be provided for public comments prior to closing the meeting. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. For copies of the minutes, contact the National Park of American Samoa Superintendent at 011–684–633–7082 or e-mail *NPSA_Superintendent@nps.gov.*

Dated: March 22, 2004.

Bernard C. Fagan,

Deputy Chief, NPS Office of Policy and Regulations.

[FR Doc. 04–7137 Filed 3–30–04; 8:45 am]

BILLING CODE 4310–RT–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 20, 2004.

Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 15, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

COLORADO

Otero County

Santa Fe Railway Manzanola Depot, (Railroads in Colorado, 1858–1948 MPS), 212 N. Grand Ave., Manzanola, 04000363.

FLORIDA

Pinellas County

Downtown St. Petersburg Historic District, Bounded by 5th Ave. N, Beach Dr. NE, Central Ave., 9th St. N, St. Petersburg, 04000364.

KANSAS

Douglas County

Black Jack Battlefield, US 56 and Cty Rd. 2000, 3.0 mi. E of Baldwin City, Baldwin, 04000365.

Riley County

Lyda—Jean Apartments, 501 Houston, Manhattan, 04000368.

Shawnee County

Albaugh, Morton, House, 1331 SW Harrison St., Topeka, 04000366.

Morgan House, 1335 SW Harrison St., Topeka, 04000367.

MAINE

Cumberland County

Crystal Spring Farm, 277 Pleasant Hill Rd., Brunswick, 04000369.
East Raymond Union Chapel, 394 Webbs Mills Rd., East Raymond, 04000370.

Kennebec County

Benton Grange #458, Jct. of River Rd. and School Dr., Benton, 04000373.

Somerset County

Anson Grange #88, 10 Elm St., North Anson, 04000371.

York County

Wallingford Hall, 21 York St., Kennebunk, 04000372.

MONTANA

Cascade County

Great Falls Central Business Historic District, Second Ave. N, First Ave. N, Central Ave., First Ave. S., Great Falls, 04000374.

NEW MEXICO

Bernalillo County

De Anza Motor Lodge, (Route 66 through New Mexico MPS), 4301 Central Ave. NE, Albuquerque, 04000375.

NEW YORK

Dutchess County

CLEARWATER (Sloop), Main St., on Hudson R, Poughkeepsie, 04000376.

RHODE ISLAND

Kent County

Royal Mill Complex, 125 Providence St., West Warwick, 04000377.

Providence County

Greystone Mill Historic District, Greystone Ave., North Providence, 04000378.

TEXAS

Anderson County

Michaux Park Historic District, (Palestine, Texas MPS), Roughly bounded by S. Michaux St., Jolly St., Crokett Rd., Rogers St., and E Park Ave., Palestine, 04000380.

Smith County

Brick Streets Neighborhood Historic District, (Tyler, Texas MPS), Roughly bounded by South Broadway, W. Dobbs St., S. Kennedy Ave., S. Vine Ave., Interior Property Lines, S. College Ave., Tyler, 04000379.

VIRGINIA

Isle Of Wight County

Parker, Col. Josiah, Family Cemetery, Approx. 50 yds from jct. of Old Macklesfield Rd. and Macklesfield Ct., Smithfield, 04000381.

A request for removal has been made for the following resources:

MAINE

Lincoln County

Hesper and Luther Little, Wiscasset waterfront off Water St., Wiscassett, 90000589.

Washington County

First Congregational Church, Calais Ave., Calais, 78000205.

A request for a MOVE has been made for the following resource:

CALIFORNIA

San Diego County

Naval Training Station, Barnett St. and Rosecrans Blvd., San Diego 00000426.

[FR Doc. 04–7138 Filed 3–30–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 13, 2004. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by April 15, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Alameda County

Berkeley Hillside Club, 2286 Cedar St., Berkeley, 04000332.

Fresno County

Hotel Californian, 851 Van Ness Ave., Fresno, 04000333.

Humboldt County

Zanone, Magdalena House, 1604 G St., Eureka, 04000335.

Los Angeles County

House at 1015 Prospect Boulevard, (Residential Architecture of Pasadena: Influence of the Arts and Crafts Movement MPS), 1015 Prospect Blvd., Pasadena, 04000322.
House at 1141 North Chester Avenue, (Residential Architecture of Pasadena: Influence of the Arts and Crafts Movement MPS), 1141 N. Chester Ave., Pasadena, 04000326.
House at 1240 North Los Robles, (Residential Architecture of Pasadena: Influence of the Arts and Crafts Movement MPS), 1240 N. Los Robles Ave., Pasadena, 04000329.
House at 1487 Loma Vista Street, (Residential Architecture of Pasadena: Influence of the Arts and Crafts Movement MPS), 1487 Loma Vista St., Pasadena, 04000323.
House at 674 Elliot Drive, (Residential Architecture of Pasadena: Influence of the Arts and Crafts Movement MPS), 674 Elliot Dr., Pasadena, 04000325.
Lower Arroyo Seco Historic District, (Residential Architecture of Pasadena: Influence of the Arts and Crafts Movement MPS), Roughly Arroyo Blvd., W. California Blvd., La Loma Blvd., Pasadena, 04000331.
Park Place—Arroyo Terrace Historic District, (Residential Architecture of Pasadena: Influence of the Arts and Crafts Movement MPS), 368–440 Arroyo Terrace, 200–240 N. Grand Ave., 201–239 N. Orange Grove Blvd., Pasadena, 04000324.

Merced County

Church of St. Joseph, 1109 K St., Los Banos, 04000330.

San Francisco County

Building at 735 Market Street, 735 Market St., San Francisco, 04000327.

San Mateo County

Folger Estate Stable Historic District, 4040 Woodside Rd., Woodside, 04000328.

Sonoma County

De Turk Round Barn, 819 Donahue St., Santa Rosa, 04000334.

COLORADO

Denver County

Fourth Church of Christ, Scientist, 3101 W. 31st Ave., Denver, 04000336.

Morgan County

Trail School, Old, (Rural School Buildings in Colorado MPS), 421 High St., Wiggins, 04000337.

GEORGIA

Clarke County

Cobb, T.R.R., House, 175 Hill St., Athens, 04000362.

Crisp Count,

O'Neal School Neighborhood Historic District, Roughly bounded by the Seaboard Coastline Railroad, Owens St. 16th Ave. and 6th St., Cordele, 04000339.

Murray County

Spring Place Historic District, Approx. 2.5 mi. W of Chatsworth, E of jct. of GA 52 A and GA 225, Spring Place, 04000338.

IOWA

Dubuque County

Epworth School, 310 W. Main St., Epworth, 04000340.

Scott County

Maycrest College Historic District, Portions of 1500 and 1600 blks of W. 12th St., Davenport, 04000341.

MISSOURI

Buchanan County

Livestock Exchange Building, 601 Illinois Ave., St. Joseph, 04000342.

St. Louis County

Olive Chapel African Methodist Episcopal Church, (Kirkwood MPS), 309 S. Harrison Ave., Kirkwood, 04000345.

St. Louis Independent City

Cotton Belt Freight Depot, 1400 N. 1st St., St. Louis (Independent City), 04000344.
Weber Implement and Automobile Company Building, 1815 Locust St., St. Louis (Independent City), 04000343.

NEW YORK

Albany County

Fonda House, 55 Western Ave., Cohoes, 04000351.
Valley Paper Mill Chimney and Site, NY 143 at Cty Rd. 111, Alcove, 04000350.

Broome County

Stone Spillway, National Defense Stockpile Center, N of Gilmore Ave., Hilcrest, 04000347.

Chenango County

District School 4, NY 235, Coventry, 04000353.

Delaware County

First Presbyterian Church of Margaretville, 169 Orchard Ave., Margaretville, 04000348.

Greene County

Church of St. John the Evangelist, Philadelphia Hill Rd., Hunter, 04000352.

Monroe County

Browncroft Historic District, Roughly bounded by Browncroft Blvd., Newcastle, Blossom, and Winton Rds., Rochester, 04000346.

Westchester County

Somers Hamlet Historic District, US 202, NY 100, NY 116, Deans Bridge Rd. and The Lane, Somers, 04000349.

SOUTH CAROLINA

Laurens County

Gray Court—Owings School, 9210 SC 14, Gray Court, 04000354.

Newberry County

Newberry County Memorial Hospital, 1300–1308 Hunt St., Newberry, 04000355.

WASHINGTON

King County

Point Robinson Light Station, (Light Stations of the United States MPS), NE end of Maury Island in Puget Sount, Vashon Island, 04000359.

WEST VIRGINIA

Braxton County

Haymond, William Edgar, House, 110 S. Stonewall St., Sutton, 04000356.

Fayette County

New River Company General Office Building, 411 Main St., Mt. Hope, 04000357.

Hancock County

Rigas, Dr. George, House, 3412 West St., Weirton, 04000358.

WISCONSIN

Marathon County

East Hill Residential Historic District, Roughly bounded by North Seventh, Adams, North Tenth, Scott and North Bellis Sts., Wausau, 04000360.

Sauk County

Corwith, J.W., Livery, (Reedsburg MRA), 121 S.Webb Ave. Reedsburg, 84004018.

A request for Removal has been made for the following resource:

GEORGIA

Clarke County

Cobb, T.R.R., House, 194 Prince Ave., Athens, 75000579.

[FR Doc. 04–7139 Filed 3–30–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 6, 2004. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW, 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW, 8th floor, Washington DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by April 15, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ALABAMA

Morgan County

New Decatur—Albany Residential Historic District (Boundary Increase), Grant, Jackson, and Sherman St., Gordon and Prospect Drs., Decatur, 04000274.

Colorado

Boulder County

First Baptist Church of Boulder, 1237 Pine St., Boulder, 04000275.

FED. STATES

Kosrae Freely Associated State

Likinlulem, Walung, Walung, Tafunsak, 04000277.
Yap Freely Associated State Dinay Village, Dinay, Rull, 04000276.

FLORIDA

Duval County

South Jacksonville Grammar School, 1450 Flagler Ave., Jacksonville, 04000278.

MISSISSIPPI

Pike County

McComb Downtown Historic District, Roughly bounded by Broadway, State, Front and Canal Sts., McComb, 04000279.

Missouri

St. Louis County

Fairfax House, 9401 Manchester Rd., Rock Hill, 04000280.

St. Louis Independent City

Tower Grove Heights Historic District (Boundary Increase), Roughly bounded by Magnolia St., Louisiana Ave., Cherokee St./Gravois Ave, Grand Ave., St. Louis (Independent City), 04000281.

NEBRASKA

Greeley County

First Presbyterian Church, 260 S. Pine St., Spalding, 04000292.

Lancaster County

Government Square, N 9th to N 10th St., O to P Sts., Lincoln, 04000303.

Nance County

Merrill, Moses, Baptist Camp, NW of Fullerton, Fullerton, 04000295.

Phelps County

Kinner House, 515 Tibbals, Holdrege, 04000294.

NEVADA

Pershing County

Central Pacific Railroad Depot, 1005 W. Broadway Ave., Lovelock, 04000300.

Washoe County

Wadsworth Union Church, Jct. of Lincoln Hwy and Railroad Ave., Wadsworth, 04000298.

NEW YORK

Albany County

St. Nicholas Ukrainian Catholic Church, 4th Ave. and 24th St., Watervliet, 04000288.
Willis, Alexander, House, NY 143, Coeymans, 04000289.

Allegany County

Van Campen, Moses, House, 4690 Birdsall Rd., Angelica, 04000287.

Cayuga County

Yawger, Peter, House, NY 90, Union Springs, 04000283.

Herkimer County

Palatine German Frame House, 4217 NY 5, Herkimer, 04000282.

Kings County

Magen David Synagogue, 2017 67th St., Brooklyn, 04000293.

Monroe County

Shirts, William, House, 196 Harmon Rd., Scottsville, 04000286.

New York County

German Evangelical Lutheran Church of St. Mark, 323 E. 6th St., New York, 04000296.
Lower East Site Historic District (Boundary Increase), Roughly along Division, Rutger, Madison, Henry, Grand Sts., New York, 04000297.

Orleans County

Skinner—Tinkham House, 4652 Oak Orchard Rd., Barre Center, 04000291.

Sullivan County

Manion's General Store, 52 Ferndale Rd., Ferndale, 04000285.
Shelburne Playhouse, Upper Ferndale Rd., Ferndale, 04000284.

Wyoming County

Arcade Center Farm, 7298 NY 98, Attica, 04000290.

NORTH DAKOTA

Walsh County

Strand Theatre, 618 Hill Ave., Grafton, 04000299.

TENNESSEE

Rutherford County

Spence, John C., House, 503 N. Maple St., Murfreesboro, 04000302.

Shelby County

Roulhac, Dr. Christopher M., House, (Memphis MPS), 810 McLemore Ave., Memphis, 04000301.

WASHINGTON

Benton County

Gold Coast Historic District, Roughly bounded by Willis St., Davison Ave., Hunt Ave., Davison Ave., and George Washington Way, Richland, 04000315.

Snohomish County

Point Elliott Treaty Monument, Jct. of Lincoln Ave. and 3rd St., Mukilteo, 04000316.

WEST VIRGINIA

Berkeley County

Clary's Mountain Historic District, Hammond's Mill Rd., Hedgesville, 04000314.
Lee-Throckmorton—McDonald House, 2101 Arden-Nolville Rd., Inwood, 04000312.
Maidstone-on-the-Potomac, 12 Temple Dr., Falling Waters, 04000311.
Overlook, 2910 Harlan Spring Rd., Martinsburg, 04000310.
Spring Mills Historic District, Portions of Hammonds Mill Rd. and Harlan Spring Rd., Martinsburg, 04000308.
Tabler's Station Historic District, Portions of Tabler's Station Rd. and Carlton Dr., Martinsburg, 04000306.

Cabell County

Johnston—Meek House, 203 6th Ave., Huntington, 04000313.

Greenbrier County

Stone Manse, Cty Rd 38, Stonehouse Rd., Caldwell, 04000307.

Kanawha County

Weimer, James, House, 411 Eighth Ave., St. Albans, 04000309.

Marion County

Woodlawn Cemetery, 335 Maple Ave., Fairmont, 04000305.

Randolph County

Tygart Valley Homesteads Historic District, Roughly bounded by U.S. 250/219, Cty Rd. 38 and Cty Rd. 21, Dailey, 04000304.

A request for a MOVE has been made for the following resource:

NEVADA

Washoe County

Lake Mansion, Adjacent to the Centennial Coliseum on U.S. 395, Reno, 72000767.

New Location is Jct. of S. Arlington Ave. at Court St. Reno.

[FR Doc. 04–7140 Filed 3–30–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–DES–04–3]

Platte River Recovery Implementation Program

AGENCY: Bureau of Reclamation, Interior.

ACTION: Extension of review and comment period for draft environmental impact statement (DEIS).

SUMMARY: The notice of availability for the DEIS was published in the **Federal Register** on January 26, 2004 (69 FR 3600), with the public review and comment period originally scheduled to end April 2, 2004. It was the intent of the Bureau of Reclamation (Reclamation) that the comment period for the DEIS overlap with the release of the National Academy of Sciences (NAS) report, entitled, ''Endangered and Threatened Species in the Platte River Basin'' that was expected January 30, 2004. Because the NAS report has been significantly delayed, Reclamation is extending the review and comment period for the DEIS to June 1, 2004, to allow the public the opportunity to have both reports available during the DEIS review and comment period.

DATES: Submit comments on the DEIS on or before June 1, 2004. Public hearings on the DEIS will be held during the month of May. Times and locations will be announced in the **Federal Register** and local media.

ADDRESSES: Written comments on, or requests for copies of, the DEIS should be addressed to the Platte River EIS Office (PL–100), P.O. Box 25007, Denver, Colorado, 80225–0007, telephone (303) 445–2096, or by sending an e–mail to *platte@prs.usbr.gov.* A copy of the DEIS summary, and/or technical reports or appendices may also be obtained by calling (303) 445–2096. The DEIS summary is also accessible at *http://www.platteriver.org.*

FOR FURTHER INFORMATION, CONTACT: Lynn Holt, Platte River EIS Office (303) 445–2096, or by sending an e–mail to *platte@prs.usbr.gov.*

SUPPLEMENTARY INFORMATION: Reclamation and the Fish and Wildlife Service (Service) have prepared this DEIS to analyze the impacts of the First Increment (13 years) of a proposed Recovery Implementation Program (Program) to benefit the target species (whooping crane, interior least tern, piping plover, and pallid sturgeon) and their habitat in the Platte River Basin and to provide compliance with the Endangered Species Act (ESA) for certain historic and future water uses in the Platte River Basin in Colorado, Nebraska, and Wyoming. The habitat objectives of the proposed Program include: Improving flows in the Central Platte River through water re-regulation and conservation/supply projects; and protecting, restoring, and maintaining at least 10,000 acres of habitat in the Central Platte River area between Lexington and Chapman, Nebraska. The DEIS analyzes the impacts of four alternatives to implement the Program.

The programmatic DEIS focuses on impacts that the Program may have on hydrology, water quality, land, target species and their habitat, other species, hydropower, recreation, economics, and social and cultural resources. Subsequent National Environmental Policy Act and ESA documents required for implementation of specific Program actions will be tiered off of this document.

Public Disclosure Statement

Comments received in response to this notice will become part of the administrative record for this project and are subject to public inspection. Comments, including names and home addresses of respondents, will be available for public review. Individual respondents may request that Reclamation withhold their home address from public disclosure, which will be honored to the extent allowable by law. There also may be circumstances in which Reclamation would withhold a respondent's identity

from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. Reclamation will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public disclosure in their entirety.

Dated: March 12, 2004.

Mary Josie Blanchard,

Acting Director, Office of Environmental Policy and Compliance.

[FR Doc. 04–7186 Filed 3–30–04; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0024 and 1029–0113

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for the Procedures and Criteria for Approval or Disapproval of State Program submissions, 30 CFR part 732; and General Reclamation Requirements, 30 CFR part 874.

DATES: Comments on the proposed information collection must be received by June 1, 2004, to be assured of consideration.

ADDRESSES: Mail comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783 or electronically at *jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR parts 732 and 874.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for these information collection activities.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submissions of the information collection requests to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activities:

Title: Procedures and Criteria for Approval or Disapproval of State Program Submissions, 30 CFR part 732.

OMB Control Number: 1029–0024.

Summary: Part 732 establishes the procedures and criteria for approval and disapproval of State program submissions. The information submitted is used to evaluate whether State regulatory authorities are meeting the provisions of their approved programs.

Bureau Form Number: None.

Frequency of Collection: Once and annually.

Description of Respondents: 24 State regulatory authorities.

Total Annual Responses: 51.

Total Annual Burden House: 6,405.

Title: General Reclamation Requirements, 30 CFR part 874.

OMB Control Number: 1029–0113.

Summary: Part 874 establishes land and water eligibility requirements, reclamation objectives and priorities and reclamation contractor responsibility. 30 CFR 874.17 requires consultation between the AML agency and the appropriate Title V regulatory authority on the likelihood of removing the coal under a Title V permit and concurrences between the AML agency and the appropriate title V regulatory authority on the AML project boundary and the amount of coal that would be extracted under the AML reclamation project.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 16 State regulatory authorities and Indian tribes.

Total Annual Responses: 16.

Total Annual Burden Hours: 1,168.

Dated: March 26, 2004.

Sarah E. Donnelly,

Acting Chief, Division of Regulatory Support.

[FR Doc. 04–7216 Filed 3–30–04; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1047 (Final)]

Ironing Tables and Certain Parts Thereof From China

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: March 25, 2004.

FOR FURTHER INFORMATION CONTACT: Megan Spellacy (202–205–3190), 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: On March 3, 2004, the Commission established a schedule for the conduct of the final phase of the subject investigation (69 FR 10753, March 8, 2004). The Commission is revising its schedule to redress a scheduling conflict created by a schedule change in another case before the ITC.

The Commission's new schedule for the investigation is as follows: the deadline for filing prehearing briefs is June 9, 2004; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on June 16, 2004; and the deadline for filing posthearing briefs is June 23, 2004.

For further information concerning this investigation see the Commission's notice cited above and the

Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 25, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–7151 Filed 3–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–439–440 and 731–TA–1077–1080 (Preliminary)]

Polyethylene Terephthalate (PET) Resin From India, Indonesia, Taiwan, and Thailand

AGENCY: International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty and antidumping investigations Nos. 701–TA–439–440 (Preliminary) and 731–TA–1077–1080 (Preliminary) under 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India and Thailand of polyethylene terephthalate (PET) resin, provided for in subheading 3907.60.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of India and Thailand and by reason of imports from India, Indonesia, Taiwan, and Thailand of PET resin that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing and antidumping duty investigations in 45 days, or in this case by May 10, 2004. The Commission's views are due at Commerce within five business days thereafter, or by May 17, 2004.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 24, 2004.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on March 24, 2004, by the U.S. PET Resin Producers' Coalition, Washington, DC.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing and antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, 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 BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 14, 2004, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202–205–3191) not later than April 12, 2004, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 19, 2004, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document

filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: March 25, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–7152 Filed 3–30–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Criminal Division

Agency Information Collection Activities: Proposed Collection; Comments Requested

Action: 60-Day Notice of Information Collection Under Review: Amendment to Register or Supplemental Registration Reports (Foreign Agents).

The Department of Justice (DOJ), Criminal Division, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 1, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to U.S. Department of Justice, 10th & Constitution Avenue, NW., Criminal Division, Counterespionage Section/ Registration Unit, Bond Building—Room 9300, Washington, DC 20530. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at (202) 514–1216.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate 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;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of currently approved information collection.

(2) *The title of the Form/Collection:* Amendment to Register or Supplemental Registration Reports (Foreign Agents).

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Form CRM–156. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. The form is used in registration of foreign agents when changes are required under the provisions of the Foreign Agents Registration Act of 1938 as amended, 22 U.S.C. 611, *et seq.*

(5) *An estimate of the total number of responses and the amount of time estimated for an average response:* The estimated total number of respondents is 175 who will complete a response within 1½ hours.

(6) *As estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information collection is 262 hours annually.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: March 25, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–7157 Filed 3–30–04; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Criminal Division

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: registration statement of individuals (foreign agents).

The Department of Justice (DOJ), Criminal Division, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 1, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to U.S. Department of Justice, 10th & Constitution Avenue, NW., Criminal Division, Counterespionage Section/ Registration Unit, Bond Building—Room 9300, Washington, DC 20530. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at (202) 514–1216.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate 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;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *The Title of the Form/Collection:* Registration Statement of Individuals (Foreign Agents).

(3) *The Agency Form Number and the Applicable Component of the Department Sponsoring the Collection:* Form CRM–153. Criminal Division, U.S. Department of Justice.

(4) *Affected Public who will be Asked to Respond, as well as a Brief Abstract: Primary:* Business or other for-profit, not-for-profit institutions, and individuals or households. Form contains the registration statement and information used for registering foreign agents under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.*

(5) *An Estimate of the Total Number of Responses and the Amount of Time Estimated for an Average Response:* There are approximately 67 respondents who will complete a response within 1 hour and 22 minutes.

(6) *As Estimate of the Total Public Burden (in Hours) Associated with the Collection:* There are approximately 92 annual burden hours associated with this collection.

For Further Information Contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: March 25, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–7158 Filed 3–30–04; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Criminal Division

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: short-form registration statement of individuals (foreign agents).

Department of Justice (DOJ), Criminal Division, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 1, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to U.S. Department of Justice, 10th & Constitution Avenue, NW., Criminal Division, Counterespionage Section/ Registration Unit, Bond Building—Room 9300, Washington, DC 20530. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at (202) 514–1216.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate 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;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *The Title of the Form/Collection:* Short-form Registration Statement of Individuals (Foreign Agents).

(3) *The Agency Form Number and the Applicable Component of the Department Sponsoring the Collection:* Form CRM–156. Criminal Division, U.S. Department of Justice.

(4) *Affected Public who will be Asked to Respond, as well as a Brief Abstract: Primary:* Business or other for-profit, not-for-profit institutions, and individuals or households. Form is used to register foreign agents as required by the Foreign Agents Registration Act, 22 U.S.C. 611, *et seq.* Rule 202 of the Act requires that a partner, officer, director, associate, employee and agent of a registrant who engages directly in activity in furtherance of the interests of the foreign principal, in other than a clerical, secretarial, or in a related or similar capacity, file a short-form registration statement.

(5) *An Estimate of the Total Number of Responses and the Amount of Time Estimated for an Average Response:* There are 523 respondents who will complete a response within approximately 25 minutes.

(6) *An Estimate of the Total Public Burden (in Hours) Associated with the Collection:* There are approximately 224 annual burden hours associated with this collection.

For Further Information Contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: March 25, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–7159 Filed 3–30–04; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement in *In re Cedar Chemical Co.* and *In re Vicksburg Chemical Corp.,* Under the Comprehensive Environmental Response *Compensation and Liability Act (Cercla)*

Notice is hereby given that on March 24, 2004, a Stipulation and Order has been filed with the United States Bankruptcy Court for the Southern District of New York in *In re Cedar Chemical Co.,* Case No. 02–11039, and *In re Vicksburg Chemical Corp.,* Case No. 02–11040 (Bankr. S.D.N.Y.), concerning the liabilities of the Debtors for chemical plant facilities in West Helena, Arkansas, and Vicksburg, Mississippi. This settlement would resolve the EPA's claims in this bankruptcy proceeding for a cash payment of $250,000, $125,000 for each site.

The Department of Justice will receive comments relating to the Stipulation and Order for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Cedar Chemical Co.* and *In re Vicksburg*

Chemical Corp. (Bankr. S.D.N.Y.), D.J. Ref. 90–7–1–463/1.

The Stipulation and Order may be examined at the Office of the United States Attorney for the Southern District of New York, Civil Division, 86 Chambers Street, 3d Floor, New York, NY 10007, by request to Assistant U.S. Attorney David J. Kennedy, and at the United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. During the public comment period, the Stipulation and Order may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Stipulation and Order may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Bruce S. Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–7240 Filed 3–30–04; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act Between the United States, the State of South Carolina, and the South Carolina Public Service Authority

Under 28 CFR 50.7, notice is hereby given that on March 16, 2004, a proposed consent decree (''Consent Decree'') between the United States, the South Carolina Department of Health and Environmental Control (''DHEC''), and the South Carolina Public Service Authority (''Santee Cooper''), Civil Action No. 2–04–0822–18, was lodged with the United States District Court for the District of South Carolina.

The Consent Decree would resolve the civil claims asserted by the United States against Santee Cooper pursuant to Sections 113(b) and 167 of the Clean Air Act (''the Act''), 42 U.S.C. 7413(b) and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions of the Act, 42 U.S.C. 7470–92, title V of the Act, 42 U.S.C. 7661, *et seq.*, and the federally approved and enforceable South Carolina State Implementation Plan (the ''SIP'').

The complaint filed by the United States alleges, among other things, that between 1980 and the present, Santee Cooper modified and thereafter operated certain coal-fired electricity generation units without first obtaining a PSD permit authorizing the construction and without installing the best available technology to control emissions of sulfur dioxide (SO_2), nitrogen oxides (NO_X), and particular matter (PM), as required by the Act, applicable Federal regulations, and the SIP. In addition, in late 2002 and 2003, Santee Cooper commenced and continued construction of a wholly new coal-fired electricity generating unit without first obtaining a PSD SIP.

The proposed Consent Decree covers Santee Cooper's four coal-fired power plants in South Carolina: the Cross Plant located in Pineville, Berkeley County; the Grainger Plant located in Conway, Horry County; the Jefferies Plant located in Moncks Corner, Berkeley County; and the Winyah Plant located in Georgetown, Georgetown County. Under the terms of the proposed Consent Decree, Santee Cooper will install or upgrade pollution controls for SO_2, NO_X, and PM at more than 80% of the electricity-generating capacity of these four plants. Santee Cooper will also pay $2.0 million in civil penalties and to undertake $4.5 million in additional injunctive relief.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *South Carolina Public Service Authority,* D.J. Ref. No. 90–5–2–1–07492.

The Consent Decree may be examined at the Office of the United States Attorney, District of South Carolina, 151 Meeting Street, 2d Floor, Charleston, SC 29402. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov)*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $26.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–7241 Filed 3–30–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[Docket No. ATF 5N]

Commerce in Explosives; List of Explosive Materials (2003R–31P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice.

ACTION: Notice of List of Explosive Materials.

SUMMARY: Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, the Department must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. 841 *et seq.* The list covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in 18 U.S.C. 841(c). This notice publishes the 2003 List of Explosive Materials.

DATES: The list becomes effective upon publication of this notice on March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Wathenia Clark; Program Manager; Public Safety Branch; Arson and Explosives Programs Division; Bureau of Alcohol, Tobacco, Firearms and Explosives; United States Department of Justice; 650 Massachusetts Avenue, NW., Washington, DC 20226 (phone 202–927–2310).

SUPPLEMENTARY INFORMATION: The list is intended to include any and all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all-inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in 18 U.S.C. 841. Explosive materials are listed alphabetically by their common names followed, where applicable, by chemical names and synonyms in brackets.

In the 2003 List of Explosive Materials, the Department has added two terms to the list of explosives:

1. Tetrazole explosives, and
2. Ammonium perchlorate having particle size less than 15 microns.

The Department has added these explosive materials to the list because their primary or common purpose is to function by explosion. ''Tetrazole explosives'' is intended to be an all-encompassing term, to include all Tetrazole explosive mixtures. Ammonium perchlorate had appeared on the List of Explosive Materials until 1991 and has been re-introduced to the 2003 List as a corrective measure. It has retained its designation as an explosive since 1991, despite the fact that it was inadvertently omitted from previous lists.

This revised list supersedes the List of Explosive Materials dated April 26, 2002 (Notice No. 943, 67 FR 20864).

Notice of List of Explosive Materials

Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, I hereby designate the following as explosive materials covered under 18 U.S.C. 841(c):

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non-cap sensitive).
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate composite propellant.
Ammonium perchlorate explosive mixtures.
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].
Aromatic nitro-compound explosive mixtures.
Azide explosives.

B

Baranol.
Baratol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Bulk salutes.
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclonite [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.
Cyclotrimethylenetrinitramine [RDX].

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM [dipicramide; diaminohexanitrobiphenyl].
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPA [2,2-dinitropropyl acrylate].
DNPD [dinitropentano nitrile].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA [ethylenedinitramine].
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
EGDN [ethylene glycol dinitrate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive liquids.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen [RDX].
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMTD [hexamethylenetriperoxidediamine].
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.

Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate explosive mixtures.
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitronium perchlorate propellant mixtures.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [plastic bonded explosives].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate explosives.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
PYX [2,6-bis(picrylamino)] 3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Salutes (bulk).
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate explosive mixtures.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TATP [triacetonetriperoxide].
TEGDN [triethylene glycol dinitrate].
Tetranitrocarbazole.
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetrazole explosives.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

Approved: March 19, 2004.

Edgar A. Domenech,

Acting Director.

[FR Doc. 04–7020 Filed 3–30–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,288]

Biddeford Blankets, LLC Microlife USA Subsidiaries of Microlife Corporation Biddeford, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 21, 2003, applicable to workers of Biddeford Blankets, LLC, a subsidiary of Microlife Corporation, Biddeford, Maine. The

notice was published in the **Federal Register** on December 29, 2003 (68 FR 74979).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of flexible heating products, including electric warming blankets.

New information shows that Biddeford Blankets, LLC and Microlife USA are subsidiaries of Microlife Corporation. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Microlife USA.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Biddeford Blankets, LLC who were adversely affected by increased imports.

The amended notice applicable to TA–W–53,288 is hereby issued as follows:

All workers of Biddeford Blankets, LLC, Microlife USA, subsidiaries of Microlife Corporation, Biddeford, Maine, who became totally or partially separated from employment on or after October 17, 2002, through November 21, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 12th day of March 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7174 Filed 3–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,118 and TA–W–51,118A]

Electrolux Home Products, Inc., Edison and Piscataway, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 1, 2003, applicable to workers of Electrolux Home Products, Inc., Edison, New Jersey. The notice was published in the **Federal Register** on May 19, 2003 (68 FR 27107).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of home air conditioners.

New findings show that worker separations will occur at the Piscataway, New Jersey facility of the subject firm when the company permanently closes June 30, 2004. The administrative workers of the subject firm who were previously located in Edison, New Jersey, are now located in Piscataway, New Jersey.

Accordingly, the Department is amending the certification to cover workers at Electrolux Home Productions, Inc., Edison, New Jersey, now located in Piscataway, New Jersey.

The intent of the Department's certification is to include all workers of Electrolux Home Products, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–51,118 is hereby issued as follows:

All workers of Electrolux Home Products, Inc., Edison, New Jersey (TA–W–51,118) and Electrolux Home Products, Inc., Piscataway, New Jersey (TA–W–51,118A), who became totally or partially separated from employment on or after March 3, 2002, through May 1, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 11th day of March 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7173 Filed 3–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,349]

Ethan Allen Manufacturing, Inc., Ethan Allen Interiors, Inc., Beecher Falls, VT; Notice of Revised Determination on Reconsideration

On December 26, 2003, the Department of Labor received the petitioner's request for administrative reconsideration of the Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Notice of Affirmative Determination Regarding Application for Reconsideration was issued on February 25, 2004 and will soon be published in the **Federal Register.**

The petitioner asserted in the request for reconsideration that the worker separations at the subject firm were the result of increased imports of furniture and case goods from China.

The Department's reconsideration investigation revealed increased case goods and furniture imports during the period of employment, sales and production declines at the subject company.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of case goods and furniture contributed importantly to the decline in production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following revised determination:

Workers of Ethan Allen Manufacturing, Inc., Ethan Allen Interiors, Inc., Beecher Falls, Vermont, who became totally or partially separated from employment on or after October 20, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 11th day of March 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7175 Filed 3–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,083]

Facemate Corporation, Greenwood, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 26, 2004, in response to a petition filed on behalf of workers at Facemate Corporation, Greenwood, South Carolina.

The Department has been unable to locate company officials of the subject firm or to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 9th day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7178 Filed 3–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,320]

Hubbell Power Systems, Inc., Leeds, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 20, 2004, in response to a petition filed by a company official on behalf of workers of Hubbell Power Systems, Inc., Leeds, Alabama.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 9th day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7181 Filed 3–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,333 and TA–W–54,333A]

Louisville Ladder Group LLC, Smyrna, Tennessee, Louisville Ladder Group LLC, Louisville, Kentucky; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 23, 2004, in response to a petition filed by a company official on behalf of workers at Louisville Ladder Group LLC, Smyrna, Tennessee (TA–W–54,333) and Louisville Ladder Group LLC, Louisville, Kentucky (TA–W–54,333A).

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 9th day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7182 Filed 3–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,487]

National Textiles, Eden, NC; Notice of Revised Determination on Reconsideration

By application of February 6, 2004, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on December 15, 2003, based on the finding that imports of cut fabric did not contribute importantly to worker separations at the subject plant and that there was no shift to a foreign country. The denial notice was published in the **Federal Register** on January 16, 2004 (69 FR 2622).

To support the request for reconsideration, the company official supplied additional information to supplement that which was gathered during the initial investigation. Upon further review, it was revealed that the company shifted production of cut fabric to Mexico and Honduras during the relevant period and that this shift contributed importantly to layoffs at the subject firm.

Conclusion

After careful review of the facts obtained in the investigation, I determine that there was a shift in production from the workers' firm or subdivision to Mexico and Honduras of articles that are like or directly competitive with those produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of National Textiles, Eden, North Carolina who became totally or partially separated from employment on or after November 5, 2002 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 11th day of March 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7176 Filed 3–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,253]

Nixon Gear, Inc., Syracuse, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 12, 2004 in response to a petition filed by a state agency representative on behalf of workers of Nixon Gear, Inc., Syracuse, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7180 Filed 3–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,998]

Tri Star Knitting, Cedar Bluff, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 14, 2004 in response to a worker petition filed by a state workforce agency on behalf of workers at Tri Star Knitting, Cedar Bluff, Alabama.

The Department was unable to locate an official of the company to obtain the information necessary to issue a determination. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7177 Filed 3–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,093]

Valenite, Gainesville, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 28, 2004, in response to a worker petition filed by a company official on behalf of workers at Valenite, Gainesville, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of March, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7179 Filed 3–30–04; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 12, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 12, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 22nd day of March, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 03/01/2004 and 03/05/2004]

TA–W	Subject firm (petitioners)	Location	Date of Institution	Date of petition
54,381	YKK (USA), Inc. (GA)	Macon, GA	03/01/2004	03/01/2004
54,382	Inter Metro Industries Corp. (Comp)	Cucamonga, CA	03/01/2004	02/27/2004
54,383	Hewlett Packard (Wkrs)	Allentown, PA	03/01/2004	02/19/2004
54,384	Keeler Die Cast (Comp)	Grand Rapids, MI	03/01/2004	02/27/2004
54,385	TSS Dupont Holding (Wkrs)	Providence, RI	03/01/2004	02/26/2004
54,386	Interface Fabrics South (Wkrs)	Elkin, NC	03/01/2004	03/01/2004
54,387	Shapiro Packing Co., Inc. (Wkrs)	Augusta, GA	03/01/2004	02/25/2004
54,388	Reeves International (Wkrs)	Pequannock, NJ	03/01/2004	02/27/2004
54,389	Slater Lemont (Wkrs)	Lemont, IL	03/02/2004	02/25/2004
54,390	Gultech North Carolina (Comp)	Raleigh, NC	03/02/2004	03/01/2004
54,391	Quad Tool and Design, Inc. (Comp)	Kewaskum, WI	03/02/2004	03/01/2004
54,392	Safelite Group (Wkrs)	Great Falls, MT	03/02/2004	03/01/2004
54,393	Johnson Controls Interior (MI)	Holland, MI	03/02/2004	02/24/2004
54,394	Magna Donnelly (MI)	Holland, MI	03/02/2004	02/24/2004
54,395	Great Lakes Gas Transmission Co. (Wkrs)	Troy, MI	03/02/2004	02/23/2004
54,396	Volt Services (Wkrs)	Roseville, CA	03/02/2004	02/23/2004
54,397	Ludlow Coated Products (Comp)	Opalocka, FL	03/02/2004	02/20/2004
54,398	Monster Cable Products, Inc. (Wkrs)	Brisbane, CA	03/02/2004	02/23/2004
54,399	WesternGeco (AK)	Anchorage, AK	03/02/2004	02/17/2004
54,400	Allen Edmonds Shoe Corp. (Wkrs)	Beigton, WI	03/02/2004	03/01/2004
54,401	G.S.W. Manufacturing (Comp)	Findlay, OH	03/02/2004	03/01/2004
54,402	Alcatel (TX)	Allen, TX	03/02/2004	03/01/2004
54,403	Missota Paper Co. LLC (MN)	Brainero, MN	03/02/2004	03/01/2004
54,404	Plains Cotton Cooperative Assoc. (Comp)	New Braunfels, TX	03/02/2004	02/25/2004
54,405	Avondale Mills, Inc. (Wkrs)	Burnsville, NC	03/02/2004	03/01/2004
54,406	Pegasus Solutions, Inc. (Comp)	Grapevine, TX	03/03/2004	03/01/2004
54,407	CFM US Corporation (Comp)	Huntington, IN	03/03/2004	03/02/2004
54,408	Morganite Inc. (Wkrs)	Dunn, NC	03/03/2004	02/16/2004
54,409	Rouge Steel Company (MI)	Dearborn, MI	03/03/2004	02/24/2004
54,410	ePlus Technology Inc. (Comp)	Wilmington, NC	03/03/2004	03/03/2004
54,411	Knowles Electronics (Comp)	Itasca, IL	03/03/2004	02/20/2004
54,412	Scovill Fastners, Inc. (Wkrs)	Clarkesville, GA	03/03/2004	03/01/2004
54,413	Sumitomo Electric Wiring Systems, Inc. (Comp)	Scottsville, KY	03/03/2004	03/02/2004
54,414	ACS (Wkrs)	Indianapolis, IN	03/03/2004	03/01/2004
54,415	MCS Merchandise (NJ)	Somerset, NJ	03/03/2004	03/02/2004
54,416	Plastic Components, Inc. (Comp)	Germantown, WI	03/03/2004	02/25/2004
54,417	Repack of Prewett Mills (Wkrs)	Ft. Payne, AL	03/03/2004	02/26/2004

APPENDIX—Continued

[Petitions instituted between 03/01/2004 and 03/05/2004]

TA–W	Subject firm (petitioners)	Location	Date of Institution	Date of petition
54,418	Flexfab, LLC (Comp)	Albion, IN	03/04/2004	03/03/2004
54,419	U.S. Forest Industries, Inc. (Comp)	Lisle, IL	03/04/2004	03/03/2004
54,420	Global Power Equipment Group (MA)	Auburn, MA	03/04/2004	02/23/2004
54,421	Sykes Enterprises, Inc. (Wkrs)	Ada, OK	03/04/2004	03/02/2004
54,422	Golden Star, Inc. (Wkrs)	Atchison, KS	03/04/2004	03/02/2004
54,423	Takata Restraint Systems, Inc. (Comp)	Cheraw, SC	03/04/2004	03/02/2004
54,424	FSI Int (MN)	Chaska, MN	03/04/2004	03/03/2004
54,425	Bloomsburg Mills, Inc. (Comp)	Bloomsburg, PA	03/05/2004	03/05/2004
54,426	Littelfuse (Wkrs)	Arcola, IL	03/05/2004	02/27/2004
54,427	Huntington Steel Corp. (Comp)	Warren, MI	03/05/2004	03/03/2004
54,428	VF Playwear (Wkrs)	Greensboro, NC	03/05/2004	03/03/2004
54,429	Decorize, Inc. (Comp)	Springfield, MO	03/05/2004	03/03/2004
54,430	Bow Industrial Corp. (Union)	Plattsburgh, NY	03/05/2004	03/04/2004

APPENDIX

[Petitions instituted between 03/08/2004 and 03/12/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,431	Dexter Shoe Company (ME)	Dexter, ME	03/08/2004	03/02/2004
54,432	American Hofmann Corp. (Wkrs)	Lynchburg, VA	03/08/2004	02/20/2004
54,433	Night Fashion (CA)	Los Angeles, CA	03/08/2004	02/26/2004
54,434	Gale Group (Wkrs)	Belmont, CA	03/08/2004	02/23/2004
54,435	ISG-Steelton (USWA)	Steelton, PA	03/08/2004	02/27/2004
54,436	Thomson (CA)	Nevada City, CA	03/08/2004	03/03/2004
54,437	Parker Seal (Comp)	Lebanon, TN	03/08/2004	02/23/2004
54,438	Reichhold Chemicals (Wkrs)	Bridgeville, PA	03/08/2004	03/04/2004
54,439	Meyer Packaging (Comp)	Palmyra, PA	03/08/2004	02/27/2004
54,440	Medsource Technologies (Comp)	Newton, MA	03/08/2004	03/05/2004
54,441	Oxford Industries (Comp)	Lyons, GA	03/08/2004	03/05/2004
54,442	Holman Cooking Equipment (Comp)	Saco, ME	03/08/2004	02/27/2004
54,443	Bloomsburg Mills (Comp)	Bloomsburg, PA	03/08/2004	03/05/2004
54,4444	Irving Forest Products (PACE)	Ashland, ME	03/08/2004	03/05/2004
54,445	Scholle Custom Packaging (Comp)	Manistee, MI	03/08/2004	03/05/2004
54,446	MPI, Inc. (Wkrs)	Poughkeepsie, NY	03/08/2004	03/03/2004
54,447	ICT Group (Wkrs)	Burnham, PA	03/09/2004	03/08/2004
54,448	Methode Electronics (Wkrs)	Golden, IL	03/09/2004	03/08/2004
54,449	Prinzing Enterprises (Comp)	Warrenville, IL	03/09/2004	03/08/2004
54,450	Dekko Engineering (Comp)	Lucas, IA	03/09/2004	03/08/2004
54,451	Meadowcraft, Inc. (Comp)	Birmingham, AL	03/09/2004	03/08/2004
54,452	Jaftex Corporation (MEPA)	Henderson, NC	03/09/2004	03/08/2004
54,453	Agilent Technologies (Wkrs)	Loveland, CO	03/09/2004	03/03/2004
54,454	J.J. Mac, Inc. d/b/a Rainbeau (Wkrs)	San Francisco, CA	03/09/2004	03/05/2004
54,455	Weirton Steel Corp. (Comp)	Weirton, WV	03/09/2004	03/06/2004
54,456	Tyco Electronics (Comp)	Fuquay-Varina, NC	03/09/2004	03/08/2004
54,457	Protopac, Inc. (Comp)	Watertown, CT	03/09/2004	03/08/2004
54,458	Rowe Pottery Works (Wrks)	Cambridge, WI	03/10/2004	03/09/2004
54,459	Webster Industries (Comp)	Bangor, WI	03/10/2004	03/08/2004
54,460	Ertex Knitting Co. (NJ)	Paterson, NJ	03/10/2004	03/09/2004
54,461	Ramtex Sales Corp. (Comp)	New York, NY	03/10/2004	02/26/2004
54,462	Steward Machine Co. (Comp)	Birmingham, AL	03/10/2004	03/09/2004
54,463	Bodycote Thermal Processing (Wkrs)	Sturtevant, WI	03/10/2004	02/26/2004
54,464	GL and V Pulp and Paper USA (Comp)	Vancouver, WA	03/10/2004	03/08/2004
54,465	Paris Accessories (Wkrs)	Walnutport, PA	03/10/2004	03/10/2004
54,466	Worth (Comp)	Tullahoma, TN	03/10/2004	02/19/2004
54,467	RBX Industries, Inc. (Comp)	Bedford, VA	03/10/2004	03/05/2004
54,468	Trans Union (Wkrs)	Crumlynne, PA	03/10/2004	03/10/2004
54,469	St. John Knits (Wkrs)	Van Nuys, CA	03/11/2004	03/01/2004
54,470	BioLab, Inc. (Wkrs)	West Lake, LA	03/11/2004	03/01/2004
54,471	Circuit City (Wkrs)	Martinsville, VA	03/11/2004	03/10/2004
54,472	Alcatel USA (Wkrs)	Plano, TX	03/11/2004	02/29/2004
54,473	Atofina Chemicals (Wkrs)	Piffard, NY	03/11/2004	02/27/2004
54,474	Osram Sylvania (IUE)	St. Marys, PA	03/11/2004	03/10/2004
54,475	Dialight (Wkrs)	Roxboro, NC	03/11/2004	03/02/2004
54,476	Tekmatex (Wkrs)	Charlotte, NC	03/11/2004	03/05/2004
54,477	Simonds Industries (Comp)	Kirkland, WA	03/11/2004	03/10/2004
54,478	Great Years (Wkrs)	San Francisco, CA	03/11/2004	03/02/2004
54,479	SCA Packaging (USWA)	Streator, IL	03/11/2004	03/03/2004

APPENDIX—Continued

[Petitions instituted between 03/08/2004 and 03/12/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,480	Ma's Manufacturing (Wkrs)	San Francisco, CA	03/11/2004	03/02/2004
54,481	Sierra Pacific Industries (Wkrs)	Susanville, CA	03/11/2004	03/01/2004
54,482	Umicore Optical Materials USA (Comp)	Quapaw, OK	03/11/2004	03/10/2204
54,483	Colortex Corporation, Inc. (Comp)	York, SC	03/11/2004	02/27/2004
54,484	Cady Industries (Comp)	Memphis, TN	03/12/2004	03/11/2004
54,485	Burlington Industries (Wkrs)	Hurt, VA	03/12/2004	02/20/2004
54,486	Pasminco Clinch Valley Mine (Comp)	Thorn Hill, TN	03/12/2004	03/11/2004
54,487	Maple Mountain Industries (Wkrs)	Meyersdale, PA	03/12/2004	03/05/2004
54,488	Fort Smith and Bow (AR)	Fort Smith, AR	03/12/2004	03/11/2004
54,489	Pradco (AR)	Fort Smith, AR	03/12/2004	03/11/2004
54,490	Parker Hannifin Corp. (Comp)	Ogden, UT	03/12/2004	03/04/2004
54,491	Art Craft Optical (Wkrs)	Rochester, NY	03/12/2004	02/19/2004
54,492	Regal Manufacturing Co. (Comp)	Hickory, NC	03/12/2004	03/08/2004
54,493	Burle Industries (Wkrs)	Lancaster, PA	03/12/2004	03/09/2003
54,494	Jones and Vining, Inc. (Comp)	Lewiston, ME	03/12/2004	03/10/2004
54,495	Milliken and Company (Wkrs)	Spartanburg, SC	03/12/2004	02/25/2004
54,496	Kilgore Knitting, Inc. (AL)	Fyffe, AL	03/12/2004	03/11/2004
54,497	Trek Bicycle Corp. (Comp)	Whitewater, WI	03/12/2004	03/11/2004

[FR Doc. 04–7170 Filed 3–30–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Security Programs: Training and Employment Guidance Letter Interpreting Federal Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC). These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Workforce Agencies. The UIPLs described below are published in the **Federal Register** in order to inform the public.

UIPL 14–01

UIPL 14–01 informs states of the amendments made by the Consolidated Appropriations Act of 2001 (CAA) affecting the federal-state UC program. The CAA amended Federal law to change the way American Indian tribes are treated under the Federal Unemployment Tax Act (FUTA). The Indian tribes are now treated similarly to state and local governments. States with ''Indian tribes,'' as defined by the CAA amendments, within their state boundaries were required to amend their laws to implement the requirements created by the CAA.

UIPL 14–01, Change 1

UIPL 14–01, Change 1 responded to questions concerning the treatment of Indian tribes under the FUTA. This issuance addresses the scope of the law, answers questions about the Model Language provided in UIPL 14–01, and responds to questions concerning financing UC for businesses owned by Indian tribes.

Dated: March 25, 2004.

Emily Stover DeRocco,

Assistant Secretary of Labor.

U.S. Department of Labor,

Employment and Training Administration, Washington, DC 20210

Classification: UI
Correspondence Symbol: TEUL
Date: January 12, 2001

Directive: Unemployment Insurance Program Letter No. 14–01.

To: All State Employment Security Agencies.

From: Grace A. Kilbane, Administrator, Office of Workforce Security.

Subject: Treatment of Indian Tribes under Federal Unemployment Compensation Law—Amendments made by the Consolidated Appropriations Act, 2001.

1. *Purpose:* To inform States of the amendments made by the Consolidated Appropriations Act, 2001 affecting the Federal-State Unemployment Compensation (UC) program.

2. *References.* Section 166 of the Community Renewal Tax Relief Act of 2000 as enacted by the Consolidated Appropriations Act, 2001 (CAA), P.L. 106–554; Sections 3304(a)(6), 3306(c)(7), 3306(u), and 3309 of the Federal Unemployment Tax Act (FUTA); Section 204(a) of the Federal-State Extended Unemployment Compensation Act; Section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)); 20 C.F.R. Part 615; *Draft Legislation to Implement the Employment Security Amendments of 1970 * * * H.R. 14705* (1970 Draft Language); *Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976–P.L. 94–566* (1976 Draft Language); Unemployment Insurance Program Letter (UIPL) No. 21–80 (February 29, 1980); UIPL No. 29–83 (September 13, 1983); UIPL No. 11–86 (January 31, 1986); UIPL No. 43–93 (September 13, 1993); UIPL No. 14–96 (April 12, 1996); and UIPL No. 30–96 (August 8, 1996).

3. *Background.* On December 21, 2000, the President signed the CAA into law. The CAA amended Federal law to change the way American Indian tribes are treated under the FUTA. Specifically, the Indian tribes are now treated similarly to State and local governments. This means—

Rescissions: None

Expiration Date: Continuing

- Services performed in the employ of tribes generally are no longer subject to the FUTA tax.
- As a condition of participation in the Federal-State UC program:

Services performed in the employ of tribes are, with specified exceptions, required to be covered under State UC laws. Prior to the CAA amendments, coverage was at the option of the State.

Tribes must be offered the reimbursement option. Prior to the CAA amendments, States were prohibited from offering the reimbursement option to Indian tribes. (See UIPL No. 4–96.)

- Extended Benefit payments based on services performed in the employ of tribes no longer qualify for Federal sharing.

Unlike State and local governments, if an Indian tribe fails to make required payments to the State's unemployment fund or payments of penalty or interest, then the tribe will become liable for the FUTA tax and the State may remove tribal services from State UC coverage.

States with ''Indian tribes,'' as defined by the CAA amendments, within their State boundaries will need to amend their laws to implement the requirements created by the CAA.

4. *Discussion.*

a. *What is the definition of Indian Tribe?* The CAA added a new provision to the FUTA defining Indian tribe. For FUTA purposes—

the term ''Indian tribe'' has the meaning given to such term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), and includes any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe. [Section 3306(u), FUTA.]

Section 4(e) of the Indian Self-Determination and Education Assistance Act provides—

''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and service provided by the United States to Indians because of their status as Indians.

A listing of these Indian tribes as of March 13, 2000, is contained in the attached **Federal Register** Notice. The amendments made by the CAA apply only to these Indian tribes. States are not required to cover services for Indian tribal entities not meeting this definition. States are prohibited from offering the reimbursement option to Indian tribal entities not meeting this definition.

b. *How does the CAA exempt tribal services from the FUTA tax?* Section 3306(c)(7), FUTA, excludes services performed by State and local governments from the FUTA definition of ''employment'' with the result that these services are not subject to the FUTA tax. The CAA amended this section to now provide that ''employment'' does not include—

service performed in the employ of a State, or any political subdivision thereof, or in the employ of an Indian tribe, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions or Indian tribes; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301. [Amendments in bold.]

The exception from employment applies only to services performed ''in the employ of an Indian tribe.'' It does not except from employment services performed for a private entity on reservation lands.

The Internal Revenue Service (IRS) is charged with administering this section and is therefore responsible for addressing any questions concerning services performed ''in the employ of an Indian tribe.''

c. *How does the CAA require coverage of tribal services*? As a condition of employers in the State receiving credit against the FUTA tax, FUTA requires State law to provide that UC must be—

payable on the basis of service to which 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law. [Section 3304(a)(6)(A), FUTA.]

These requirements are generally referred to as the ''required coverage'' and ''equal treatment'' provision. They apply to the services described in Section 3309(a)(1), FUTA. Section 3309(a)(1)(B) applies to ''service excluded from the term 'employment' solely by reason'' of Section 3306(c)(7), FUTA. Since services performed in the employ of an Indian tribe are now included in Section 3306(c)(7), FUTA, they fall within the scope of the required coverage and equal treatment provisions.

In brief, this means that services performed in the employ of a tribe must be covered for State UC law purposes when the services are excluded from the FUTA definition of ''employment'' solely by reason of being performed for the tribe. It also means that ''equal treatment'' must be provided in the payment of UC based on services performed in the employ of a tribe. States may not create special eligibility provisions related to tribal services within the scope of Section 3306(c)(7), FUTA, without conflicting with Federal law.

d. *Are any services excepted from the required coverage of tribal services*? Yes. The same services which may be excluded from coverage for State and local governments may be excluded when performed for a tribe. These services are found in paragraphs (1) through (6) and (8) through (20) of Section 3306(c) and Section 3309(b) of the FUTA. The CAA amended three of the FUTA exceptions to specifically address their application to services performed for tribes. These exceptions now provide that States are not required to cover services performed—

- ''as a member of legislative body, or a member of the judiciary, of a State or political subdivision thereof, **or of an Indian tribe**.'' (Section 3309(b)(3)(B), FUTA; amendment in bold.)
- ''in a position, which under or pursuant to the State **or tribal** law, is designated as (i) a major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week.'' (Section 3309(b)(3)(E), FUTA; amendment in bold.)
- ''as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof **or of an Indian tribe**, by an individual receiving such work relief or work training.'' (Section 3309(b)(5), FUTA; amendment in bold.)

Guidance on the exclusions relating to members of a legislative body or judiciary and to major nontenured policymaking or advisory position is found on pages 26–29 of the 1976 Draft Language. Guidance on work-relief or work-training programs is found in UIPL No. 30–96.

States are not required to except any services performed for a tribe from coverage. This decision is entirely a State option.

e. *How does the CAA give tribes the reimbursement option*? *How does the CAA allow States to terminate coverage and the reimbursement option*? FUTA also requires, as a condition of employers in the State receiving credit against the FUTA tax, that State law provide that—

payments (in lieu of contributions) with respect to service to which section 3309(a)(1) applies may be made into the State unemployment fund on the basis set forth in section 3309(a)(2). [Section 3304(a)(6)(B), FUTA.]

Since, as discussed in the preceding item, services performed in the employ of Indian tribes now fall under Section 3309(a)(1), the reimbursement option must be offered to Indian tribes. Therefore, the States are required to offer the option of ''payments in lieu of contributions'' (or reimbursement) option to Indian tribes.

The reimbursement option is described in Section 3309(a)(2), FUTA—

the State law shall provide that a governmental entity, **including an Indian tribe,** or any other organization (or group of governmental entities or other organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may guards to ensure that governmental entities or other organizations so electing will make the payments required under such elections. [Amendment in bold.]

In addition to making the reimbursement requirements of Section 3309(a)(2) applicable to the tribes, the CAA added a new Section 3309(d) to FUTA concerning elections of reimbursement status by an Indian tribe. It provides that—

The State law shall provide that an Indian tribe may make contributions for employment as if the employment is within the meaning of section 3306 or make payments in lieu of contributions under this section, and shall provide that an Indian tribe may make separate elections for itself and each subdivision, subsidiary, or business enterprise wholly owned by such Indian tribe. State law may require a tribe to post a payment bond or take other reasonable measures to assure the making of payments in lieu of contributions under this action. Notwithstanding the requirements of section 3306(a)(6) [sic—should be 3304(a)(6)], if, within 90 days of having receiving a notice of delinquency, a tribe fails to make contributions, payments in lieu of contributions, or payment of penalties or interest (at amounts or rates comparable to those applied to all other employers covered under the State law) assessed with respect to such failure, or if the tribe fails to post a required payment bond, then service for the tribe shall not be excepted from employment under section 3306(c)(7) until any such failure is corrected. This subsection shall apply to an Indian tribe within the meaning of section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

f. *What is the effect of these amendments on the reimbursement option*? The

amendments to FUTA establish the following rules for offering tribes the reimbursement option—

• States must offer the reimbursement option to tribes.

• A tribe must be given the option of making separate reimbursement elections for itself, each subdivision, subsidiary, or business enterprise wholly owned by the tribe.

• Tribes must be allowed to combine into group reimbursement accounts if they so choose.

• States may require a payment bond or take other reasonable measures to assure reimbursements are made. (See the discussion contained in the 1970 Draft Language, pages 99–103, concerning bonds or other security.)

• States may establish minimum periods for which an election (or the declining of the election) is a applicable and the times at which elections may be made.

g. *What happens if a tribe fails to make payments required under State law?* Concerning any failure of a tribe to make payments required under State law—

• The failure applies to any contributions, reimbursements, penalties, interest, and bonds required by State law.

• The amount of the penalty or rate of interest must be ''comparable'' to those applied to all other employers covered under State law. For ease of administration, States are encouraged to apply identical amounts or rates. States should not vary the amount or rate from that which would be charged other employers by more than 10 percent.

• If, within 90 days of receiving a delinquency notice, the tribe fails to make a required payment, then the services performed will no longer ''be excepted from unemployment under section 3306(c)(7) until any such failure is corrected.'' This means that—

• Services performed for the Indian tribe become subject to the FUTA tax.

• States are, at their option, no longer required to cover services performed for the tribe.

• States are prohibited from allowing the tribe to reimburse the State's unemployment fund. If the State chooses to continue coverage of tribal services, the tribe must be converted to contributing status.

Whether a tribe fails to make the required payment within 90 days of receiving a delinquency notice is a determination made under State law. Since the effects of unpaid liabilities for Indian tribes differs from the effect on other employers, States should advise the tribes at the time of mailing of the delinquency notice that non-payment will result in the tribe becoming subject to the FUTA tax, the exclusion of tribal services from coverage (if the State decides to exercise this option), and loss of reimbursement status.

Under Section 3309(d), FUTA, if ''a tribe fails to make'' ''a payment or fails to post a required payment bond,'' then ''service for the tribe'' shall not be excepted from the FUTA definition of employment. When any subdivision, subsidiary, or business enterprise wholly owned by the tribe (''tribal units'') fails to make a payment or post a required bond, all services performed for the tribe become subject to the FUTA and States are no longer required to cover the services. If, however, the services continue to be covered, the tribe must be converted to contributing status. In cases where tribal units have separately elected the reimbursement option, States may wish to consider making the entire tribe and its tribal units jointly and severally liable so that the risk of the Indian tribe losing its privileges is minimized.

States are not required to terminate coverage due to nonpayment. If a State elects to do so, the State should terminate coverage due to non-payment only as a last resort because terminating coverage publishes workers who have no control over whether their employers satisfy the UC liabilities.

States have some flexibility to determine when the termination of reimbursement status becomes final. For example, the termination could become effective either immediately or the following tax year. Also, if the State has reason to believe the tribe will pay the amounts due, termination may be delayed. For example, States may enter into payment schedules, which, if adhered to by the tribe, would be a basis for delaying termination. Similarly, once the tribe satisfies its liabilities, the State has the option of immediately converting the tribe back to a reimbursing employer, waiting until the following tax year, or requiring a new election. States may also choose to treat certain delinquencies differently depending on the nature of the delinquency. For example, if a tribe is delinquent in posting the initial required payment bond for purposes of becoming a reimbursing employer, the State may grant reimbursing status immediately upon the bond being paid. Alternatively, if the delinquency is for unpaid reimbursements, the State may wait until the following tax year to again grant reimbursing status.

The IRS will determine any FUTA tax liability resulting from State determinations made under provisions of State law consistent with Section 3309(d), FUTA. To assure proper determination of FUTA liability, the State will need to advise the IRS and the Department of Labor of any determination it has made concerning an Indian tribe's failure to make required payments or post a required bond and whether the tribe has subsequently satisfied these liabilities.

h. *What options exist for allocating UC costs when the tribe elects reimbursement status.?* Under the FUTA, State law must provide for payment by reimbursing employers ''of amounts equal to the amounts of compensation attributable under the State law to such service.'' As explained in UIPL No. 21–80, whether UC paid is attributable to service in the employ of a reimbursing employer (and, therefore, whether the UC costs must be reimbursed by that employer) is to be determined under provisions of State UC law which reasonably interpret and implement FUTA. As a general rule, if an amount may be noncharged to a contributory employer, the State may similarly find that the payment is not ''attributable to'' a reimbursing employer. When this occurs, there is the possibility of unrecovered UC costs. UIPL No. 44–93 explains acceptable methods for establishing liability for these unrecovered UC costs.

i. *Is there any affect on Federal sharing under the Extended Benefit (EB) program?* Yes. States may no longer claim the Federal share of EB based on services performed for Indian tribes. The Federal-State Extended Unemployment Compensation Act (EUCA) provides that, with exceptions related to certain waiting weeks and rounding of benefits, the Federal share of EB will be 50 percent of benefit costs. (Section 204(a), EUCA.) Since, as discussed above, services performed for Indian tribes are now included in Section 3306(c)(7), the Department is prohibited from providing a Federal share based on these services. (The rationale for this prohibition is that the entities in question do not pay the FUTA tax which funds the Federal share of EB.)

How States allocate the costs of EB is controlled by 20 CFR 615.10. Contributory employers may be noncharged the costs of EB. In the case of reimbursing employers, the employer must reimburse at least 50 percent of the EB costs. As is the case for State and local governments, when Federal sharing is not permitted, the State may either charge the tribe for the all its EB costs or socialize its EB costs to the extent allowed by 20 CFR.

j. *Does the ''between and within terms denial'' for employees of education institutions apply?* Yes. The between and within terms denial provisions are an exception to the ''equal treatment'' requirements discussed in item 4.d. (Section 3304(a)(6)(A)(i)-(vi), FUTA.) some of these provisions are required; others are optional Denial between and within terms is required based on services performed in an instructional, research or principal administrative (that is, a ''professional'' capacity. (See UIPL No. 43–83 for a general discussion of these requirements.) When an Indian tribe operates an educational institution, UC based upon professional services for that institution are subject to the between and within terms denial. (Note that educational institutions on tribal lands may be operated by the Federal government. Treatment of these institutions is unchanged. *See* UIPL No. 11–86.)

k. *What is the CAA's Transition Rule for Indian Tribes?* The CAA's transition rule provides that, if a tribe has unpaid FUTA liabilities prior to its date of enactment, then the services for the tribe ''shall not be treated as employment''—that is, the FUTA tax will not be due—provided the tribe reimburses the State's unemployment fund for any UC paid prior to the date of enactment. This transition rule only affects the tribe's liability for FUTA tax prior to the date of enactment of the CAA. It has no effect on the requirement that coverage be extended to tribal services or on the requirement that tribes be offered the reimbursement option.

l. *Which States must amend their laws?* Only States with ''Indian tribes'' within their State boundaries must amend their laws. These States are:

Alabama
Alaska
Arizona

California
Colorado
Connecticut
Florida
Idaho
Iowa
Kansas
Louisiana
Maine
Massachusetts
Michigan
Minnesota
Mississippi
Montana
Nebraska
Nevada
New Mexico
New York
North Carolina
North Dakota
Oklahoma
Oregon
Rhode Island
South Carolina
South Dakota
Texas
Utah
Washington
Wisconsin
Wyoming

In addition, petitions for Federal recognition have been filed in the following States which do not currently have federally recognized tribes:

Arkansas
Delaware
Georgia
Indiana
Maryland
Missouri
New Jersey
Ohio
Tennessee
Vermont
Virginia

We recommend that States where Federal recognition has not been granted, but where petitions have been filed, amend their laws to assure State UC law automatically conforms with Federal law in the event Federal recognition is granted.

m. *By what date must amendments to State UC law be made?* The amendments ''apply to services performed on or after the date of enactment'' of the CAA. (Section need time to introduce and enact legislation, the Department will take no enforcement action prior to October 31, 2001.)

n. *Is the Department of Labor supplying model legislative language for States to use?* Model legislative language to aid States in developing their amendments is attached. States are not required to use this model legislation. As an alternative to using the model legislation, States may, for example, integrate the coverage provisions into the coverage provisions relating to State and local governments and integrate the reimbursement/bonding provisions into the reimbursement/bonding provisions applicable to all other employers who may elect the reimbursement option.

5. *Action Required.* Administrators are requested to provide this information to the appropriate staff. Action should be taken by the States with Indian tribes within their State boundaries listed in item 4.1. to implement the new Federal requirements discussed in this program letter as soon as possible.

6. *Inquiries.* Questions should be directed to the appropriate Regional Office.

Attachments—
Listing of Indian Tribes[1]
Model Legislative Language

Model Legislative Language

Section_____. Treatment of Indian Tribes

(a) The term ''employer'' shall include any Indian tribe for which service in employment as defined under this Act[1] is performed.

(b) The term ''employment'' shall include service performed in the employ of an Indian tribe, as defined in Section 3306(U) of the Federal Unemployment Tax Act (FUTA), provided such service is excluded from ''employment'' as defined in FUTA solely by reason of Section 3306(c)(7), FUTA, and is not otherwise excluded from ''employment'' under this Act. For purposes of this section, the exclusions from employment in section [insert provision of State law relating to State and local government exclusions] shall be applicable to services performed in the employ of an Indian tribe.

(c) Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject under this Act.

(d)(1) Indian tribes or tribal units (subdivisions, subsidiaries or business enterprises wholly owned by such Indian tribes) subject to this Act shall pay contributions under the same terms and conditions as all other subject employers, unless they elect to pay into the State unemployment fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(2) Indian tribes electing to make payments in lieu of contributions must make such election in the same manner and under the same conditions as provided in [enter section of State law] pertaining to State and local governments and nonprofit organizations subject to this Act. Indian tribes will determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.

(3) Indian tribes or tribal units will be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

(4) At the discretion of the commissioner, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions shall be required within ____ days after the effective date of its election, to:

(A) execute and file with the commissioner s surety bond approved by the commissioner or

(B) deposit with the commissioner money or securities on the same basis as other employers with the same election option.

(e)(1)(A) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within 90 days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in section (d), for the following tax year unless payment in full is received before contribution rates for next tax year are computed.

(B) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subparagraph (A), shall have such option reinstated if, after a period of one year, all contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties or interest remain outstanding.

(2)(A) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the commissioner have been exhausted, will cause services performed for such tribe to not be treated as ''employment'' for purposes of subsection (b).

(B) The commissioner may determine that any Indian tribe that loses coverage under subparagraph (A), may have services performed for such tribe again included as ''employment'' for purposes of subsection (b) if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(C) The commissioner will notify the United States Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage made under subparagraphs (A) and (B).

(f) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

(1) will cause the Indian tribe to be liable for taxes under FUTA;

(2) will cause the Indian tribe to lose the option to make payments in lieu of contributions;

(3) could cause the Indian tribe to be excepted from the definition of ''employer,'' as provided in paragraph (a), and services in the employ of the Indian tribe, as provided in paragraph (b), to be excepted from ''employment.''

(g) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the Federal government shall be financed in their entirety by such Indian tribe.

U.S. Department of Labor,

Employment and Training Administration, Washington, DC 20210

Classification: UI
Correspondence Symbol: OWS/OIS/DL
Date: April 6, 2001

Directive: Unemployment Insurance Program Letter, No. 14–01, Change 1

To: All State Employment Security Administrators

[1] The attachment was published in the **Federal Register**, Vol. 65, No. 49, pp. 13298–13303, on Monday, March 13, 2000.

[1] ''Act'' refers to the State employment security law.

From: Grace A. Kilbane, Administrator, Office of Workforce Security.

Subject: Treatment of Indian Tribes under Federal Unemployment Compensation Law—Questions and Answers.

1. *Purpose.* To respond to questions concerning the treatment of Indian tribes under the Federal Unemployment Tax Act as amended by the Consolidated Appropriations Act, 2001.

2. *References.* Section 166 of the Community Renewal Tax Relief Act of 2000 as enacted by the Consolidated Appropriations Act, 2001 (CAA), P.L. 106–554; the Internal Revenue Code, including the Federal Unemployment Tax Act (FUTA); Section 303(a)(1) of the Social Security Act (SSA); Section 2079 of the Revised Statutes (25 U.S.C. 71); Internal Revenue Service (IRS) Revenue Ruling 59–354; Unemployment Insurance Program Letter (UIPL) No. 24–89 (April 4, 1989); UIPL No. 11–92 (December 30, 1991); UIPL No. 14–96 (August 8, 1996); and UIPL No. 14–01 (January 12, 2001).

3. *Background.* The Department of Labor (Department) has received numerous questions on the treatment of Indian tribes under the FUTA, as amended by the CAA. The Department has also received several questions concerning the Model Legislative Language issued in UIPL No. 14–01. The attachment to this UIPL responds to these questions. Note the Question and Answer pertaining to notifying the IRS of delinquent payments provides new language modifying the Model Legislative Language.

3a. *Inquiries.* Questions should be directed to the Appropriate Regional Office.

Attachment—Questions and Answers

Rescissions: None

Expiration Date: Continuing

Treatment of Indian Tribes for FUTA Purposes

Questions and Answers

MODEL LEGISLATIVE LANGUAGE

Q. *Exclusions From Employment.* Subsection (b) of the Model Legislative Language provided in UIPL No. 14–01 says that the ''exclusions from employment in section [insert provision of State law relating to State and local government exclusions] shall be applicable to service performed in the employ of an Indian tribe.'' What does this accomplish?

A. The amendments to the FUTA allow the exclusions from employment currently available to State and local governments, such as those related to work-relief and work-training, to also be available to Indian tribes. (See pages 4 and 5 of UIPL No. 14–01.) Since these State law exclusions are currently written to apply only to State and local governments (and in some cases to nonprofit organizations), States wishing to exclude these services when performed for tribes will need to amend their laws to do so. Using subsection (b) of the Model Legislative Language is one method of doing so. Another method is to amend the sections of State law containing the exclusions.

Q. *Current State Law Covers Tribal Services.* My State law currently requires coverage of all Indian tribal services except in those cases where Federal law permits an exclusion from coverage. Also, my State law currently determines eligibility based on tribal services the same as all other services. The Model Legislative Language seems to assume that tribal services are not currently covered and that tribal services are treated differently for eligibility purposes. As a result, adding this language would be redundant. Is it necessary to add this language?

A. No. As noted in UIPL No. 14–01, States are not required to use the Model Legislative Language.

If your State already covers tribal services and if tribal services are treated the same as all other services in determining benefit eligibility, then subsections (a) through (c) of the Model Legislative Language are not necessary.

States are cautioned, however, that in some cases their laws may contain exclusions from coverage which are not found in FUTA. These exclusions do not raise conformity issues when they are limited to FUTA taxable services.

However, when the services are performed for State and local governmental entities or nonprofit organizations, and now for federally recognized Indian tribes, those services not excluded by FUTA must be covered. States not using the Model Legislative Language will need to ensure that any such exclusions do not apply to tribal services.

States are also cautioned to examine their between- and within-terms denial provisions to ensure that they apply to tribal services. (See UIPL No. 14–01, item 4.j.)

Q. *Termination of Coverage.* Is it necessary for States to adopt the provisions in subsection (e)(2) of the Model Legislative Language regarding the termination of coverage of tribal services for failure to make a required payment?

A. Although the amendments to the FUTA permit termination of coverage, they do not by their own terms require termination. However, Section 303(a)(1), SSA, requires ''[s]uch methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.'' We interpret this provision to mean that a State must have administrative means to prevent drains on its unemployment fund. Therefore, if the State has no other effective means of enforcing tribal liabilities to its fund, then the State will need to include a provision for termination of coverage.

As noted in UIPL No. 14–01, termination of coverage should be used as a last resort because termination punishes workers who have no control over whether their employers satisfy their UC liabilities. For this reason, the termination provisions are written to give the head of the State agency considerable discretion in determining whether and when to terminate coverage.

Whether or not a State opts to terminate coverage, the State is prohibited from allowing a tribe to continue reimbursing its unemployment fund if the tribe fails to make a required payment within 90 days of receiving the delinquency notice and until such delinquency is corrected. As explained in UIPL No. 14–01, item 4.g., if the State chooses to continue coverage of tribal services, the tribe must be converted to contributing status.

Q. *Delinquency Notices.* Is it necessary for States to adopt the provisions in subsection (f) of the Model Legislative Language regarding the content of delinquency notices sent to tribes?

A. No. State law need not spell out the contents of the delinquency notice. However, since the effects of unpaid delinquencies differ from those on non-tribal employers, inclusion of subsection (f) is recommended.

Q. *When to Notify the IRS.* Page (item 4.g.) of UIPL 14–01 states that a State ''will need to advise the IRS and the Department of Labor of any determination it has made concerning an Indian tribe's failure to make required payments or post a required bond and whether the tribe has subsequently satisfied these liabilities.'' However, the Model Legislative Language only requires such notification when the State has terminated the tribe from coverage. Which is correct?

A. Under Section 3309(d), FUTA, services performed for the tribe are not excepted from the FUTA definition of employment if ''within 90 days of having received a notice of delinquency, a tribe fails to make contributions, payments in lieu of contributions, or payment of penalties or interest * * * or if the tribe fails to post a required payment bond.'' Therefore, page 8, item 4.g. of UIPL 14–01 correctly states the requirement of Federal law as it relates to a tribe's delinquency in making required payments, but not to State coverage of services.

The Model Legislative Language in UIPL No. 14–01 should accordingly be modified by striking subsection (e)(2)(C) and inserting the following new subsection:

(h) If an Indian tribe fails to make payments required under this section (including assessments of interest and penalty) within 90 days of a final notice of delinquency, the commissioner will immediately notify the United States Internal Revenue Service and the United States Department of Labor

Scope of Amendments/Coverage of Services

Q. *Applicability.* Do the amendments to the FUTA apply to all enterprises wholly owned by an Indian tribe, including those that might compete with similar private businesses?

A. Yes. The amendments to Section 3306(a)(7), FUTA, apply to service performed ''in the employ of an Indian tribe.'' Section 3306(u) defines ''Indian tribe'' to include ''any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe.'' (Emphasis added.) As a result, the amendments apply to all wholly-owned tribal enterprises, regardless of whether they compete with private businesses. This parallels the treatment of governmental entities performing business activities, such as the operation of resorts or the sale of beer, wine and liquor.

The amendments do not apply when the service is performed in the employ of an enterprise jointly-owned by an Indian tribe (as defined in Section 3307(u), FUTA) and another entity. In this case, the services are

not ''performed in the employ of'' the tribe itself, but for the jointly-owned entity or partnership. In addition, the amendments do not apply when the service is performed in the employ of a contractor who may operate a tribally-owned business because the services are not ''performed in the employ of'' the tribe itself, but for the contractor.

Q. *Coverage of Tribal Councils.* Are services performed as a member of an Indian tribal council required to be covered?

A. No. IRS Revenue Ruling 59–354 states that ''amounts paid to members of Indian tribal councils for services performed by them as council members do not constitute 'wages' for the purposes of 'the'' FUTA. As a result, the required coverage provisions of the FUTA do not apply to these services.

Q. *Exceptions to Coverage.* My State law contains several exceptions from the definition of ''employment'' which are not found in FUTA. Does the Model Legislative Language automatically override these non-FUTA exceptions? If not, will other amendments to State law be needed to assure coverage of tribal services?

A. The Model Legislative Language does not override any non-FUTA exceptions from employment found in State law. As a result, States may need additional amendments to their UC laws.

As explained in item 4.c. of UIPL No. 14–01, FUTA requires coverage of services ''excluded from the FUTA definition of 'employment' solely by reason of being performed for the tribe.'' (Emphasis in original.) If no other exclusion of the services from ''employment'' or ''employee'' is found in Federal law, then the services must be covered. these exclusions are described in paragraphs (1)–(6) and (9)–(21) of Section 3306(c), FUTA; Section 3309(b), FUTA; and Sections 3121(d)(3)(B) and (C), and 3508 of the Internal Revenue Code. An exclusion related to fishing rights activities is described in the following Question and Answer.

States will need to determine if any non-FUTA exclusions are present in their laws. If any are present, the State will need to determine whether other provisions of State law require coverage when provided for a tribe. For example, under some State laws, non-FUTA exceptions from the State definition of ''employment'' are covered when the services are performed for State and local governmental entities and nonprofit organizations. Such provisions will need to be amended to add services performed for Indian tribes. Other State laws provide for the required coverage by specific reference to Section 3306(c)(7), FUTA, (pertaining to services performed for State and local governmental entities and, following the CAA amendments, for Indian tribes) or by a general statement that the non-FUTA exceptions will not apply if Federal law requires coverage. If the State determines that these provisions result in coverage of non-FUTA exceptions, then no additional amendments are necessary.

Q. *Treatment of Certain Fishing Rights-Related Activities.* Section 7873 of the Internal Revenue Code provides that no employment tax (including FUTA) will be imposed on services performed ''in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity'' as defined in Section 7873(b). Are States required to cover these services?

A. No. Section 2079 of the Revised Statutes (25 U.S.C. 71) provides that States may not impose taxes on the activities described in Section 7873 of the Internal Revenue Code. As explained on pages 7 and 8 of the Attachment to UIPL No. 24–89—

Section 7873 and 2079 exempt fishing rights income from Federal and State tax, ''including income, social security, and unemployment compensation insurance taxes.'' * * * Therefore, States may no longer tax remuneration paid for services to which Section 7873 pertains for State unemployment compensation purposes.

States are not required to cover services which they are prohibited from taxing. However, nothing prevents tribes from voluntarily entering into coverage for such services.

Q. *Tribe Has Employees in Other State(s).* Item 4.1. of UIPL No. 14–01 says that ''[o]nly States with 'Indian tribes' within their State boundaries must amend their laws'' and then lists 33 States which have tribes ''within their State boundaries.'' My State is not included in the list of 33 States, but a tribe based in another State has employees in my State. In my State required to cover these services?

A. Yes. The State is also required to offer the reimbursement option. In this case, the situation is no different from a nonprofit organization headquartered in one State but having employees in another State.

As a result, there may be cases when States not listed in UIPL No. 14–01 will need to amend their laws to conform with the FUTA requirements related to Indian tribes.

Financing

Q. *Experience Rating Systems.* My State has a separate experience rating system for State and local governments. Do the amendments to the FUTA require that Indian tribes be made part of this system when they do not elect the reimbursement option?

A. No. When Indian tribes are experienced rated, they must be assigned rates under your State's general experience rating provisions.

The experience rating requirements of Section 3303(a)(1), FUTA, apply to ''persons.'' ''Person'' is defined in Section 7701(a)(1) of the Internal Revenue Code to ''mean and include an individual, a trust, estate, partnership, association, company or corporation.'' Tribes have been considered persons for purposes of experience rating. (See UIPL No. 14–96.) The amendments to the FUTA did not change the definition of ''person'' and therefore did not change the fact that the experience rating provisions are applicable to tribes which do not reimburse the State's unemployment fund. Rather, the amendments simply required States to offer Indian tribes the option of electing reimbursement in lieu of contributions under an approved experience rating plan.

Q. *Use of Positive Reserve Balances.* Under my State law, employers reimburse the State's unemployment fund for weeks of unemployment which begin during the effective period of such election. May tribes which convert from contributory to reimbursing status use any positive balances accumulated as a contributory employer to pay reimbursements?

A. No. The reimbursement option is controlled by Section 3309(a)(2), FUTA, which provides that an entity ''may elect, for such minimum period and at such times as may be provided by State law, to pay (in lieu of such contribution [i.e., reimbursements]) into the State unemployment fund *amounts equal to the amounts of compensation attributable under the State law to such service.*'' (Emphasis added.) Simply put, an employer in reimbursement status must reimburse 100 percent of all UC costs attributable to service with that employer. Because FUTA does not contain any exception to this reimbursement requirement, a past contribution may not be treated as a ''reimbursement.'' This rule applies to all entities eligible for the reimbursement option. Indeed, in 1970 and 1976, amendments to FUTA were necessary to allow nonprofit entities which had previously been contributory employers to apply their positive balances to reimbursements during a transition period which has since expired. (See 3303(f) and (g), FUTA.)

Q. *Retroactivity of Reimbursement Option.* UIPL No. 14–01 says that ''The coverage and reimbursement requirements were. . .effective on December 21, 2000, and all affected States must enact conforming legislation immediately and retroactive to December 21, 2000.'' Does this mean States are required to permit tribes currently covered by State UC law to convert to reimbursement status retroactive to that date?

A. No. The Department's main concern regarding retroactivity is to ensure that States cover all tribal services as of December 21, 2000.

In addition, allowing tribes to retroactively change from contributory to reimbursement status may offer the tribes no advantages for State UC purposes. As noted in UIPL No. 11–92, Federal UC law authorizes only the withdrawal of ''compensation'' from a State's unemployment fund ''unless a clear and unambiguous exception is found in Federal law.'' Under UIPL No. 11–92, refunds of contributions are permissible only if the payment was in error and ''results in an amount being paid into the fund which was not required by the State law in effect at the time the payment was made.'' In short, a retroactive conversion to reimbursing status would not result in a refund of contributions paid as a contributory employer.

Q. *State Effective Date of Reimbursement Option.* Must tribes be allowed to convert to the reimbursement option as of the date of enactment of the State's law?

A. No. Under Section 3309(a)(2), FUTA, the reimbursement option applies ''for such minimum period and at such time as may be provided by State law.'' Therefore, regular State law provisions governing conversion will apply. For example, if a State's law is amended on July 31, and the State law provides that the next effective date for converting employers to reimbursing status is January 1, then the State will convert tribes to reimbursing status on such January 1.

Similarly, in the case of newly covered tribes, State law provisions governing the election of the reimbursement option at the time of establishing liability will apply.

Transition Provision

Q. *Transition Payments.* The transition provisions permits an Indian tribe to escape unpaid FUTA tax liability for services performed for the tribe before the enactment of the amendments to the FUTA if the tribe reimburses the State unemployment fund for UC attributable to this service. Does this mean my State must, for conformity and compliance purposes, permit an Indian Tribe to convert to reimbursement status for the period before the enactment of the amendments if it makes a transition payment?

A. No. The transition provision does not affect conformity and compliance. The reimbursement option of Section 3309(a)(2), FUTA, (as well as the mandatory coverage requirement of Section 3304(a)(6)(A), FUTA) only applies when services excluded from the term ''employment'' solely by reason of Section 3309(a)(1)(B), FUTA. Services performed for an Indian tribe before the enactment of the amendments on December 21, 2000, are not excluded from the term ''employment'' solely by reason of Section 3306(c)(7), FUTA. Rather, these services are excluded because the transition provision provides that they ''shall not be treated as employment (within the meaning of section 3306 of [FUTA]).'' As a result, FUTA does not require a state to permit an Indian tribe to elect the reimbursement option with respect to services performed before December 21, 2000, nor does it mandate coverage for these services.

The transition provision does not require the State to convert tribes to reimbursement status in order for the State to accept a tribal transition payment. The State may, in addition to accepting the tribal transition payment, waive outstanding liabilities for contributions for the period to which the transition payment applies.

The terms and conditions under which States accept transition payments and apply waivers will be determined under State law. However, the transition provision clearly contemplates that States will accept transition payments because they are necessary if an Indian tribe chooses unpaid FUTA liability. States therefore should accept any tribe's transition payment.

IRS Bulletin 2001–8 discusses the transition provision as it affects an Indian tribe's liability for unpaid FUTA taxes.

[FR Doc. 04–7172 Filed 3–30–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines

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.

DATES: Submit comments on or before June 1, 2004.

ADDRESSES: Send comments to Darrin A. King, Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2139, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet e-mail to *king.darrin@dol.gov*. Mr. King can be reached at (202) 693–9838 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(f) of the Federal Mine Safety and Health Act of 1977, Pub. L. 91 173 as amended by Pub. L. 95 164, (Mine Act) establishes miners' rights which may be exercised through a representative. Title 30, Code of Federal Regulations (CFR) part 40 contains procedures which a person or organization must follow in order to be identified by the Secretary as a representative of miners. The regulations define what is meant by ''representative of miners,'' a term that is not defined in the Mine Act.

Title 30 CFR 40.3 requires the following information to be filed with the Mine Safety and Health Administration (MSHA): (1) The name, address and telephone number of the representative or organization that will serve as representative; (2) the name and address of the mine operator; the name, address and MSHA ID number, if known, of the mine; (3) a copy of the document evidencing the designation of the representative; (4) a statement as to whether the representative will serve for all purposes of the Act, or a statement of the limitation of the authority; (5) the name, address and telephone number of an alternate; (6) a statement that all the required information has been filed with the mine operator; and (7) certification that all information filed is true and correct followed by the signature of the miners' representative. Title 30 CFR 40.4 requires that a copy of the notice designating the miners' representative be posted by the mine operator on the mine bulletin board and maintained in current status. Once the required information has been filed, a representative retains his or her status unless and until his or her designation is terminated. Under 30 CFR 40.5, a representative who wishes to terminate his or her designation must file a written statement with the appropriate district manager terminating his or her designation.

Section 109(d) of the Mine Act, requires each operator of a coal or other mine to file with the Secretary of Labor (Secretary), the name and address of such mine, the name and address of the person who controls or operates the mine, and any revisions in such names and addresses. Title 30 CFR part 41 implements this requirement and provides for the mandatory use of Form 2000–7, Legal Identity Report, for notifying the MSHA of the legal identity of the mine operator.

The legal identity for a mine operator is fundamental to enable the Secretary to properly ascertain the identity of persons and entities charged with violations of mandatory standards. It is also used in the assessment of civil penalties which, by statute, must take into account the size of the business, its economic viability, and its history of previous violations. Because of the rapid and frequent turnover in mining company ownership, and because of the statutory considerations regarding penalty assessments, the operator is required to file information regarding ownership interest in other mines held by the operator and relevant persons in a partnership, corporation or other organization. This information is also necessary to the Office of the Solicitor in determining proper parties to actions arising under the Mine Act.

Under title 30 CFR 56.1000 and 57.1000, operators of metal and

nonmetal mines must notify MSHA when the operation of a mine will commence or when a mine is closed. Openings and closings of mines are dictated by the economic strength of the mined commodity, and by weather conditions prevailing at the mine site during various seasons.

MSHA must be aware of openings and closings so that its resources can be used efficiently in achieving the requirements of the Mine Act, 30 U.S.C. 801 *et seq.* Section 103(a) of the Mine Act, 30 U.S.C. 813, requires that each underground mine be inspected in its entirety at least four times a year, and each surface mine at least two times per year. Mines which operate only during warmer weather must be scheduled for inspection during the spring, summer, and autumn seasons. Mines are sometimes located a great distance from MSHA field offices and the notification required by this standard precludes wasted time and trips.

II. Desired Focus of Comments

MSHA 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''**Federal Register** Documents.''

III. Current Actions

Currently, MSHA is soliciting comments concerning the extension of the information collection requirements related to 30 CFR 40.3, 40.4, and 40.5 (Representative of Miners), 30 CFR part 41.20 (Notification of Legal Identity), and 30 CFR 56.1000 and 57.1000 (Notification of Commencement of Operations and Closing of Mines).

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines.

OMB Number: 1219–0042.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Number of Respondents: 3,900.

Cite / reference	Annual responses	Average responses time	Annual burden hours
30 CFR 40.3, 40.4, and 40.5 (Representative of Miners)	90	0.75	68
30 CFR Part 41.20 (Notification of Legal Identity):			
New mines (paper filings)	755	0.5	378
New mines (electronic filings)	45	0.33	15
Changes (paper filings)	3,900	0.25	975
Changes (electronic filings)	1,600	0.17	267
30 CFR 56.1000 and 57.1000 (Notification of Commencement of Operations and Closing of Mines, pertains to metal and nonmetal mines):			
Telephone responses	1,725	0.05	86
Written responses	345	0.5	173
Total	8,460	.....	1,962

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintaining): $3,078.

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 in Arlington, Virginia, this 23rd day of March, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–7171 Filed 3–30–04; 8:45 am]

BILLING CODE 4510–43–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Sunshine Act Meetings

Time and Date: 9 a.m. to 12 p.m., Friday April 23, 2004.

Place: The offices of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

Status: This meeting will be open to the public, unless it is necessary for the Board to consider items in executive session.

Matters to be Considered: (1) A report on the U.S. Institute for Environmental Conflict Resolution; (2) a report from the Udall Center for Studies in Public Policy; (3) a report on the Native Nations Institute; (4) program reports; and (5) a report from the Management Committee.

Portions Open to the Public: All sessions with the exception of the session listed below.

Portions Closed to the Public: Executive session.

Contact Person for More Information: Christopher L. Helms, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 670–5529.

Dated: March 26, 2004.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 04–7345 Filed 3–29–04; 1:14 pm]

BILLING CODE 6820–FN–M

NATIONAL INDIAN GAMING COMMISSION

RIN 3141–AA04

Government-to-Government Tribal Consultation Policy

AGENCY: National Indian Gaming Commission.

ACTION: Notice, policy statement.

SUMMARY: This National Indian Gaming Commission Government-to-Government Tribal Consultation Policy establishes a framework for consultation between the NIGC and tribes with respect to the regulation of Indian gaming.

EFFECTIVE DATE: This policy statement takes effect immediately.

FOR FURTHER INFORMATION CONTACT: Maria J. Getoff, Staff Attorney, NIGC, Suite 9100, 1441 L St. NW, Washington, DC 20005. Telephone: (202) 632–7003; and fax, (202) 632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

A. Background
B. Response to Public Comments

A. Background

The Indian Gaming Regulatory Act (IGRA or Act), enacted on October 17, 1988, established the National Indian Gaming Commission (NIGC or Commission) as an independent Federal regulatory agency to provide federal regulation and oversight of Indian gaming. In carrying out its statutory responsibilities under the IGRA, the Commission represents the Federal government in its unique government-to-government relationship with Indian tribes regarding the operation and regulation of gaming on Indian land under the Act. In order to promote and strengthen that relationship and also effectively implement the provisions of the IGRA and further its stated policies and purposes, the Commission is strongly committed to meaningful consultation with Indian tribes regarding the formulation and implementation of NIGC policies and regulations that may substantially effect or impact the operation or regulation of gaming on Indian land under the Act.

The NIGC considers consultation to be a vitally important and effective means of communicating with gaming tribes to learn their concerns regarding the operation and regulation of Indian gaming, prior to, during, and after the formulation and implementation of related NIGC policies and regulations. Therefore, the NIGC has regularly engaged in consultations with Indian tribes on matters that impact Indian gaming. For instance, during 2003, five regional consultations were held across the United States as well as numerous consultations with individual tribes and representative organizations. Many tribes attended each of the regional consultation sessions. While the NIGC viewed these consultations as highly productive, they also provided insight into the need for a formal tribal consultation policy.

As it developed this policy, the NIGC looked for guidance to Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and the published tribal consultation policies of other Federal agencies. Executive Order 13175 sets forth certain criteria that federal agencies should follow when formulating and implementing policies that affect Indian tribes.[1] The Executive Order further provides that agencies ''shall have a process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' 65 FR 67249, 67250 (November 9, 2000).

On October 3, 2003, after several months of consultation with tribal leaders and intertribal organizations regarding the need for, and format and content of an NIGC consultation policy, the NIGC issued a Preliminary Draft Tribal Consultation Policy (Draft Policy) and solicited comments from tribes regarding the Draft Policy. Three of the five regional consultations held in 2003 occurred after the issuance of the Draft Policy, and informal comments were received during these consultations.[2] In addition, the NIGC received 36 written comments. The scheduled comment period ended on February 6, 2004. The majority of commenters commended the Commission for its efforts to establish this policy as an important step to foster productive government-to-government relations. Two commenters felt that the implementation of this policy actually limits consultation and does not allow tribes to express themselves fully. Due consideration has been given to each of the comments received. A discussion of specific comments follows.

[1] The Executive Order mandates compliance by all federal agencies with the exception of independent regulatory agencies, which are encouraged to comply with its provisions. The NIGC is an independent regulatory agency. *See* 25 U.S.C. 2702(3).

[2] The consultations occurred in Albuquerque, NM and Phoenix, AZ, October 23–24, 2003; in Temecula, CA, December 2–3, 2003; and in Crystal City, VA, February 3–5, 2004.

B. Responses to Public Comments

Comment: Several commenters recommended that the policy include a statement requiring all future proposed regulations published in the **Federal Register** include a statement that the Commission has complied with Executive Order 13175 through prior consultation and collaboration with tribal governments.

Response: The Commission fully intends to follow this consultation policy with respect to future proposed regulations. The Commission established this policy because of its strong belief that consultation with tribes on all issues affecting Indian gaming, including the promulgation of regulations, is vitally important. Furthermore, this policy is based in part on Executive Order 13175. However, Executive Order 13175 does not mandate compliance by independent federal regulatory agencies, of which the NIGC is one. Therefore, the Commission determined that it is neither compulsory nor necessary that the NIGC comply with the Executive Order, and instead decided it was more appropriate to develop and adhere to the terms of its own tribal consultation policy as an independent federal regulatory agency.

Comment: One commenter stated that, in Section I.A.1, there is no reference to Federal court decisions as part of the body of law that the NIGC must consider as it interprets the IGRA.

Response: The first sentence of Section I.A.1 of the Draft Policy reads as follows ''The United States of America has a unique government-to-government relationship with Federally-recognized Indian tribes, as set forth and defined in the Constitution of the United States and Federal treaties, statues, Executive Orders, and court decisions.'' We have inserted the word, ''Federal'' in front of ''court decisions'' to make this clearer.

Comment: One commenter questioned whether it was necessary to reiterate the findings and purposes of IGRA in Section I.A.2, arguing that the language of IGRA speaks for itself and does not add much to the consultation policy.

Response: We have restated the statutory language because we believe it provides relevant background to the policy. The policy is intended to promote and strengthen the government-to-government relationship between the NIGC and Indian tribes, in order to effectively implement the provisions of the IGRA and further accomplishment of its stated policies and purposes. Since the policies and purposes of the Act are so central to the goals of the policy, the Commission

believes they should be stated in the policy.

Comment: Several commenters suggested that the term, ''direct substantial effect'', used in Sections II.A. 5, III.A, III.F, and III.I should be defined, and should be defined liberally. Several commenters urged the NIGC to engage in consultation with tribes as to whether proposed regulation is necessary, and thereafter whether the proposed regulation has a potentially significant impact on tribes.

Response: We have slightly modified the text, by replacing ''which will have direct substantial effect'' with ''which may substantially affect or impact.'' We do interpret this language liberally, and intend that whenever the Commission proposes to develop or implement policies or regulations that may substantially effect or impact the operation or regulation of gaming on Indian land, it will consult with the potentially affected tribes regarding the need, substance, and effect of such policies or regulations. In addition, the Commission will continue to consult on existing NIGC policies and regulations upon request and as otherwise needed.

Comment: One commenter questioned how the regulated community would determine whether in fact the NIGC ''carefully considered'' tribal positions as the policy says it will in Section III.F. This commenter suggested that the NIGC adopt a policy that it would not invoke Exemption 5 of the Freedom of Information Act (FOIA) with respect to the decision-making process of the NIGC in arriving at a policy, procedure, program, requirement, restriction, or standard. Along these same lines, one commenter suggested that the policy include a requirement that the NIGC publicly report on issues of concern identified by tribes during consultation and how such matters were handled by the NIGC.

Response: The Commission cannot agree to adopt a policy whereby it would release information protected by Exemption 5 of the FOIA. Exemption 5 allows the withholding of ''inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.'' 5 U.S.C. 552(b)(5). In addition, we believe premature release of information related to the decision-making process would hamper the free exchange of ideas and the open and frank discussions we wish to encourage during consultation on matters of policy. Furthermore, items discussed in the meetings might have no bearing on a final action. We would risk public confusion if we released information on discussion of issues and concerns that were not relevant to our final action.

Finally, this consultation policy provides for early, robust and meaningful consultation regarding proposed NIGC policies and regulations before they are formulated and implemented. Once a final agency decision is made regarding the formulation and implementation of a policy or regulation, the NIGC will fully respond in writing to all relevant issues of concern raised in tribal comments during consultation and the rule-making process, in the same fashion it has done with regard to this policy and NIGC regulations in the past.

Comment: Several commenters objected to the use of the term ''domestic dependent'' to describe Indian tribes in Sections I.A.1 and II.A.1 as disrespectful of tribal sovereignty. These commenters proposed the term, ''sovereign Indian nation'' instead. These same commenters and others also objected to the use of the word, ''certain'' to modify the language, ''rights to self-government over their internal affairs'' and further objected to the use of the words, ''internal affairs'' as limiting in scope. Finally, some commenters objected to the term, ''under its protection.''

Some commenters recommended that the policy restate the Executive Order's language that: ''The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.'' Other commenters suggested that we add the language, ''and, under certain circumstances, civil jurisdiction over non-members and non-Indians. Other commenters also suggested removing reference to tribal ''internal affairs'' from the first sentence of Section I.A.2 and ending the sentence with ''* * * tribal economic development, tribal self-sufficiency and strong tribal governments.'' One commenter suggested we either more fully describe the powers of self-government that tribes possess, or modify the sentence to end with, ''* * * and possess the powers of self-government over their internal affairs.''

Response: We note that Executive Order 13175, which many tribes recommended we follow, uses the terms ''domestic dependent'' and ''under its protection'', as do many Federal court cases, to describe the Federal government's trust responsibility to Indian tribes and the extent of tribal sovereignty. Nevertheless, we have removed the words, ''domestic dependent'' and ''under its protection'' from Section I.A.1. We have also removed the language, ''and certain rights to self-government over their internal affairs.'' We have added ''as recognized and defined in the Constitution of the United States, Federal treaties statutes, and Executive Orders, and Federal court decisions' to the end of the sentence. The sentence now reads, ''Since its formation, the United States has recognized Indian tribes as sovereign nations which possess and exercise sovereign authority over their members and territory to the extent recognized and defined in the Constitution of the United States, Federal treaties, statutes, and Executive Orders, and Federal court decisions.

Comment: Several commenters recommended the removal of all reference to consultation with State and local governments. These commenters argued that the tribes already consult with these governments regarding class III gaming and that consultation with States and local governments on other matters are not appropriate in a policy regarding consultation with tribes. One commenter suggested we modify the language regarding states by adding the phrase, ''in some instances'' before the word ''state'' in Section I.B.3. One commenter felt differently, stating, ''We agree that all three governments charged with ensuring the success and integrity of tribal governmental gaming govern best when they communicate with one another with respect and candor.''

Response: We agree with the last comment. The Commission recognizes that states may only have a negotiated role in the regulation of Class III gaming, and would, therefore, not consult with states with respect to the regulation of Class II gaming, which is strictly within the jurisdiction of tribes and the NIGC. However, the Commission also recognizes the considerable role states may have in the regulation of Class III gaming and, therefore, believes it critical to this consultation policy to confer with state authorities where necessary to implement the provisions of the IGRA and further its stated goals. Without strong communication among all three sovereigns, the integrity of the regulated gaming operations may be compromised. We hope to facilitate the level of mutual respect, communication and cooperation between tribal, federal and state governments intended by the IGRA and necessary to accomplish its stated policies and purposes.

Comment: Several commenters argued that the Draft Policy implies that the NIGC has broad authority that, these commenters argue, it does not have. Several commenters argue that the NIGC has only limited regulatory responsibility over Class III gaming. These commenters point to Section

I.B.1, which states, ''The Act vests the Commission with certain regulatory powers and responsibilities for Indian gaming, including broad authority to promulgate such regulations and guidelines as it deems appropriate to implement and further the provisions of the Act.'' The commenters believe this statement conflicts with Congress' intent to limit the Commission's authority to those items expressed in IGRA, and suggests striking the term, ''certain'' and substituting the term ''statutory.'' These commenters also suggest striking the term ''broad'' and the phrase ''as it deems appropriate to implement and further the provisions of the Act and substitute the phrase ''to implement its authority consistent with the Act.''

Response: The Commission does not believe that the inclusion of the words, ''certain'' and ''broad'' imply the existence of authority that does not exist. The IGRA does vest the Commission with certain powers and responsibilities, and the use of the word ''certain'' neither enhances nor diminishes the statutory authority granted to the NIGC by Congress. In addition, the exact language from IGRA is ''the Commission shall promulgate such regulations and guidelines as it deems necessary to implement the provisions of [the Act].'' 25 U.S.C. 2706(b)(10). This is by its very language a broad grant of authority. The Commission does agree that the word, ''further'' is redundant, and has removed it.

Comment: Several commenters suggested striking the language in Section II.A.3., ''subject to independent Federal regulatory oversight and certain other conditions, restrictions and requirements prescribed by the Act'' and substitute the phrase ''subject to the requirements of the Act, tribal-state compact provisions, procedures in lieu of compacts, and regulations promulgated pursuant to the Act.''

Response: The Commission agrees, in part, that the suggested language is more accurate and comprehensive and has, accordingly, changed the text to read ''subject to independent Federal regulatory oversight and the conditions, restrictions, and requirements of the IGRA, Tribal-State Compact provisions, Federal procedures in lieu of a Tribal-State Compact, and NIGC regulations promulgated pursuant to the Act.''

Comment: With respect to the section regarding increasing flexibility for waiver of regulatory requirements, some commenters propose striking the language in Section IV.A., ''take whatever steps it determines appropriate and permitted by law'' and substituting ''whenever appropriate and permitted by law.''

Response: In its attempts to streamline the waiver process, the Commission will necessarily have to make the determination how best to accomplish this within the confines of the law. The Commission believes this language clarifies the conclusions it must reach before it may simplify the waiver process and therefore declines to substitute this language.

Comment: The language in Section II.B.3 troubled two commenters. It provides that the NIGC will defer to tribal regulations and standards (and thereby either decline to promulgate, or grant a variance or waiver of, its own regulations and standards) when the Commission determines that tribal compliance and enforcement are ''readily verifiable'' by the NIGC. These commenters felt that this language might give rise to unlimited and unwarranted intrusion in the name of verification and suggested that ''both the concept and language of 'verification' [be] thoroughly discussed and their consequences considered to eliminate any possibility that the phrase could be used to effectively nullify the primacy of tribal regulation.''

Response: As generally indicated in Section II.B. 6. the purpose of the preceding Sections II.B.3. through 5. is not to make unwarranted intrusions into tribal gaming operation or regulation, but instead to ''grant tribes the maximum administrative and regulatory discretion possible in operating and regulating their tribal gaming operations * * * '' In order to achieve this goal, the NIGC must first confirm that the proposed or established tribal regulations are permitted by IGRA; that they provide adequate regulation in furtherance of the Act's purposes; that there are tribal authorities and procedures in place to ensure tribal compliance with the regulations and their enforcement; and that similar Federal regulations are not also needed or otherwise required by IGRA. Verification of the adequacy, compliance, and enforcement of the tribal regulations will be accomplished through field inspections and audits in the same way that the NIGC now monitors and confirms compliance with NIGC required tribal internal control standards and approves related tribal variances from the NIGC's Minimum Internal Control Standards.

Comment: One commenter requested removal of everything in Section II.B.5 after the word, ''tribe(s).'' No explanation was provided for this request. The complete sentence reads, ''[t]he NIGC will not formulate and implement Federal regulatory policies, procedures, programs, requirements, restrictions, or standards for Indian gaming that will impose substantial direct compliance or enforcement costs on an Indian tribe(s), if the Commission determines that such Federal regulation and standards are not required by IGRA or necessary to implement its provisions or further accomplishment of its policies and purposes.''

Response: The Commission cannot agree never to implement policies or procedures that might impose costs on Indian tribes. All regulatory efforts involve some cost. Generally, the benefits of a tightly regulated casino outweigh the costs of that regulation. That said, we think the modifying language provides assurance that the NIGC will not move forward with any requirements that are not necessary to implement the IGRA or further its stated purposes.

Comment: One commenter objects to the inclusion of the language, ''and provide financial assistance to local governments'' in Section I.B.2. The commenter argues that the IGRA does not recognize that Indian gaming is conducted even in part to provide financial assistance to local governments.

Response: We agree generally with this statement and have accordingly revised the language of Section I.B.2. This Section relates to the proper uses of net revenue under the IGRA, one of which is ''to help fund operations of local government agencies.'' 25 U.S.C. 2710(b)(2)(B)(v). We have changed the language to make that clearer and to add one of the allowed uses of net revenue, which was inadvertently left out. The Section now reads, ''IGRA recognizes and provides that the operation of gaming on Indian lands is primarily a function of tribal sovereignty. Indian gaming is conducted by tribal governments, who may use the net revenues derived from this gaming only to fund tribal government operations or programs; provide for the general welfare of the tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies.''

Comment: One commenter suggested that the NIGC initiate consultation 60 days prior to a final decision regarding the formulation or implementation of regulatory policies or procedures.

Response: The NIGC declines to set a specific time period for consultation. Section III.D. provides that the ''NIGC will initiate consultation by providing early notification to affected tribes of the regulatory policies, procedures,

programs, requirements, restrictions, and standards that it is proposing to formulate and implement, before a final agency decision is made regarding its formulation or implementation.'' We believe that an arbitrary time period might hamper the process, particularly when complicated or controversial programs are at issue. At these times, we expect that comprehensive consultations will take substantially longer than 60 days to complete. The Commission does not want to run the risk of shortchanging the process in the name of expediency. Similarly, we also want to avoid unnecessary delay in starting and completing the consultation process. As stated in Section III.A., ''* * * the NIGC is committed to regular, timely, and meaningful government-to-government consultation with Indian tribes.'' This commitment implicitly requires that tribes be adequately informed regarding proposed NIGC policies and regulations well enough in advance for them to provide thoughtful and meaningful input regarding the need, content, and implementation of such policies and regulations, before the agency has made its final decision on these issues.

Comment: One commenter objects to Section III.G., which states that ''[t]he NIGC has authority and responsibilities under IGRA to conduct investigations, take enforcement actions, and render regulatory and quasi-judicial decision making regarding * * * tribal compliance with the Act.'' The commenter believes that the NIGC does not have generalized authority to take enforcement actions or render quasi-judicial decisions regarding compliance, especially over Class III gaming, and that the NIGC only has those authorities over specific tribal actions that are stated in IGRA.

Response: We have changed the text cited by the commenter to read ''the NIGC has authority and responsibilities under IGRA to conduct investigations, take enforcement actions, and issue regulatory and quasi-judicial decisions regarding the approval of tribal gaming ordinances and third party management contracts; the suitability of management contractors to participate in Indian gaming; and tribal compliance with the Act.''

The IGRA specifically provides that the Chairman of the NIGC may issue orders of temporary closure and may levy and collect civil fines. 25 U.S.C. 2705(a)(1) and (2). The Chairman has the authority to order temporary closure for substantial violations and to levy and collect civil fines for any violation of any provision of IGRA, any regulation prescribed by the Commission, or tribal regulations, ordinances, or resolutions approved by the Chairman. 25 U.S.C. 2713(b)(1) and (a)(1). These are enforcement powers. Pursuant to its authority to ''promulgate such regulations and guidelines as it deems appropriate to implement the provisions of [the IGRA],'' the NIGC has promulgated regulations governing the enforcement process. *See* 25 CFR part 573.

With respect to ''quasi-judicial'' decisions, the IGRA provides that the Commission may ''hold such hearings, sit and act at all such times and places, take such testimony, and receive such evidence as the Commission deems appropriate.'' 25 U.S.C. 2706(b)(8). The IGRA further provides that the Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman, 25 U.S.C. 2713(a)(2), and that, ''not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order shall be made permanent or dissolved.'' 25 U.S.C. 2713(b)(2). Decisions of the Commission may be appealed to Federal district court. 25 U.S.C. 2713(c).

Comment: One commenter suggested the development of a tribal liaison office or division whose primary purpose would be to facilitate the communication and consultation process with the various tribes.

Response: The Commission believes that the provisions of the consultation policy itself will facilitate communication and consultation, and that a separate office is unnecessary. Furthermore, all Region Directors are tasked with the responsibility of facilitating communication with the tribes within their Region. However, as we move forward with implementation of the policy, we will revisit this issue and evaluate the need for any additional staff to oversee policy performance.

Comment: One commenter would like to see the policy include consultation with tribal gaming commissions as well as tribal governments.

Response: The policy provides that the primary focus of our consultation activities will be with individual tribes and their recognized governmental leaders. Consultation with authorized intertribal organizations and representative intertribal advisory committees will be conducted in coordination with individual tribal governments. While we recognize that tribal gaming commissions are often the in-house authority on gaming issues within tribes and often serve as the tribal governments' representatives at our formal and informal consultations, the government-to-government relationship requires that the ultimate decision of who will represent a tribe at the consultation table is decided by the tribal government.

Comment: One commenter objects to the language in Section II.A.7 which states that the NIGC will work with other Federal departments and agencies to enlist their support to assist the NIGC and tribes in providing adequate environmental protections for the health and safety of the public at tribal gaming facilities. This commenter argues that the NIGC does not provide environmental protection and has no legitimate role in doing so.

Response: The IGRA requires that tribal gaming ordinances include a provision that the construction and maintenance of a gaming facility, and the operation of gaming be conducted in a manner which adequately protects the environment and the public health and safety. 25 U.S.C. 2710(b)(2)(E). On July 12, 2002, the NIGC published an interpretive rule with respect to health and safety that defines the Commission's responsibilities. 67 FR No. 134, 46111 (July 12, 2002). The Commission has limited and discrete responsibility to provide regulatory oversight of tribal compliance with this ordinance provision. As we stated in the interpretive rule, it is the Commission's view that this section of IGRA requires tribal governments to adopt and apply health and safety standards. If the Commission determines that tribal standards are not routinely enforced, it will so notify the tribe. Only if the Commission finds imminent jeopardy to the environment, public health or safety will it proceed to enforcement if no corrective action is taken. *Id.* at 46112. We believe the language of Section II.A.7. does not imply the Commission has powers it does not have with respect to health and safety. The role and responsibilities of the Commission are clearly set forth in the IGRA and the interpretive rule.

Comment: Several commenters believe that the General Limitations section, Section V, absolves the NIGC of all responsibility to adhere to the policy. These commenters would like to see this section removed.

Response: We decline to remove this section. This section clarifies that there are limits on the policy; it does not release the NIGC from responsibility to follow it. This is a comprehensive tribal consultation policy, which will inform and guide the Commission as it

continues to engage in active consultation with Indian tribes. Statements of policy do not typically create rights to administrative or judicial review, nor other causes of action. To avoid any misunderstanding in this regard, we believe it prudent to include this Section in the policy.

Comment: One commenter suggested adding the following to Section V.: ''This policy is not intended to create a forum for resolution of issues between the Tribes and the NIGC. Nor is it meant to replace presently existing lines of communication. Both the Tribes and NIGC recognize that issues that are the subject of litigation or that are likely to become the subject of litigation are inappropriate for discussion in this process.

Response: We agree that this language would improve the General Limitations section, and we have added it, with slight modifications.

Dated: March 26, 2004.

Philip N. Hogen,

Chairman, National Indian Gaming Commission.

Nelson W. Westrin,

Vice-Chair, National Indian Gaming Commission.

Cloyce V. Choney,

Commissioner, National Indian Gaming Commission.

National Indian Gaming Commission Government-to-Government Tribal Consultation Policy

The National Indian Gaming Commission (''NIGC'' or ''Commission''), in consultation with Federally-recognized Indian tribes, establishes and issues this Government-to-Government Tribal Consultation Policy, which shall take effect immediately and remain in effect until further order of the Commission.

I. Introduction

A. Fundamental Principles of the Government-to-Government Relationship

1. The United States of America has a unique government-to-government relationship with Federally-recognized Indian tribes, as set forth and defined in the Constitution of the United States and Federal treaties, statutes, Executive Orders, and Federal court decisions. Since its formation, the United States has recognized Indian tribes as sovereign nations, which possess and exercise inherent sovereign authority over their members and territory to the extent recognized and defined by the Constitution of the United States, Federal treaties, statutes, Executive Orders, and Federal court decisions. Pursuant to this unique government-to-government relationship, the Federal Government has enacted numerous statutes and promulgated numerous administrative regulations that establish and define its trust responsibilities to Indian tribes and address issues concerning tribal self-governance, tribal territory and resources, and tribal treaty and other rights.

2. A principal goal of long-standing Federal Indian policy is to support the federally recognized sovereignty of Indian tribes by promoting tribal economic development, tribal self-sufficiency, and strong tribal governance and self-determination over their internal affairs. In 1988, to further this policy and also address congressional concerns regarding the absence of clear Federal standards or regulations for the conduct of Indian gaming, Congress enacted the Indian Gaming Regulatory Act (''IGRA'' or ''Act''), 25 U.S.C. 2701 *et seq.*, for three specified purposes:

(a) To provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal government;

(b) To provide a statutory basis for the regulation of Indian gaming adequate to shield it from organized crime and other corrupting influences; ensure that tribes are the primary beneficiaries of their gaming operations; and assure that the gaming is conducted fairly and honestly by both the operator and players; and,

(c) To declare that the establishment of independent Federal regulatory authority and Federal standards for Indian gaming and the establishment of the NIGC are necessary to meet congressional concerns regarding Indian gaming and protect it as a viable means of generating tribal governmental revenues and furthering the policies and purposes of IGRA.

B. Tribal, Federal, State and Local Rights and Interests Regarding the Operation and Regulation of Indian Gaming Under IGRA

1. The NIGC was established by IGRA as an independent Federal regulatory agency. The Act vests the Commission with certain regulatory powers and responsibilities for Indian gaming, including broad authority to promulgate such regulations and guidelines as it deems appropriate to implement the provisions of the Act.

2. IGRA recognizes and provides that the operation of gaming on Indian lands is primarily a function of tribal sovereignty. Indian gaming is conducted by tribal governments, who may use the net revenues derived from gaming only to fund tribal governmental operations or programs; provide for the general welfare of the tribe and its members; promote tribal economic development; donate to charitable organizations; and help fund operations of local government.

3. The regulatory framework established by IGRA for Indian gaming provides differing, but complementary, regulatory authority and responsibility to Indian tribes, the NIGC, the Secretary of the Interior, and state governments, dependent upon which of three different statutorily defined classes of tribal gaming activity is conducted. Under IGRA, Class I gaming remains under the exclusive sovereign jurisdiction of Indian tribes and is not subject to the Act's other regulatory provisions. Indian tribes also retain primary sovereign regulatory authority and responsibility for the day-to-day regulation of Class II and Class III Indian gaming operations under IGRA. However, the Act also vests the NIGC with certain independent Federal regulatory powers and responsibilities regarding the regulation of Class II and Class III gaming activity on Indian lands. In addition, IGRA also requires that Class III Indian gaming activity be conducted in conformance with a Tribal-State compact that is in effect and approved by the Secretary of the Interior. Under IGRA, such Tribal-State Compacts may include negotiated provisions for state participation in the regulation of Class III tribal gaming activity conducted on Indian lands within the state.

4. IGRA's statutory system of shared regulatory authority and responsibility for Indian gaming will work most effectively to further the Act's declared policies and purposes, when the three involved sovereign governmental authorities work, communicate, and cooperate with each other in a respectful government-to-government manner. Such government-to-government relationships will make it possible for all three sovereign governments to mutually resolve their issues and concerns regarding the operation and regulation of Indian gaming, and efficiently coordinate and assist each other in carrying out their respective regulatory responsibilities for Indian gaming under IGRA.

5. Accordingly, the NIGC deems it appropriate to issue this Government-to-Government Tribal Consultation Policy, to promote and enhance the government-to-government relationships, consultations, and mutual cooperation among Indian tribes, the NIGC, other involved Federal departments and agencies, and state and local governments, regarding the

operation and regulation of Indian gaming under IGRA.

II. NIGC Policy Making Principles and Guidelines

A. Fundamental Principles

The NIGC will adhere to and be guided by the following fundamental principles of Federal Indian policy, when formulating and implementing Federal regulatory policies, programs, procedures, requirements, restrictions, or standards that may substantially affect or impact the operation or regulation of gaming on Indian lands by a Federally-recognized tribal government under the provisions of IGRA:

1. The NIGC recognizes and respects the Federally recognized sovereignty of Indian tribes, which possess and exercise inherent sovereign authority over their members and territory and have certain rights to self-government over their internal governmental affairs under Federal law.

2. The NIGC recognizes and is committed to maintaining a respectful and meaningful government-to-government relationship with Federally-recognized Indian tribes and their authorized governmental leaders, when exercising and discharging its regulatory authority and responsibilities for Indian gaming under IGRA.

3. The NIGC acknowledges that Indian tribes retain and exercise primary sovereign authority and responsibility with respect to the day-to-day operation and regulation of gaming on their tribal lands under IGRA, subject to independent Federal regulatory oversight and the conditions, restrictions, and requirements of the Act, Tribal-State Compact provisions, Federal procedures in lieu of Tribal-State compacts, and NIGC regulations promulgated pursuant to the Act.

4. The NIGC will honor and respect the provisions of Tribal-State Class III Gaming Compacts that are duly approved by the Secretary of the Interior and in effect, or, in the alternative, Federal Class III tribal gaming procedures approved by the Secretary of the Interior, in lieu of a Tribal-State Compact, pursuant to IGRA and Department of Interior regulations.

5. To the extent practicable and permitted by law, the NIGC will engage in regular, timely, and meaningful government-to-government consultation and collaboration with Federally recognized Indian tribes, when formulating and implementing NIGC administrative regulations, bulletins, or guidelines, or preparing legislative proposals or comments for Congress, which may substantially affect or impact the operation or regulation of gaming on Indian lands by tribes under the provisions of IGRA.

6. The NIGC will encourage Federally-recognized Indian tribes and state and local governments to consult, collaborate and work cooperatively with each other in a respectful, good faith government-to-government manner to mutually address and resolve their respective issues and concerns regarding the operation and regulation of gaming on Indian lands under IGRA, in furtherance of the policies and purposes of the Act.

7. The NIGC will also work cooperatively with other Federal departments and agencies and with state and local governments to enlist their interest and support to assist the Commission and Indian tribes in safeguarding tribal gaming from organized crime and other corrupting influences; providing adequate law enforcement, fire, and emergency health care services, and environmental protections for the health and safety of the public in tribal gaming facilities; and accomplishing the other goals of IGRA.

B. Other Policy Making Principles and Guidelines

To the extent practicable and permitted by law, the NIGC will also adhere to and be guided by the following additional principles and guidelines, when formulating and implementing Federal regulatory policies, programs, procedures, requirements, restrictions, or standards, that may substantially effect or impact the operation or regulation of gaming on Indian lands by a Federally-recognized tribal government(s) under the provisions of IGRA:

1. The NIGC acknowledges and will reasonably consider variations in the nature and scale of tribal gaming activity across Indian country, as well as variations in the extent and quality of tribal gaming regulation and state regulatory involvement under the different Tribal-State Compacts, when determining the need, nature, scope, and application of new or revised Federal regulatory policies, procedures, programs, requirements, restrictions, or standards for Indian gaming operations under IGRA.

2. The NIGC will also provide technical assistance, advice, guidance, training, and support to help Indian tribes and tribal leaders and employees understand and comply with Federal policies, regulations and standards for Indian gaming.

3. The NIGC will defer to tribally established regulations and standards for Indian gaming, when the Commission determines that they are permitted by IGRA and further its policies and purposes; that they adequately address congressional concerns regarding Indian gaming; that tribal compliance and enforcement are readily verifiable by the NIGC; and, that similar Federal regulations and standards are not statutorily required or necessary to implement the Act.

4. The NIGC will also encourage and provide technical assistance, advice, guidance, and support to Indian tribes and tribal leaders to formulate and implement their own regulatory policies, procedures, requirements, restrictions, and standards for their gaming operations, in lieu of similar Federal regulations and standards, if the Commission determines that the proposed tribal regulations and standards are permitted by IGRA and further its policies and goals; that they will adequately address congressional concerns regarding Indian gaming; that tribal compliance and enforcement will be readily verifiable by the NIGC; and, that similar Federal regulations and standards are not statutorily required or necessary to implement the Act.

5. The NIGC will not formulate and implement Federal regulatory policies, procedures, programs, requirements, restrictions, or standards for Indian gaming that will impose substantial direct compliance or enforcement costs on an Indian tribe(s), if the Commission determines that such Federal regulations and standards are not required by IGRA or necessary to implement its provisions or further accomplishment of its policies and purposes.

6. In general, the NIGC will strive to grant Indian tribes the maximum administrative and regulatory discretion possible in operating and regulating gaming operations on Indian land under IGRA; and also strive to eliminate unnecessary and redundant Federal regulation, in order to conserve limited tribal resources, preserve the prerogatives and sovereign authority of tribes over their own internal affairs, and promote strong tribal government and self-determination, in accordance with Federal Indian policy and the goals of IGRA.

C. Applicability

The NIGC will be guided by the above policy-making principles and guidelines in its planning and management activities, including budget development and execution, legislative

initiatives and comments, and policy and rule making processes.

III. Tribal Consultation Procedures and Guidelines

A. To the fullest extent practicable and permitted by law, the NIGC is committed to regular, timely, and meaningful government-to-government consultation with Indian tribes, whenever it undertakes the formulation and implementation of new or revised Federal regulatory policies, procedures, programs, requirements, restrictions, or standards for Indian gaming, either by means of administrative regulation or legislative initiative, which may substantially affect or impact the operation or regulation of gaming on Indian lands by a tribe(s) under IGRA.

B. Based on the government-to-government relationship and in recognition of the sovereignty and unique nature of each Federally-recognized Indian tribe, the primary focus of the NIGC's consultation activities will be with individual tribes and their recognized governmental leaders. Consultation with authorized intertribal organizations and representative intertribal advisory committees will be conducted in coordination with and not to the exclusion of consultation with individual tribal governments. When the NIGC determines that its formulation and implementation of new or revised Federal regulatory policies, procedures, programs, requirements, restrictions, or standards may substantially effect or impact the operation or regulation of gaming on Indian lands by a tribe(s) under IGRA, the Commission will promptly notify the affected tribes and initiate steps to consult and collaborate directly with the tribe(s) regarding the proposed regulation and its need, formulation, implementation, and related issues and effects. Tribes may and are encouraged, however, to exercise their sovereign right to request consultation with the NIGC at any time they deem necessary.

C. The Chairman of the NIGC or his or her designee is the principal point of contact for consultation with Indian tribes regarding all NIGC programs and related policies and policy-making activities of the Commission under IGRA.

D. The NIGC will initiate consultation by providing early notification to affected tribes of the regulatory policies, procedures, programs, requirements, restrictions, and standards that it is proposing to formulate and implement, before a final agency decision is made regarding their formulation or implementation.

E. The NIGC will strive to provide adequate opportunity for affected tribes to interact directly with the Commission, to discuss and ask questions regarding the substance and effects of proposed Federal regulations and standards and related issues, and to provide meaningful input regarding the legality, need, nature, form, content, scope and application of such proposed regulations, including opportunity to recommend other alternative solutions or approaches. Such consultation will be conducted with tribes by means of scheduled meetings, telephone conferences, written correspondence, and other appropriate methods of communication, before a final agency decision is made regarding the formulation or implementation of the proposed Federal regulations or standards.

F. As part of the tribal consultation process, the NIGC will answer tribal questions and carefully consider all tribal positions and recommendations, before making its final decision to formulate and implement proposed new or revised Federal regulatory polices, procedures, programs, requirements, restrictions, or standards that may substantially affect or impact the operation or regulation of gaming on Indian lands by affected tribe(s) under IGRA.

G. As an independent Federal regulatory agency, the NIGC has authority and responsibilities under IGRA to conduct investigations, take enforcement actions, and render regulatory and quasi-judicial decisions regarding the approval of tribal gaming ordinances and third party management contracts, the suitability of management contractors to participate in Indian gaming, and tribal compliance with the Act. The nature of these statutory responsibilities necessarily places some limitations on the nature and type of consultation that the Commission may engage in with the involved tribes. These limitations on consultation are necessary to preserve the integrity of the NIGC's investigations, enforcement actions, and decision-making processes, and also comply with provisions of the Federal Administrative Procedures Act that limit Commission contact with parties in contested cases. Nevertheless, the NIGC will endeavor, to the extent practicable and permitted by law, to reduce procedural impediments to consulting directly with tribal governments to resolve issues regarding the operation and regulation of Indian gaming under IGRA.

H. The NIGC will, to the extent necessary and appropriate, consult with affected tribes to select and establish fairly representative intertribal work groups, task forces, or advisory committees to assist the NIGC and tribes in developing administrative rules or legislative recommendations to address and resolve certain issues of regulatory concern regarding the operation and regulation of Indian gaming under IGRA.

I. The NIGC will, to the extent it deems practicable, appropriate, and permitted by law, explore and consider the use of consensual policy making mechanisms, including negotiated rulemaking, when formulating and implementing Federal regulatory policies, procedures, programs, requirements, restrictions, or standards that may substantially effect or impact sovereign tribal rights of self-government regarding the operation or regulation of gaming under IGRA, or related tribal resources, or tribal treaty or other rights.

IV. Increasing Flexibility for Tribal Waivers of Regulatory Requirements

A. The NIGC will review the provisions and processes under which Indian tribes may apply for waivers of regulatory requirements under NIGC regulations, and take whatever steps it determines appropriate and permitted by law to further streamline those processes, consistent with the policy making principles and guidelines set forth in Part II of this policy.

B. This Part only applies to regulatory requirements that are discretionary and subject to waiver by the NIGC.

V. General Limitations

This policy is not intended to nor does it create any right to administrative or judicial review, or any other right, benefit, trust responsibility, or cause of action, substantive or procedural, enforceable by any party against the United States of America, its departments, agencies or instrumentalities, its officers, or employees, or any other persons or entities.

This policy is not intended to create a forum for resolution of specific disputes or issues that are the subject of litigation between the NIGC and a tribe(s) nor is it meant to replace presently existing lines of communication.

[FR Doc. 04–7191 Filed 3–30–04; 8:45 am]

BILLING CODE 7565–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 4, ''Nondiscrimination in Federally Assisted Commission Programs''.

2. *Current OMB approval number:* 3150–0053.

3. *How often the collection is required:* On occasion and quarterly.

4. *Who is required or asked to report:* Recipients of Federal Financial Assistance (Agreement States) provided by the NRC.

5. *The number of annual respondents:* Approximately 32 recipients of Federal Financial Assistance (Agreement States).

6. *The number of hours needed annually to complete the requirement or request:* 352 hours (256 hours for reporting [2 hrs per response] and 96 hours for recordkeeping [3 hrs per recordkeeper]).

7. *Abstract:* Recipients of NRC financial assistance provide data to demonstrate assurance to NRC that they are in compliance with nondiscrimination regulations and policies.

Submit, by June 1, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F52, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 24th day of March 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–7184 Filed 3–30–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on April 12, 2004. The topic of discussion will be ''ACMUI Vote on the Dose Reconstruction Subcommittee's Recommendation Relating to the NRC's Method of Dose Reconstruction.'' This teleconference is being scheduled in the event that extenuating circumstances prevent the ACMUI from holding its previously scheduled April 8, 2004, teleconference. If ACMUI is able to hold its April 8, 2004, teleconference, this teleconference will not be held.

DATES: The teleconference meeting will be held on Monday April 12, 2004, from 1 p.m. to 2 p.m eastern standard time.

Public Participation: Any member of the public who wishes to participate in the teleconference discussion may contact Angela R. Williamson using the contact information below.

FOR FURTHER INFORMATION CONTACT: Angela R. Williamson, telephone (301) 415–5030; e-mail *arw@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Conduct of the Meeting: Manuel D. Cerqueira, M.D., will chair the meeting. Dr. Cerqueira will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Angela Williamson, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, Washington, DC 20555–0001. Hard copy submittals must be postmarked by April 6, 2004. Electronic submittals must be submitted by April 8, 2004. Any submittal must pertain to the topic on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (*http://www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about May 10, 2004. Minutes of the meeting will be available on or about June 8, 2004.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a); the Federal Advisory Committee Act (5 U.S.C. App 2); and the Commission's regulations in title 10, U.S. Code of Federal Regulations, part 7.

Dated: March 25, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–7185 Filed 3–30–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Potential Impact of Debris Blockage on Emergency Recirculation During Design Basis Accidents at Pressurized Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter (GL) to request that addressees submit information to the NRC concerning the status of their compliance with 10 CFR 50.46(b)(5), which requires long-term reactor core cooling be available following a design basis loss of coolant accident, and with

the additional plant-specific licensing basis requirements listed in this generic letter, in accordance with 10 CFR 50.54(f). This request is based on the identified potential susceptibility of pressurized-water reactor (PWR) recirculation sump screens to debris blockage during design basis accidents requiring recirculation operation of the emergency core cooling system (ECCS) or containment spray system (CSS) and the potential for additional adverse effects due to debris blockage of flowpaths necessary for ECCS and CSS recirculation and containment drainage

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML040830518.

DATES: Comment period expires June 1, 2004. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T–6D59), Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION, CONTACT: David Cullison at 301–415–1212 or by e-mail at *dgc@nrc.gov* or Ralph Architzel at 301–415–2804 or by e-mail at *rea@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Draft NRC Generic Letter 2003–XX: Potential Impact of Debris Blockage on Emergency Recirculation During Design Basis Accidents at Pressurized Water Reactors

Addressees

All holders of operating licenses for pressurized-water nuclear power reactors, except those who have ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to:

(1) Request that addressees submit information to the NRC to confirm compliance with 10 CFR 50.46(b)(5), which requires long-term reactor core cooling, and other existing regulatory requirements listed in this generic letter. This request is based on the identified potential susceptibility of pressurized-water reactor (PWR) recirculation sump screens to debris blockage during design basis accidents requiring recirculation operation of the emergency core cooling system (ECCS) or containment spray system (CSS) and the potential for additional adverse effects due to debris blockage of flowpaths necessary for ECCS and CSS recirculation and containment drainage.

(2) Require addressees to provide the NRC a written response in accordance with 10 CFR 50.54(f).

Background

In 1979, as a result of evolving staff concerns related to the adequacy of PWR recirculation sump designs, the NRC opened Unresolved Safety Issue (USI) A–43, ''Containment Emergency Sump Performance.'' To support the resolution of USI A–43, the NRC undertook an extensive research program, the technical findings of which are summarized in NUREG–0897, ''Containment Emergency Sump Performance,'' dated October 1985. The resolution of USI A–43 was subsequently documented in Generic Letter (GL) 85–22, ''Potential for Loss of Post-LOCA Recirculation Capability Due to Insulation Debris Blockage,'' dated December 3, 1985. Although the staff's regulatory analysis concerning USI A–43 did not support imposing new sump performance requirements upon licensees of operating PWRs or boiling-water reactors (BWRs), the staff recommended in GL 85–22 that all affected reactor licensees replace the 50-percent blockage assumption (under which most nuclear power plants had been licensed) with a comprehensive, mechanistic assessment of plant-specific debris blockage potential for future modifications related to sump performance, such as thermal insulation changeouts. The 50-percent screen blockage assumption does not require a plant-specific evaluation of the debris-blockage potential and may result in a non-conservative analysis for screen blockage effects. The staff also updated the NRC's regulatory guidance, including Section 6.2.2 of the Standard Review Plan (NUREG–0800) and Regulatory Guide 1.82, ''Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident,'' to reflect the USI A–43 technical findings documented in NUREG–0897. Following the resolution of USI A–43 in 1985, several events occurred that challenged the conclusion that no new requirements were necessary to prevent the clogging of ECCS strainers at operating BWRs:

- On July 28, 1992, at Barsebäck Unit 2, a Swedish BWR, the spurious opening of a pilot-operated relief valve led to the plugging of two containment vessel spray system suction strainers with mineral wool and required operators to shut down the spray pumps and backflush the strainers.
- In 1993, at Perry Unit 1, two events occurred during which ECCS strainers became plugged with debris. On January 16, ECCS strainers were plugged with suppression pool particulate matter, and on April 14, an ECCS strainer was plugged with glass fiber from ventilation filters that had fallen into the suppression pool. On both occasions, the affected ECCS strainers were deformed by excessive differential pressure created by the debris plugging.
- On September 11, 1995, at Limerick Unit 1, following a manual scram due to a stuck-open safety/relief valve, operators observed fluctuating flow and pump motor current on the A loop of suppression pool cooling. The licensee later attributed these indications to a thin mat of fiber and sludge which had accumulated on the suction strainer.

In response to these ECCS suction strainer plugging events, the NRC issued several generic communications, including Bulletin 93–02, Supplement 1, ''Debris Plugging of Emergency Core Cooling Suction Strainers,'' dated February 18, 1994, Bulletin 95–02, ''Unexpected Clogging of a Residual Heat Removal (RHR) Pump Strainer While Operating in Suppression Pool Cooling Mode,'' dated October 17, 1995, and Bulletin 96–03, ''Potential Plugging of Emergency Core Cooling Suction Strainers by Debris in Boiling-Water Reactors,'' dated May 6, 1996.

These bulletins requested that BWR licensees implement appropriate procedural measures, maintenance practices, and plant modifications to minimize the potential for the clogging of ECCS suction strainers by debris accumulation following a loss-of-coolant accident (LOCA). The NRC staff has concluded that all BWR licensees have sufficiently addressed these bulletins.

However, findings from research to resolve the BWR strainer clogging issue have raised questions concerning the adequacy of PWR sump designs. In comparison to the technical findings of the USI A–43 research program concerning PWRs, the research findings demonstrate that the amount of debris generated by a high-energy line break (HELB) could be greater, that the debris could be finer (and, thus, more easily transportable), and that certain

combinations of debris (*e.g.*, fibrous material plus particulate material) could result in a substantially greater head loss than an equivalent amount of either type of debris alone. These research findings prompted the NRC to open Generic Safety Issue (GSI) 191, ''Assessment of Debris Accumulation on PWR Sump Performance.'' The objective of GSI–191 is to ensure that post-accident debris blockage will not impede or prevent the operation of the ECCS and CSS in recirculation mode at PWRs during LOCAs or other HELB accidents for which sump recirculation is required.

On June 9, 2003, having completed its technical assessment of GSI–191 (summarized below in the Discussion section of this generic letter), the NRC issued Bulletin 2003–01, ''Potential Impact of Debris Blockage on Emergency Recirculation During Design-Basis Accidents at Pressurized-Water Reactors.'' As a result of the emergent issues discussed therein, the bulletin requested an expedited response from PWR licensees as to the status of their compliance on a mechanistic basis, with regulatory requirements concerning the ECCS and CSS recirculation functions. Addressees who were unable to assure regulatory compliance pending further analysis were asked to describe any interim compensatory measures that have been implemented or will be implemented to reduce risk until the analysis could be completed. All licensees have since responded to Bulletin 2003–01. In developing Bulletin 2003–01, the NRC staff recognized that it may be necessary for addressees to undertake complex evaluations to determine whether regulatory compliance exists in light of the concerns identified in the bulletin and that the methodology to perform such evaluations was not currently available. As a result, that information was not requested in the bulletin but addressees were informed that the staff was preparing a generic letter that would request this information. This generic letter is the follow-on information request referenced in the bulletin.

In response to Bulletin 2003–01, PWR licensees that were unable to confirm regulatory compliance implemented or plan to implement compensatory measures to reduce risk or otherwise enhance the capability of the ECCS and CSS recirculation functions. During the process of resolving the potential concerns identified in this generic letter, the revised analysis of sump performance may affect addressees' understanding of their facilities' ECCS and CSS recirculation capabilities. In accordance with GL 91–18, Revision 1, ''Information to Licensees Regarding NRC Inspection Manual Section on Resolution of Degraded and Nonconforming Conditions,'' dated October 8, 1997, addressees may find it necessary to reevaluate the adequacy of their compensatory measures in light of the new information and take further action as appropriate and necessary. Upon resolution of the potential concerns identified in this generic letter and the completion of any corrective actions resulting from that resolution, addresses may consider continuing, revising, or retiring their compensatory measures as appropriate.

The NRC has developed a Web page to keep the public informed of generic activities on PWR sump performance (*http://www.nrc.gov/reactors/operating/ops-experience/pwr-sump-performance.html*). This page provides links to information on PWR sump performance issues, along with documentation of NRC interactions with industry (industry submittals, meeting notices, presentation materials, and meeting summaries). The NRC will continue to update this Web page as new information becomes available.

Discussion

In the event of a HELB inside the containment of a PWR, energetic pressure waves and fluid jets would impinge upon materials in the vicinity of the break, such as thermal insulation, coatings, and concrete, causing them to become damaged and dislodged. Debris could also be generated through secondary mechanisms, such as severe post-accident temperature and humidity conditions, flooding of the lower containment, and the impact of containment spray droplets. In addition to debris generated by jet forces from the pipe rupture, debris can be created by the chemical reaction between the chemically reactive spray solutions used following a LOCA and the materials in containment. These reactions may result in additional debris such as disbonded coatings and chemical precipitants being generated. Through transport methods such as entrainment in the steam/water flows issuing from the break and containment spray washdown, a fraction of the generated debris and foreign material in the containment would be transported to the pool of water formed on the containment floor. Subsequently, if the ECCS or CSS pumps were to take suction from the recirculation sump, the debris suspended in the containment pool would begin to accumulate on the sump screen or be transported through the associated system. The accumulation of this suspended debris on the sump screen could create a roughly uniform covering on the screen, referred to as a debris bed, which would tend to increase the head loss across the screen through a filtering action. If a sufficient amount of debris were to accumulate, the debris bed would reach a critical thickness at which the head loss across the debris bed would exceed the net positive section head (NPSH) margin required to ensure the successful operation of the ECCS and CSS pumps in recirculation mode. A loss of NPSH margin for the ECCS or CSS pumps as a result of the accumulation of debris on the recirculation sump screen, referred to as sump clogging, could result in degraded pump performance and eventual pump failure. Debris could also plug or wear close tolerance components within the ECCS or CSS systems. The effect of this plugging or wear may cause a component to degrade to the point where it may be unable to perform its designated function (*i.e.* pump fluid, maintain system pressure, or pass and control system flow.)

Assessing the likelihood of the ECCS and CSS pumps at domestic PWRs experiencing a debris-induced loss of NPSH margin during sump recirculation was the primary objective of the NRC's technical assessment of GSI–191. The NRC's technical assessment culminated in a parametric study that mechanistically treated phenomena associated with debris blockage using analytical models of domestic PWRs generated with a combination of generic and plant-specific data. As documented in Volume 1 of NUREG/CR–6762, ''GSI–191 Technical Assessment: Parametric Evaluations for Pressurized Water Reactor Recirculation Sump Performance,'' dated August 2002, the GSI–191 parametric study concludes that recirculation sump clogging is a credible concern for domestic PWRs. As a result of limitations with respect to plant-specific data and other modeling uncertainties, however, the parametric study does not definitively identify whether or not particular PWR plants are vulnerable to sump clogging when phenomena associated with debris blockage are modeled mechanistically.

The methodology employed by the GSI–191 parametric study is based upon the substantial body of test data and analyses that are documented in technical reports generated during the NRC's GSI–191 research program and earlier technical reports generated by the NRC and the industry during the resolution of the BWR strainer clogging issue and USI A–43. These pertinent technical reports, which cover debris generation, transport, accumulation, and

head loss, are incorporated by reference into the GSI–191 parametric study:

• NUREG/CR–6770, ''GSI–191: Thermal-Hydraulic Response of PWR Reactor Coolant System and Containments to Selected Accident Sequences,'' dated August 2002.

• NUREG/CR–6762, Vol. 3, ''GSI–191 Technical Assessment: Development of Debris Generation Quantities in Support of the Parametric Evaluation,'' dated August 2002.

• NUREG/CR–6762, Vol. 4, ''GSI–191 Technical Assessment: Development of Debris Transport Fractions in Support of the Parametric Evaluation,'' dated August 2002.

• NUREG/CR–6224, ''Parametric Study of the Potential for BWR ECCS Strainer Blockage Due to LOCA Generated Debris,'' dated October 1995.

In light of the credibility of the concerns identified above, the NRC staff has determined that it is appropriate to request that addressees submit information to confirm their plant-specific compliance with NRC regulations and other existing regulatory requirements listed in this generic letter pertaining to post-accident debris blockage. If addressees perform an analysis to confirm compliance, the NRC staff recommends the use of an analysis method that mechanistically accounts for debris generation and transport, post accident equipment and systems operation with debris laden fluid.

In addition to demonstrating the potential for debris to clog containment recirculation sumps, operational experience and the NRC's technical assessment of GSI–191 have also identified three integrally related modes by which post-accident debris blockage could adversely affect the sump screen's design function of intercepting debris that could impede or prevent the operation of the ECCS and CSS in recirculation mode.

First, as a result of the 50-percent blockage assumption, most PWR sump screens were designed assuming that relatively small structural loadings would result from the differential pressure associated with debris blockage. Consequently, PWR sump screens may not be capable of accommodating the increased structural loadings that would occur due to mechanistically determined debris beds that cover essentially the entire screen surface. Inadequate structural reinforcement of a sump screen may result in its deformation, damage, or failure, which could allow large quantities of debris to be ingested into the ECCS and CSS piping, pumps, and other components, potentially leading to their clogging or failure. The ECCS strainer plugging and deformation events that occurred at Perry Unit 1 (further described in Information Notice (IN) 93–34, ''Potential for Loss of Emergency Cooling Function Due to a Combination of Operational and Post-LOCA Debris in Containment,'' dated April 26, 1993, and LER 50–440/93–011, ''Excessive Strainer Differential Pressure Across the RHR Suction Strainer Could Have Compromised Long Term Cooling During Post-LOCA Operation,'' submitted May 19, 1993), demonstrate the credibility of this concern for screens and strainers that have not been designed with adequate reinforcement.

Second, in some PWR containments, the flowpaths by which containment spray or break flows return to the recirculation sump may include ''choke-points,'' where the flowpath becomes so constricted that it could become blocked with debris following a HELB. Examples of potential choke-points are drains for pools, cavities, isolated containment compartments, and constricted drainage paths between physically separated containment elevations. Debris blockage at certain choke-points could hold up substantial amounts of water required for adequate recirculation or cause the water to be diverted into containment volumes that do not drain to the recirculation sump. The holdup or diversion of water assumed to be available to support sump recirculation could result in an available NPSH for ECCS and CSS pumps that is lower than the analyzed value, thereby reducing assurance that recirculation would successfully function. A reduced available NPSH directly concerns sump screen design because the NPSH margin of the ECCS and CSS pumps must be conservatively calculated to determine correctly the required surface area of passive sump screens when mechanistically determined debris loadings are considered. Although the parametric study (NUREG/CR–6762, Volume 1) did not analyze in detail the potential for the holdup or diversion of recirculation sump inventory, the NRC's GSI–191 research identified this phenomenon as an important and potentially credible concern. A number of LERs associated with this concern have also been generated, which further confirms its credibility and potential significance:

• LER 50–369/90–012, ''Loose Material Was Located in Upper Containment During Unit Operation Because of an Inappropriate Action,'' McGuire Unit 1, submitted August 30, 1990.

• LER 50–266/97–006, ''Potential Refueling Cavity Drain Failure Could Affect Accident Mitigation,'' Point Beach Unit 1, submitted February 19, 1997.

• LER 50–455/97–001, ''Unit 2 Containment Drain System Clogged Due to Debris,'' Byron Unit 2, submitted April 17, 1997.

• LER 50–269/97–010, ''Inadequate Analysis of ECCS Sump Inventory Due to Inadequate Design Analysis,'' Oconee Unit 1, submitted January 8, 1998.

• LER 50–315/98–017, ''Debris Recovered from Ice Condenser Represents Unanalyzed Condition,'' D.C. Cook Unit 1, submitted July 1, 1998.

Third, debris blockage at flow restrictions within the ECCS recirculation flowpath downstream of the sump screen is a potential concern for PWRs. Debris that is capable of passing through the recirculation sump screen may have the potential to become lodged at a downstream flow restriction, such as a high-pressure safety injection (HPSI) throttle valve or fuel assembly inlet debris screen. Debris blockage at such flow restrictions in the ECCS flowpath could impede or prevent the recirculation of coolant to the reactor core, thereby leading to inadequate core cooling. Similarly, debris blockage at flow restrictions in the CSS flowpath, such as a containment spray nozzle, could impede or prevent CSS recirculation, thereby leading to inadequate containment heat removal. Debris may also accumulate in close tolerance sub-components of pumps and valves. The effect may either be to plug the sub-component thereby rendering the component unable to perform its function or to wear critical close tolerance sub-components to the point at which component or system operation is degraded and unable to fully perform its function. Considering the recirculation sump screen's design function of intercepting potentially harmful debris, it is essential that the screen openings are adequately sized and that the sump screen's current configuration is free of gaps or breaches which could compromise the ECCS and CSS recirculation functions. It is also essential that system components are designed and evaluated to be able to operate with debris laden fluid as necessary post-LOCA.

To assist in determining on a plant-specific basis whether compliance exists with 10 CFR 50.46(b)(5), addressees may use the guidance contained in Regulatory Guide 1.82 (RG 1.82), Revision 3, ''Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident,'' dated November 2003. Revision 3 enhanced the debris blockage evaluation guidance

for pressurized water reactors provided in Revision 1 of the regulatory guide. The NRC staff determined after the issuance of Revision 2 that research for PWRs indicated that the guidance in that revision was not comprehensive enough to ensure adequate evaluation of a PWR plant's susceptibility to the detrimental effects caused by debris accumulation on debris interceptors (*e.g.*, trash racks and sump screens). Revision 2 altered the debris blockage evaluation guidance found in Revision 1 following the evaluation of blockage events, such as the Barsebäck Unit 2 event mentioned above, but for BWRs only. Revision 1 replaced the 50-percent blockage assumption in Revision 0 with a comprehensive, mechanistic assessment of plant-specific debris blockage potential for future modifications related to sump performance, such as thermal insulation changeouts. This was in response to the findings of USI A–43. In addition, the NRC staff is reviewing generic industry guidance and will issue a safety evaluation report endorsing portions or all of the generic industry guidance, if found acceptable. Once approved, this guidance may also be used to assist in determining the status of regulatory compliance. Individual addressees may also develop alternative approaches to those named in this paragraph for determining the status of their regulatory compliance; however, additional staff review may be required to assess the adequacy of such approaches. If the industry guidance will not be available when the generic letter is issued, the NRC will provide additional guidance for determining on a plant-specific basis whether compliance exists with 10 CFR 50.46(b)(5).

The time frames for addressee responses in this generic letter were selected to (1) allow adequate time for addresses to perform an analysis, if they opt to do so, (2) allow addressees to properly design and install any identified modifications, (3) allow addresses adequate time to obtain NRC approval, as necessary, for any licensing basis changes, and (4) allow for the closure of the generic issue in accordance with the published schedule. These time frames are appropriate since all addresses have responded to Bulletin 2003–01 and will, if necessary, implement compensatory measures until the issues identified in this generic letter are resolved.

Applicable Regulatory Requirements

NRC regulations in Title 10, of the Code of Federal Regulations Section 50.46,(10 CFR 50.46), require that the ECCS must satisfy five criteria, one of which is to provide the capability for long-term cooling of the reactor core following a LOCA. The ECCS must have the capability to provide decay heat removal, such that the core temperature is maintained at an acceptably low value for the extended period of time required by the long-lived radioactivity remaining in the core. For PWRs licensed to the General Design Criteria (GDCs) in Appendix A to 10 CFR Part 50, GDC 35 specifies additional ECCS requirements.

Similarly, for PWRs licensed to the GDCs in Appendix A to 10 CFR Part 50, GDC 38 provides requirements for containment heat removal systems, and GDC 41 provides requirements for containment atmosphere cleanup. Many PWR licensees credit a CSS, at least in part, with performing the safety functions to satisfy these requirements, and PWRs that are not licensed to the GDCs may similarly credit a CSS to satisfy licensing basis requirements. In addition, PWR licensees may credit a CSS with reducing the accident source term to meet the limits of 10 CFR Part 100 or 10 CFR 50.67.

Criterion XVI (Corrective Action) of Appendix B to 10 CFR Part 50 states that measures shall be established to assure that conditions adverse to quality are promptly identified and corrected. For significant conditions adverse to quality, the measures taken shall include root cause determination and corrective action to preclude repetition of the adverse conditions.

If, in the course of preparing a response to the requested information, an addressee determines that its facility is not in compliance with the Commission's requirements, the addressee is expected to take appropriate action in accordance with requirements of Appendix B to 10CFR Part 50 and the plant technical specifications to restore the facility to compliance.

Applicable Regulatory Guidance [1]

Regulatory Guide 1.82, Revision 3, ''Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident,'' November 2003.

Requested Information

All addressees are requested to provide the following information:

1. Within 60 days of the date of this generic letter, addressees provide information regarding their planned actions and schedule to confirm their compliance with 10 CFR 50.46(b)(5) and other existing regulatory requirements listed in this generic letter. The provided information should include the following:

(a) A description of the methodology used or that will be used to analyze the susceptibility of the ECCS and CSS recirculation functions for your reactor to adverse effects of post-accident debris blockage and operation with debris laden fluids identified in this generic letter. Provide the completion date of any analysis that will be performed.

(b) If a mechanistic analysis was or will be performed to confirm compliance, provide a statement of whether or not you plan to perform a containment walkdown surveillance in support of the analysis of the susceptibility of the ECCS and CSS recirculation functions to the adverse effects of debris blockage identified in this generic letter. Provide justification if no containment walkdown surveillance will be performed. If a containment walkdown surveillance will be performed, state the planned methodology to be used and the planned completion date. If a containment walkdown surveillance has already been performed, state the methodology used, the completion date, and the results of the surveillance.

2. Addresses are requested to provide no later than April 1, 2005, information that confirms their compliance with the regulatory requirements listed in the Applicable Regulatory Requirements section of this generic letter.

(a) Provide confirmation that the ECCS and CSS recirculation functions under debris loading conditions are or will be in compliance with the regulatory requirements listed in the Applicable Regulatory Requirements section of this generic letter. This submittal should also address the configuration of the plant that will exist once all modifications required for regulatory compliance have been made.

(b) A general description of and implementation schedule for all corrective actions, including any plant modifications that may be necessary to ensure compliance with the regulatory requirements listed in the Applicable Regulatory Requirements section of this generic letter. Provide justification for any corrective action that will not be completed by the end of the first refueling outage after April 1, 2005.

(c) A submittal that describes the methodology that was used to perform an analysis of the susceptibility of the ECCS and CSS recirculation functions to the adverse effects of post-accident debris blockage and operation with

[1] The NRC staff is currently reviewing evaluation guidance developed by the industry. The NRC staff will document its review in a safety evaluation which licensees can reference as regulatory guidance.

debris laden fluids. The submittal may reference a guidance document (*e.g.* Regulatory Guide 1.82, industry guidance) or other methodology previously submitted to the NRC. If a mechanistic analysis was performed to confirm compliance, the documents to be submitted or referenced should include the methodology for conducting a supporting containment walkdown surveillance used to identify potential debris sources and other pertinent containment characteristics.

(d) If a mechanistic analysis was performed to confirm compliance, the submittal should include, at a minimum, the following information:

(i) The minimum available NPSH margin for the ECCS and CSS pumps with an unblocked sump screen.

(ii) The extent of submergence of the sump screen (*i.e.*, partial or full) at the time of the switchover to sump recirculation, and the submerged area of the sump screen at this time.

(iii) The maximum head loss postulated from debris accumulation on the submerged sump screen, and a description of the primary constituents of the debris bed that result in this head loss. In addition to debris generated by jet forces from the pipe rupture, debris created by the resulting containment environment (thermal and chemical) and CSS washdown should be considered in the analyses. Examples of this type of debris are disbonded coatings in the form of chips and particulates or chemical precipitants caused by chemical reactions in the pool.

(iv) The basis for concluding that water inventory required to ensure adequate ECCS or CSS recirculation would not be held up or diverted by debris blockage at choke-points in containment recirculation sump return flowpaths.

(v) The basis for concluding that inadequate core or containment cooling would not result due to debris blockage at flow restrictions in the ECCS and CSS flowpaths downstream of the sump screen, such as a HPSI throttle valve, pump bearings and seals, fuel assembly inlet debris screen, or containment spray nozzles. The discussion should consider the adequacy of the sump screen's mesh spacing and state the basis for concluding that adverse gaps or breaches are not present on the screen surface.

(vi) Verification that close tolerance sub-components in pumps, valves and other ECCS and CSS components are not susceptible to plugging or excessive wear due to extended post accident operation with debris laden fluids.

(vii) If an active approach (*e.g.* back flushing, powered screens, etc.) is selected in lieu of or in addition to a passive approach to mitigate the effects of the debris blockage, describe the approach and associated analyses.

(e) A general description of and planned schedule for any changes to the plant licensing bases resulting from any analysis or plant modification done to ensure compliance with the regulatory requirements listed in the Applicable Regulatory Requirements section of this generic letter.

(f) A description of any existing or planned programmatic controls that will ensure that, in the future, potential sources of debris introduced into containment (*e.g.*, insulations, signs, coatings, and foreign materials) will be assessed for potential adverse effects on the ECCS and CSS recirculation functions. Addressees may reference their responses to GL 98–04 to the extent that their responses address these specific foreign material control issues.

Required Response

In accordance with 10 CFR 50.54(f), the subject PWR addressees are required to submit written responses to this generic letter. This information is sought to verify licensees' compliance with current licensing basis for the subject PWR addressees. The addressees have two options:

(1) Addressees may choose to submit written responses providing the information requested above within the requested time periods, or

(2) Addressees who choose not to provide information requested or cannot meet the requested completion dates are required to submit written responses within 15 days of the date of this generic letter. The responses must address any alternative course of action proposed, including the basis for the acceptability of the proposed alternative course of action.

The required written responses should be addressed to the U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, 11555 Rockville Pike, Rockville, Maryland 20852, under oath or affirmation under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, a copy of a response should be submitted to the appropriate regional administrator.

The NRC staff will review the responses to this generic letter and will notify affected addressees if concerns are identified regarding compliance with NRC regulations and their current licensing bases. The staff may also conduct inspections to determine addressees' effectiveness in addressing the generic letter.

Reasons for Information Request

As discussed above, research and analysis suggests that (1) the potential for the failure of the ECCS and CSS recirculation functions as a result of debris blockage is not adequately addressed in most PWR licensees' current safety analyses, and (2) the ECCS and CSS recirculation functions at a significant number of operating PWRs could become degraded as a result of the potential effects of debris blockage or extended operation with debris laden fluids identified in this generic letter. An ECCS that is incapable of providing long-term reactor core cooling through recirculation operation would be in violation of 10 CFR 50.46. A CSS that is incapable of functioning in recirculation mode may not comply with GDCs 38 and 41 or other plant-specific licensing requirements or safety analyses. Bulletin 2003–01 requested information to verify addressees' compliance with NRC regulations and to ensure that any interim risks associated with post-accident debris blockage are minimized while evaluations to determine compliance proceed. This generic letter is the follow-on generic communication to Bulletin 2003–01 which is requesting information on the results of the evaluations referenced in the bulletin. Therefore, the information requested in this generic letter is necessary to confirm plant-specific compliance with 10 CFR 50.46 and other existing regulations.

The NRC staff will also use the requested information to (1) determine whether a sample auditing approach is acceptable for verifying that addressees have resolved the concerns identified in this generic letter, (2) assist in determining which addressees would be subject to the proposed sample audits, (3) provide confidence that any nonaudited addressees have addressed the concerns identified in this generic letter, and (4) assess the need for and guide the development of any additional regulatory actions that may be necessary to address the adequacy of the ECCS and CSS recirculation functions.

Related Generic Communications

- Bulletin 2003–01, ''Potential Impact of Debris Blockage on Emergency Recirculation During Design-Basis Accidents at Pressurized-Water Reactors,'' June 9, 2003.
- Bulletin 96–03, ''Potential Plugging of Emergency Core Cooling Suction Strainers by Debris in Boiling-Water Reactors,'' May 6, 1996.

• Bulletin 95–02, ''Unexpected Clogging of a Residual Heat Removal (RHR) Pump Strainer While Operating in the Suppression Pool Cooling Mode,'' October 17, 1995.

• Bulletin 93–02, ''Debris Plugging of Emergency Core Cooling Suction Strainers,'' May 11, 1993.

• Bulletin 93–02, Supplement 1, ''Debris Plugging of Emergency Core Cooling Suction Strainers,'' February 18, 1994.

• Generic Letter 98–04, ''Potential for Degradation of the Emergency Core Cooling System and the Containment Spray System After a Loss-of-Coolant Accident Because of Construction and Protective Coating Deficiencies and Foreign Material in Containment,'' July 14, 1998.

• Generic Letter 97–04, ''Assurance of Sufficient Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal Pumps,'' October 7, 1997.

• Generic Letter 85–22, ''Potential For Loss of Post-LOCA Recirculation Capability Due to Insulation Debris Blockage,'' December 3, 1985.

• Information Notice 97–13, ''Deficient Conditions Associated With Protective Coatings at Nuclear Power Plants,'' March 24, 1997.

• Information Notice 96–59, ''Potential Degradation of Post Loss-of-Coolant Recirculation Capability as a Result of Debris,'' October 30, 1996.

• Information Notice 96–55, ''Inadequate Net Positive Suction Head of Emergency Core Cooling and Containment Heat Removal Pumps Under Design Basis Accident Conditions,'' October 22, 1996.

• Information Notice 96–27, ''Potential Clogging of High Pressure Safety Injection Throttle Valves During Recirculation,'' May 1, 1996.

• Information Notice 96–10, ''Potential Blockage by Debris of Safety System Piping Which Is Not Used During Normal Operation or Tested During Surveillances,'' February 13, 1996.

• Information Notice 95–47, ''Unexpected Opening of a Safety/Relief Valve and Complications Involving Suppression Pool Cooling Strainer Blockage,'' October 4, 1995.

• Information Notice 95–47, Revision 1, ''Unexpected Opening of a Safety/Relief Valve and Complications Involving Suppression Pool Cooling Strainer Blockage,'' November 30, 1995.

• Information Notice 95–06, ''Potential Blockage of Safety-Related Strainers by Material Brought Inside Containment,'' January 25, 1995.

• Information Notice 94–57, ''Debris in Containment and the Residual Heat Removal System,'' August 12, 1994.

• Information Notice 93–34, ''Potential for Loss of Emergency Cooling Function Due to a Combination of Operational and Post-LOCA Debris in Containment,'' April 26, 1993.

• Information Notice 93–34, Supplement 1, ''Potential for Loss of Emergency Cooling Function Due to a Combination of Operational and Post-LOCA Debris in Containment,'' May 6, 1993.

• Information Notice 92–85, ''Potential Failures of Emergency Core Cooling Systems Caused by Foreign Material Blockage,'' December 23, 1992.

• Information Notice 92–71, ''Partial Plugging of Suppression Pool Strainers at a Foreign BWR,'' September 30, 1992.

• Information Notice 89–79, ''Degraded Coatings and Corrosion of Steel Containment Vessels,'' December 1, 1989.

• Information Notice 89–79, Supplement 1, ''Degraded Coatings and Corrosion of Steel Containment Vessels,'' June 29, 1990.

• Information Notice 89–77, ''Debris in Containment Emergency Sumps and Incorrect Screen Configurations,'' November 21, 1989.

• Information Notice 88–28, ''Potential for Loss of Post-LOCA Recirculation Capability Due to Insulation Debris Blockage,'' May 19, 1988.

Backfit Discussion

Under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10CFR 50.54(f), this generic letter transmits an information request for the purpose of verifying compliance with existing applicable regulatory requirements (see the Applicable Regulatory Requirements section of this generic letter). Specifically, the required information will enable the NRC staff to determine whether the emergency core cooling system (ECCS) and containment spray system (CSS) at reactor facilities are able to perform their safety functions following all postulated accidents for which ECCS or CSS recirculation is required while taking into account the adverse effects of post-accident debris blockage and operation with debris laden fluids. No backfit is either intended or approved by the issuance of this generic letter, and the staff has not performed a backfit analysis.

Small Business Regulatory Enforcement Fairness Act

The NRC has determined that this generic letter is not subject to the Small Business Regulatory Enforcement Fairness Act of 1996.

***Federal Register** Notification*

The NRC published a notice of opportunity for public comment on this generic letter in the **Federal Register** on _____. In addition, the NRC has provided opportunities for public comment at several public meetings. As the resolution of this matter progresses, the NRC will continue to provide opportunities for further public involvement.

Paperwork Reduction Act Statement

This generic letter contains information collections that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget (OMB) under approval number XXXX–XXXX which expires on XXX XX, XXXX.

The burden to the public for these mandatory information collections is estimated to average 1000 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and completing and reviewing the information collections. Send comments regarding this burden estimate or any other aspect of these information collections, including suggestions for reducing the burden, to the Records Management Branch, Mail Stop T–6 E6, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may neither conduct nor sponsor, and an individual is not required to respond to, an information collection unless the requesting document displays a currently valid OMB control number.

End of Draft Generic Letter

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to

ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of March 2004.

For the Nuclear Regulatory Commission.

William D. Beckner,

Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–7164 Filed 3–30–04; 8:45 am]

BILLING CODE 7590–01–U

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–16637]

Issuer Delisting; Notice of Application of Price Legacy Corporation To Withdraw Its Common Stock, $.00001 Par Value, From Listing and Registration on the American Stock Exchange LLC

March 25, 2004.

Price Legacy Corporation, a Maryland corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.0001 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer unanimously approved resolutions on March 11, 2004 to withdraw the Issuer's Security from listing and registration on the Amex and to list the Security on Nasdaq National Market System (''NMS''). The Board states that it expects the last day of trading on the Amex to be March 12, 2004. The Issuer states that the reasons for delisting its Security from the Amex are as follows: Listing on the NMS will afford the Issuer more desirable exposure; and the Issuer felt that dual listing within different exchanges and markets would cause confusion for the Issuer's shareholders.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Maryland, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act [3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before April 19, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–16637. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–7207 Filed 3–30–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–01150]

Issuer Delisting; Notice of Application of Verizon New England, Inc. To Withdraw Its Thirty Year 6⅞% Debentures, (due October 1, 2023) and Forty Year 7⅞% Debentures (due November 15, 2029) From Listing and Registration on the New York Stock Exchange, Inc.

March 25, 2004.

Verizon New England, Inc., a New York corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Thirty Year 6⅞% Debentures (due October 1, 2023) and Forty Year 7⅞% Debentures (due November 15, 2029) (''Securities''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of NYSE Rule 806 governing an issuer's voluntary withdrawal of a security from listing and registration and by complying with all applicable laws in effect in the State of New York.

The Board of Directors (''Board'') of the Issuer adopted a resolution on March 3, 2004 to withdraw the Issuer's Securities from listing and registration on the NYSE. The Board of the Issuer stated that the following reasons factored into its decision to withdraw the Issuer's Security from the Exchange: (i) The Issuer desires to change its method for obtaining long-term capital and no longer intends to issue long-term indebtedness to the public, enabling the Issuer to eliminate the costs and expenses that it would otherwise incur in operating its own commercial paper program; (ii) the Issuer has no preferred stock outstanding and none of the indentures under which the Issuer's long-term indebtedness has been issued requires the Issuer to continue to file reports with the Commission or maintain a listing for securities issued by the Issuer with the NYSE; (iii) each series of the Securities is currently held of record by fewer than 300 holders; (iv) the Issuer does not believe that maintaining the listing of its Securities on the NYSE is required to maintain trading liquidity; and (v) the Issuer has determined that the costs of maintaining a listing on the NYSE significantly outweighs the benefits, especially in view of the fact that the over-the-counter market permits the holders of the Securities access to a liquid market in which to trade them.

The Issuer's application relates solely to the Securities' withdrawal from listing on the NYSE and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before April 19, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–01150. The Commission, based on the information submitted to it, will issue an order

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–7205 Filed 3–30–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–03435]

Issuer Delisting; Notice of Application of Verizon New York Inc. To Withdraw Its Twelve Year 6½% Debentures (Due March 1, 2005), Twelve Year 6.125% Debentures (Due January 15, 2010) Twenty-One Year 8⅝% Debentures (Due November 15, 2010), Twenty Year 7% Debentures, (Due May 1, 2013), Twenty Year 7% Debentures (Due June 15, 2013), Thirty Year 6.70% Debentures (Due November 1, 2023), Thirty Year 7¼% Debentures (Due February 15, 2024), Thirty-Two Year 7% Debentures (Due August 15, 2025), and Forty Year 7% Debentures (Due December 1, 2033) From Listing and Registration on the New York Stock Exchange, Inc.

March 25, 2004.

Verizon New England, Inc., a New York corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Twelve Year 6½% Debentures (due March 1, 2005), Twelve Year 6.125% Debentures (due January 15, 2010), Twenty-One Year 8⅝% Debentures (due November 15, 2010), Twenty Year 7% Debentures (due May 1, 2013), Twenty Year 7% Debentures (due June 15, 2013), Thirty Year 6.70% Debentures (due November 1, 2023), Thirty Year 7¼% Debentures (due February 15, 2024),[3] Thirty-Two Year 7% Debentures (due August 15, 2025),[4] and Forty Year 7% Debentures (due December 1, 2033) (''Securities''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of NYSE Rule 806 governing an issuer's voluntary withdrawal of a security from listing and registration and by complying with all applicable laws in effect in the State of New York.

The Board of Directors (''Board'') of the Issuer adopted a resolution on March 3, 2004 to withdraw the Issuer's Security from listing and registration on the NYSE. The Board of the Issuer stated that the following reasons factored into its decision to withdraw the Issuer's Securities from the Exchange: (i) The Issuer desires to change its method for obtaining long-term capital and no longer intends to issue long-term indebtedness to the public, enabling the Issuer to eliminate the costs and expenses that it would otherwise incur in operating its own commercial paper program; (ii) the Issuer has no preferred stock outstanding and none of the indentures under which the Issuer's long-term indebtedness has been issued requires the Issuer to continue to file reports with the Commission or maintain a listing for securities issued by the Issuer with the NYSE; (iii) each series of the Securities is currently held of record by fewer than 300 holders; (iv) the Issuer does not believe that maintaining the listing of its Securities on the NYSE is required to maintain trading liquidity; and (v) the Issuer has determined that the costs of maintaining a listing on the NYSE significantly outweighs the benefits, especially in view of the fact that the over-the-counter market permits the holders of the Securities access to a liquid market in which to trade them.

The Issuer's application relates solely to the Securities' withdrawal from listing on the NYSE and from registration under section 12(b) of the Act[5] and shall not affect its obligation to be registered under Section 12(g) of the Act.[6]

Any interested person may, on or before April 19, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–03435. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–7206 Filed 3–30–04; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] Entire principal amount of these securities has been called for redemption on March 29, 2004.

[4] Entire principal amount of these securities has been called for redemption on March 29, 2004.

[5] 15 U.S.C. 78*l*(b).

[6] 15 U.S.C. 78*l*(g).

[7] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49473; File No. PCAOB–2004–01]

Public Company Accounting Oversight Board; Notice of Filing and Order Granting Accelerated Approval of Proposed Amendment to Registration Deadline for Non-U.S. Public Accounting Firms

March 25, 2004.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on March 15, 2004, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule amendment described in Items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed amendment from interested persons and is approving the proposal on an accelerated basis.

I. Board's Statement of the Terms of Substance of the Proposed Rule Change

On March 9, 2004, the Board adopted a rule amending PCAOB Rule 2100, ''Registration Requirements for Public Accounting Firms,'' to change the effective date of the registration requirement for foreign public accounting firms. The proposal changes the effective date of that requirement to July 19, 2004. PCAOB Rule 2100, as the Board proposes to amend it, is set out below. Proposed new language is in *italics;* proposed deletions are in [brackets].

Text of the Proposed Rule Change

Rules of the Board

* * * * *

Section 2. Registration and Reporting

Part 1—Registration of Public Accounting Firms

Rule 2100. Registration Requirements for Public Accounting Firms

Effective October 22, 2003 (or, for foreign public accounting firms, [April] *July* 19, 2004), each public accounting firm that—

(a) prepares or issues any audit report with respect to any issuer; or

(b) plays a substantial role in the preparation or furnishing of an audit report with respect to any issuer

must be registered with the Board.

* * * * *

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item III below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

As originally proposed, the Board's registration rules would require that, effective April 19, 2004, a foreign public accounting firm that prepares or issues any audit report with respect to any issuer, or plays a substantial role in the preparation or furnishing of an audit report with respect to any issuer, must be registered with the Board. The purpose of the proposed rule is to change the effective date of that requirement to July 19, 2004.

(b) Statutory Basis

The statutory basis for the proposed rule is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rule will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes the effective date of the registration requirement for foreign public accounting firms to July 19, 2004.

C. Board's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Board released the proposed rule for public comment as part of a group of proposed rules related to Board oversight of foreign public accounting firms in PCAOB Release No. 2003–024 (December 10, 2003). A copy of PCAOB Release No. 2003–024 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at *http://www.pcaobus.org.* The Board received 22 written comments. While there was broad support for the Board changing the effective date of the registration requirement to July 19, seven commenters, who included accounting firms, profession-based organizations and a representative of a foreign government, suggested the Board further extend the registration deadline.

The Board proposed the 90-day extension of the effective date of the registration requirement to allow non-U.S. accounting firms additional time to consider the Board's framework for how the Board would conduct its oversight of such firms, should they choose to register. Given that the cooperative framework was outlined in October of last year, the Board believes that 90 days is an adequate amount of time to extend the effective date of the registration requirement. As such, the final rule is identical to the proposed rule.

III. Commission's Finding and Order Granting Accelerated Approval of Proposed Rule Change

The proposed rule change would extend the effective date of the registration requirement for foreign public accounting firms by 90 days (until July 19, 2004). This would provide additional time for foreign firms to prepare and submit their registration applications to the PCAOB before the effective date of the registration requirement.

Under section 102(c)(1) of the Act and PCAOB Rule 2106(b), the Board has 45 days within which to act on a registration application; therefore, a prospective applicant would need to submit its application within 45 days of the deadline to allow the Board sufficient time to act on its application. Since the April 19th deadline is now less than 45 days in the future, if a foreign firm has not already submitted an application for registration, the Board may not have sufficient time to act on that firm's application before the current deadline. If the proposed rule change is not given accelerated effectiveness, the rule change would not take effect until after the April 19th deadline, which would undermine the purpose of the rule change. The proposed rule change would help to eliminate any confusion or uncertainty relating to the impending effective date of the registration requirement for foreign public accounting firms.

On the basis of the foregoing, the Commission finds that the extension is consistent with the requirements of sections 102, 106, and 107(b) of the Act and the securities laws and is necessary and appropriate in the public interest and for the protection of investors.

The Commission also finds good cause to approve the proposed rule change on an accelerated basis.[1] The Commission believes that the proposed rule change would benefit both the PCAOB and accounting firms by allowing non-U.S. accounting firms additional time to consider the Board's framework for conducting its oversight of foreign registered public accounting firms and to prepare and submit their registration applications in sufficient time for the Board to act on their applications before the registration deadline. The public will benefit from the orderly implementation of international auditor oversight. Also, the proposed rule change would provide the Board with additional time to work with its foreign counterparts in developing cooperative arrangements to accomplish the goals of the Act without subjecting foreign firms to unnecessary burdens or conflicting requirements and would help to eliminate any confusion relating to the impending registration deadline until the firms have had an opportunity to consider the Board's framework. The Commission believes that it is in the public interest to approve the proposed rule amendment as soon as possible so that sufficient advance notice of the Board's extension of the registration deadline for non-U.S. public accounting firms may be provided in order to avoid unnecessary burdens on firms attempting to comply with the Board's original registration requirements.

Accordingly, the Commission believes that good cause exists, consistent with sections 102, 106 and 107 of the Act, and section 19(b) of the Exchange Act, to approve the proposed rule change on an accelerated basis.

[1] Section 107(b)(4) of the Act states that paragraphs (1) through (3) of section 19(b) of the Exchange Act, with certain amendments, govern Commission approval of the rules of the Board. Section 19(b)(2) of the Exchange Act provides for the Commission to approve rules on an accelerated basis if ''the Commission finds good cause for so doing and publishes its reasons for so finding.''

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed amendment is consistent with the Act. Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) Electronic form on the SEC Web site (*http://www.sec.gov*) or (2) e-mail to *rule-comments@sec.gov.* Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File No. PCAOB–2004–01; this file number should be included on the subject line if e-mail is used. To help us 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*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All comments should be submitted on or before April 30, 2004.

IV. Conclusion

It is therefore ordered, pursuant to sections 102, 106 and 107 of the Act and section 19(b)(2) of the Exchange Act that the proposed rule change (File No. PCAOB–2004–01) be and hereby is approved on an accelerated basis.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–7211 Filed 3–30–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49465; File No. SR–Amex–2003–89]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, 3, 4, 5 and 6 Thereto by the American Stock Exchange LLC To Implement a New Options Trading Platform Known as the Amex New Trading Environment or ANTE

March 24, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 7, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 17, 2003, December 17, 2003, February 9, 2004, March 2, 2004, March 18, 2004, and March 24, 2004, the Exchange submitted Amendments No. 1, 2, 3, 4, 5 and 6 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new rules for the implementation of its new options trading platform known as the Amex New Trading Environment or ANTE.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Amex, at the Commission, and on the Commission's Web site.

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, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to implement a new trading environment (referred to hereinafter as ''ANTE'' or the ''ANTE System'') to replace many of its existing floor trading systems. Initially, ANTE would be used for the trading of standardized options on the Exchange, but would be expanded to include all of the Exchange's current and future product lines—Exchange-Traded Funds, equities and single stock futures. The Exchange seeks the approval of new rules and the amendment of current rules to implement ANTE in options only. However, additional filings would be submitted to the Commission when the Exchange seeks to expand ANTE to other product lines. ANTE is designed to be an integrated, scaleable, easily configurable system that is being developed to meet current and future competitive and economic challenges. The Exchange believes that ANTE has been designed to replicate and improve upon many of the processes and procedures currently in place on the trading floor today. The ANTE System would replace many of the Exchange's current systems, including the automated quotation calculation system and specialist ''book'' functions such as limit order display, automatic order execution and allocation of trades. Each floor participant would have electronic access to the ANTE System: floor brokers would access the ANTE system through the Booth Automated Routing System (''BARS''); specialists would access the ANTE System through the Central and Display Books—providing the functions of the quote calculation system (known as ''XTOPS'') and the Amex Options Display Book (''AODB'') in one integrated system; and registered options traders would access the ANTE System through a handheld device.

The functions currently available in the AODB would be split between the ANTE Central Book and the ANTE Display Book. The Central Book would contain what was formerly known as the ''specialist's limit order book'' and would provide for the matching and execution of eligible orders similar to the current Auto Match and Auto-Ex Systems. The Display Book would be similar to the ''Acknowledgement Box'' currently found in the AODB and would contain orders awaiting manual handling. Registered options traders would be able to view both the Display Book and the Central Book on their hand-held devices, giving them a complete view of the limit order book and all pending orders in each option series they trade. Market and marketable limit orders routed to the Exchange would be sent to either the Central Book or the Display Book based on whether the size of the order is within the size

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 14, 2003 (''Amendment No. 1''); December 16, 2003 (''Amendment No. 2''); February 5, 2004 (''Amendment No. 3''); March 1, 2004 (''Amendment No. 4''); March 17, 2004 (''Amendment No. 5''); and March 23, 2004, replacing Form 19b–4 in its entirety (''Amendment No. 6'').

eligible for automatic matching in the Central Book (referred to as the ''auto-match size''). The Options Trading Committee would establish the auto-match size for each option class.

Similar to the Auto-Ex sizes in use today, the auto-match size would be the maximum order size that could be routed to the Central Book for automatic matching with orders on the book or the disseminated quote. An order greater than the established auto-match size would be routed to the Display Book for an immediate execution by the specialist, at the disseminated price, up to the disseminated size. Market and marketable limit orders less than or equal to the disseminated size and less than or equal to the auto-match size would be sent to the Central Book for automatic matching and execution against the disseminated quote and allocation to the appropriate party. Orders less than or equal to the disseminated size and greater than the auto-match size would be routed to the Display Book. Orders greater than the disseminated size and less than or equal to the auto-match size would be routed to the Central Book for a partial execution up to the disseminated size. Orders greater than the disseminated size and greater than the auto-match size would be routed to the Display Book.

The following four examples illustrate order routing in the ANTE System. First example, if a market or marketable limit order of 75 contracts is routed to the Exchange in an option series whose current disseminated size is 150 contracts and whose auto-match size is 100 contracts, the 75-contract order would be sent to the Central Book to be automatically matched against quotes and orders in the book and allocated to the appropriate party. Second example, if a market or marketable limit order of 125 contracts in the same option series is routed to the Exchange, the 125-contract order would be routed to the Display Book to be handled by the specialist since it exceeds the auto-match size. Third example, if a market or marketable limit order of 200 contracts is routed to the Exchange in the same option series, the 200-contract order would be routed to the Display Book to be handled by the specialist since it exceeds the currently disseminated size of 150 contracts and the auto-match size of 100 contracts. Fourth example, if the disseminated size is 75 contracts and the auto-match size is 100 contracts, and a market or marketable limit order of 85 contracts is routed to the Exchange, then the order would be routed to the Central Book for a partial execution up to the disseminated size. Any remaining contracts would be sent to the Display Book to be handled by the specialist.

Marketable limit orders that better the current bid or offer would be routed to the Display Book to be handled by the specialist. As discussed below, the ANTE System would provide a quote assist feature so that marketable limit orders that better the current bid or offer and have not been executed or otherwise displayed by the specialist would be sent to the Central Book for display within the appropriate timeframe established by Exchange rules. Non-marketable limit orders would route directly to the Central Book, which, as noted above, would function as the specialist's limit order book. Once a non-marketable limit order becomes marketable, it could be executed by being matched by an incoming order, matched with other orders on the specialist's book, or be ''taken off the book'' by the specialist or a registered options trader.

Member firms would continue to submit orders to the Exchange through the Common Message Switch (''CMS'') for direct access into the ANTE System and through phone calls to the trading floor. Floor brokers who receive orders over the telephone (either in their booth or while at the specialist's post) would continue to be obligated to input order information into BARS or BARS handheld terminal (''HHT'') immediately upon receipt. Orders in BARS and BARS HHT could be manually represented by the floor broker or electronically forwarded to the specialist or to the Central Book.

The Exchange would continue to maintain its floor-based auction market so that orders of size, complex orders, solicited orders, facilitation orders and other types of orders as determined by the order flow providers could potentially receive price improvement and be exposed to the auction market environment. Orders not eligible for execution through the ANTE System and orders represented by a floor broker at the specialist's post would trade in the same manner and pursuant to the same rules as they do today. Crowd trades or trades that occur outside the ANTE System would be allocated to registered options traders in the same manner as such trades are allocated today.[4] Specialists would be obligated to use best efforts to attempt to ensure that the registered options trader responsible for announcing the best bid or offer during a crowd trade be appropriately allocated executed contracts in accordance with the participation provisions found in Amex Rule 950(d)—ANTE, Commentary .07.

Quoting Function for Specialists and Registered Options Traders

Specialists and registered options traders would be given new tools to calculate quotations using either their own proprietary automatic quotation systems or an Exchange provided automatic quotation system. Both specialists and registered options traders would have the ability to stream quotations for each option series they trade. While specialists would continue to be required to disseminate quotations in all series of the option classes they trade, registered options traders would be able to choose whether to stream quotes with size in all or select series of the option classes they trade. Registered options traders could also choose to join the specialist's quote in those classes they trade and have chosen not to stream quotes. In those series a registered options trader has chosen to join the specialist's quote, he would also have the ability to manually improve a quote on a series by series basis. In addition, for those classes in which the registered options trader has chosen to join the specialist's quote, the registered options trader would be required to input into the ANTE System the size at which he would be willing to trade, which should not be less than ten contracts. The Exchange believes it is appropriate to provide registered options traders with the choice of either streaming quotes into the ANTE System or joining the specialist's quote with the ability to improve a quote on a series by series basis.

To calculate a quote for each option series, specialists and registered options traders would utilize option valuation formulas to generate options quotations based on a number of variables. These variables include the price of the underlying stock, time remaining to expiration, interest rates (or ''cost to carry'', the amount of interest on the money used to pay for the options position during the period prior to expiration of the option series), dividends (both declared and anticipated) and volatility. Given that most of these variables are objective for inactive, less volatile options classes, registered options traders could rely upon the quote calculated by the specialist when providing additional liquidity to the market. In addition, from a practical perspective, allowing registered options traders to join the specialist's quote when their quoting variables are identical and likely to produce identical quotes would reduce

[4] *See* Amex Rule 950—ANTE (l), Commentary .03.

the amount of quote traffic required to be processed by the Exchange.

The ANTE System would collect all of the quotes submitted by the specialist and each registered options trader, and would determine the best bid and best offer for dissemination pursuant to the firm quote rule, as the Amex Best Bid and Offer (''ABBO''). The ANTE System would never allow a locked or crossed market to occur in the ABBO. If a quote is submitted that would lock or cross the ABBO, the ANTE System would either: (i) revise the bid or the offer by the minimum price variant(s) so that the ABBO is not locked or crossed; or (ii) if the ABBO represents an off-floor limit order, the ANTE System would execute the order and allocate the trade pursuant to the post trade allocation process. If the Ante System revises the quote as discussed in (i), a notification would be sent to the ANTE Participant (specialist or registered options trader) submitting the quote.

The Exchange's market data system would continue to submit only one quote per series to the Options Price Reporting Authority. Each quote entered would have a specific participant identifier to allow the ANTE System to allocate directly contracts executed at the best bid or best offer to those participants quoting at the ABBO at the time the execution occurs. Registered options traders, whether entering their own quotes or joining the specialist's quote, using ANTE hand held devices, would be required to specify the size of each quote they submit or join.

The ANTE System would allocate to each registered options trader only the amount of executed contracts indicated in their quote size. As executed contracts are allocated to registered options traders at the ABBO, their quote size would decrement so that they would never be allocated more than their indicated quote size. Once the indicated quote size is depleted, the registered options trader would need to replenish the quote size before being allocated additional executed contracts. The Exchange believes that the ability to indicate a size for quotes in each option series would provide registered options traders with the ability to manage their own exposure to the market in order to compete more effectively.

The Exchange believes that providing registered options traders with ability to auto-quote in the option classes they trade could potentially increase the number of messages per second flowing through Exchange systems many fold. As the ANTE System is being rolled-out across the trading floor, the Exchange would monitor the effect of increased quote traffic on its systems and, if needed, would limit the use of the auto-quote feature in less active classes or series.

Registered Options Traders Obligations

Registered options traders would continue to be obligated to meet the requirements of Amex Rule 958—ANTE when quoting and trading in the ANTE System. As noted by the Commission in its Order announcing the effectiveness of the Exchange's plan to list and trade options, the Amex's ''* * * registered floor traders will be expected to trade in a way that *assists* the specialist in maintaining a fair and orderly market * * *.''[5] [Emphasis supplied] The Exchange recognizes that it is the role of a registered options trader to provide additional liquidity and to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists a lack of price continuity, a temporary disparity between the supply of and demand for option contracts of a particular series, or a temporary distortion of the price relationships between option contracts of the same class.

Under the proposal, registered options traders would submit a written application to trade option classes on the ANTE System. The Exchange would review such applications and assign classes to each registered options traders based upon the following factors: (a) The preference of applicants; (b) assuring that financial resources available to a registered options trader enable him to satisfy the obligations set forth in Amex Rule 958—ANTE with respect to each class of option contracts to which he is assigned; (c) the applicant's expertise in option trading; (d) the applicant's prior market performance; and (e) the impact of the number of registered options traders assigned in an option class or classes on the Exchange's quotation system capacity. The Exchange could suspend or terminate any assignment of a registered options trader under this Rule and make additional assignments whenever, in the Exchange's judgment, the interests of a fair and orderly market would be best served by such action. Pursuant to Article II, Section 3 of the Amex Constitution, registered options traders would, of course, have the right to appeal any Exchange determination made in accordance with this Rule.

During the first six months that an option class is on the ANTE System, a registered options trader applying for an assignment in that option class should be guaranteed an assignment in such class, provided for at least the immediately preceding calendar year the registered options trader: (i) Has been a member of the Exchange; (ii) has maintained a continuous presence as a registered options trader in such option class; and (iii) has met the requirements set forth above.

In addition to their trading activity requirements in their assigned classes, registered options traders would have an electronic quoting requirement. Any registered options trader who transacts more than 20% of their contract volume in an assigned option class electronically and not through open outcry measured over a calendar quarter would be obligated to maintain continuous two-sided quotations for at least ten contracts in a certain percentage of series in that option class commencing the next calendar quarter. The percentage of series in which a registered options trader would be obligated to quote would vary depending on the amount of contract volume executed electronically on the Exchange in that option class. The Exchange would establish for each option class the percentage of series that should be continuously quoted by those registered options traders based upon the Exchange's percentage of electronic contract volume as set forth below:

Percentage of overall contract volume executed electronically on the exchange during the previous calendar quarter	Registered options traders electronic quoting requirement percentage of series
50% or below	20
51%–75%	40
Above 75%	60

Thus, if the overall contract volume executed electronically on the Exchange is 65%, then registered options traders meeting their own threshold of more than 20% electronic contract volume, would be obligated to maintain continuous quotes in 40% of the series in that option class. It should be noted that for the first 90 days after an option class begins trading on the ANTE System, registered options traders would not have the electronic quoting requirement discussed above.

Registered options traders whose electronically transacted contract volume is less than 20% in a given option class would not have an electronic quoting obligation in any specific number of series in that option class.

In summary, registered options traders would, pursuant to Amex Rule 958—ANTE, be obligated to: (1) Apply

[5] *See* Securities Exchange Act Release No. 11144 (December 19, 1974), 40 FR 3258 (January 20, 1975).

for an assignment of options classes to trade on the ANTE System; (2) continue to have 50% of their trading activity each quarter in their assigned classes; (3) make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market; (4) maintain a continuous two-sided market in a certain percentage of series in those classes in which the registered options trader has electronically transacted more than 20% of his contract volume; (5) disseminate a size of at least 10 contracts with each quote; and (6) be physically present at the specialist's post on the floor of the Exchange where the option class is traded in order to quote (either by joining the specialist's quote or streaming his own quotes) or submit orders in that option class.

Firm Quote Rule

The ANTE Firm Quote Rule would reflect that registered options traders, when inputting their own quotes either manually on a series-by-series basis or through the use of an Exchange provided or proprietary automated quote calculation system, would each be considered a responsible broker or dealer for their bids or offers to the extent of their quotation size. Any registered options trader choosing to join the specialist's quote would continue along with other registered options traders joining the specialist quote to be collectively considered the responsible broker or dealer for purposes of the firm quote rule.

As discussed above, the ANTE System would not allow an internal locked or crossed market to occur. A responsible broker or dealer that submits to the Exchange a bid or offer that locks or crosses the ABBO would be deemed to have submitted a bid that is one or more minimum price variations lower than the bid submitted or an offer that is one or more minimum price variations higher than the offer submitted, so that the bid or offer submitted does not lock or cross the ABBO. For example, if the ABBO is 1.00 bid, 1.10 ask, and a responsible broker or dealer submits a quote 1.15 bid, 1.20 ask that would cross the ABBO, the responsible broker or dealer would be deemed to have submitted a 1.05 bid, and the ABBO would become 1.05 bid, 1.10 ask. However, when the ABBO represents an off-floor limit order, the ANTE System would execute the off-floor limit order and allocate the trade in accordance with the post trade allocation process.

Limit Order Display Feature

The ANTE System would provide the specialist with a quote assist feature that would aide the specialist in assuring that limit orders are displayed within the time frame established by the Exchange. The Exchange currently has pending with the Commission a proposal to adopt a rule requiring specialists to either execute or display customer limit orders immediately upon receipt, unless one of the exceptions set forth in the proposed rule applies. The proposed rule provides that ''immediately upon receipt'' is defined ''as soon as practicable which shall mean, under normal market conditions, no later than 30 seconds after receipt.'' While the Exchange anticipates that this rule change should be approved prior to the completed roll-out of the ANTE System, development of the quote assist feature in ANTE would be necessary to aide the specialist in complying with Exchange expectations and performance standards in place today that require specialists to execute or display customer limit orders immediately upon receipt.

The ANTE System would automatically display eligible limit orders within a configurable time that could be set on a class-by-class basis. If, as stated in the proposed rule, customer limit orders must be executed or displayed within 30 seconds, the ANTE quote assist feature could be set to automatically display limit orders at or close to the end of the 30-second timeframe or within any other shorter time frame established by the Exchange. A new commentary to Amex Rule 950—ANTE (g) would require that the specialist maintain and keep active the ANTE limit order quote assist feature. The Exchange would establish the time frame within which the quote assist feature would display eligible customer limit orders.

The specialist could deactivate the quote assist feature provided Floor Official approval is obtained. The specialist would be required to obtain Floor Official approval as soon as practicable, but in no event later than three minutes after deactivation. If the specialist does not receive approval within three minutes after deactivation, the Exchange would review the matter as a regulatory issue. Floor Officials could grant approval only in instances when there is an unusual influx of orders or movement of the underlying that would result in gap pricing or other unusual circumstances. The Exchange would document all instances where a Floor Official has granted approval.

The quote assist feature would be used on a pilot program basis for the first year that the ANTE System is in use. Thus, use of the quote assist feature would expire on or about April 1, 2005 or the first anniversary of the use of the ANTE System, whichever is later. Notwithstanding the foregoing, the Commission could determine to approve use of the quote assist feature on a permanent basis and not allow it to expire.

The Exchange notes that the quote assist feature would not relieve the specialists of their obligation to display customer limit orders immediately. To the extent that a specialist excessively relies on the quote assist feature to display eligible limit orders without attempting to address the orders immediately, the specialist could be violating his due diligence obligation. However, brief or intermittent reliance on the quote assist feature by a specialist during an unexpected surge in trading activity in an option class would not violate the specialist's obligation if used when the specialist is not physically able to address all the eligible limit orders within 30 seconds.

The Exchange commits to conduct surveillance designed to detect whether specialists as a matter of course rely on the ANTE quote-assist feature to display all eligible limit orders. Initially, the ANTE System would not be able to produce data that would identify for surveillance purposes when the specialist has relied upon the quote assist feature to display a customer limit order versus when the specialist displayed the customer limit order prior to the quote assist time frame. The Exchange anticipates that this information would be available by the end of the second quarter of 2004. In the meantime, the Exchange would run its limit order display exception report at various display intervals in an attempt to detect a pattern suggestive of undue reliance on the quote assist feature. The Exchange would report to the Commission every three months the statistical data it uses to determine whether there has been impermissible reliance on the quote assist feature by specialists.

Automatic Matching and Execution of Eligible Orders in the Central Book

The ANTE Central Book would provide for the automatic matching and execution of eligible market and marketable limit orders at the ABBO provided that there is no better market at another options exchange, and the order is less than the auto-match size. Orders for the accounts of public customers would be eligible for automatic matching and execution in all option classes trading on the ANTE System, provided such order sizes are within the auto-match size.

As currently provided, the Options Trading Committee would determine on a class-by-class basis whether orders for the accounts of broker-dealers and competing market makers would be eligible for automatic matching and execution. The Options Trading Committee would also continue to determine the maximum order size eligibility for broker-dealer and competing market maker accounts. Orders greater than the public customer, broker-dealer or competing market makers maximum eligible auto-match size would be routed to the Display Book for full or partial execution at the disseminated bid or offer, if appropriate, up to the disseminated size. If the ABBO is not at the National best bid or offer (''NBBO'') and the order is not eligible for automatic price matching at the NBBO as set forth in Amex Rule 933—ANTE, Commentary .01(b), the order would be routed to the specialist for handling through the Options Intermarket Linkage.

At all times during the trading day a quote with size would be required to be disseminated for each option series. The ANTE System's Specialist's Emergency Quote process would assure that a quote with size for each series would be available for dissemination. The Specialist's Emergency Quote would be disseminated whenever an execution results in the disseminated bid or offer size decrementing to zero. The Specialist's Emergency Quote would be disseminated until the specialist refreshes his bid or offer with size, a registered options trader disseminates a better bid or offer, or a limit order is received that betters the Specialist's Emergency Quote. The Specialist's Emergency Quote would not be disseminated if there is a better bid or offer already being disseminated by a registered options trader or represented by a limit order.

The specialist could establish the Specialist's Emergency Quote parameters as often as the start of every trading day. The specialist would determine the number of minimum price variations [6] below the bid or above the offer and the size associated with that bid or offer. For example, assume the specialist (i) is disseminating a bid of $2.00 and an offer of $2.20 with a quote size of 50 contracts for both the bid and the offer, and (ii) has set his Specialist's Emergency Quote parameters at one minimum price variation below the bid or above the offer with a size of 20 contracts each for both the bid and the offer, the Specialist's Emergency Quote for a bid whose size has decremented to zero would be $.05 below that bid, and for an offer whose size has decremented to zero, the Specialist's Emergency Quote would be $.05 above that offer. Furthermore, assume that an order to buy 50 contracts is received by the ANTE System. Previously, such an order would be routed to the Display Book to be manually executed and allocated by the specialist. Under the proposal, the 50-contract order to buy would be auto-matched with the bid for 50 contracts. The $2.00 bid size would decrement to zero, and the bid would drop one minimum price variation, resulting in a quote of 1.95 bid and 2.20 offered with a quote size of 20 contracts.

As noted above, the Specialist's Emergency Quote would only be disseminated until the specialist either refreshes his bid or offer size or disseminates a better bid or offer. Since the Specialist's Emergency Quote would not represent a bid or offer created using the theoretical value calculated by the specialist's automated quote calculation system, the specialist would have an incentive to refresh his previous quote size or update his quote as quickly as possible. Therefore, it is expected that the Specialist's Emergency Quote would be disseminated for short periods of time only and would be replaced by the specialist or other market participants.

Priority and Allocation of Executed Contracts

Similar to proposed rules currently pending at the Commission, the ANTE System would provide that non-broker-dealer customer orders at the ABBO would always have priority over all other market participants (*i.e.*, broker-dealers, competing market makers, specialists and registered options traders). Multiple public customer orders in ANTE at the ABBO would be ranked for allocation purposes based on time priority. An ANTE Participant quoting alone at the ABBO would be allocated all contracts executed at his disseminated bid or offer up to the disseminated size. When more than one ANTE Participant is quoting or has orders at the ABBO, executed contracts would be automatically allocated as follows: (i) All non-broker-dealer customer orders would be allocated first; (ii) specialist participating in the quote would be allocated executed contracts in accordance with the specialist participation schedule set forth in Amex Rule 935—ANTE; and (iii) remaining executed contracts would be allocated to broker-dealers and competing market makers as one ANTE Participant, and registered options traders as individual ANTE Participants in accordance with provisions also set forth in Amex Rule 935—ANTE. In addition, Quick Trade, an allocation system in place today to aid in allocating executed contracts, would continue to exist in the ANTE System to assist in the allocation of executed contracts resulting from transactions occurring outside the ANTE System in the trading crowd. Rule provisions in place today for the operation of Quick Trade would apply to the use of Quick Trade in the ANTE System.

In addition, ANTE Participants (specialists and registered options traders) and/or floor brokers representing customer orders could submit orders into ANTE to trade with orders in the ANTE Central Book. When an ANTE Participant's quote or order executes against the order in the book, a trade would occur and be reported to the Amex's market data system, and the disseminated size would be decremented to reflect the execution. Executed contracts would be allocated to either a single ANTE Participant or multiple ANTE Participants provided they have submitted an order within five seconds of the initial ANTE Participant's submission of an order. The ANTE Participant that first submits the order to trade would be allocated executed contracts up to a size established on a class-by-class basis by the Options Trading Committee and referred to as the ''Take Size.''

The Options Trading Committee would consider the option's liquidity and the size of the trading crowd in determining the appropriate ''Take Size'' for each option class. For example, more liquid option classes with larger trading crowds would be assigned a larger ''Take Size.'' The Options Trading Committee would review and in some cases revise the assigned ''Take Sizes'' on a periodic basis, but would not change a ''Take Size'' during the course of a trading day. The ability to establish the ''Take Size'' for a given option class would not be used in a discriminatory manner by the Options Trading Committee. If the specialist is entitled to be allocated the ''Take Size,'' he would be allocated the ''Take Size'' amount or the amount he would be entitled to pursuant to Amex Rule 935—ANTE (a) 4, whichever amount is greater. The remaining executed contracts would be allocated to those other ANTE Participants that have submitted an order within the five-second time frame. If the specialist is among those ANTE Participants, he

[6] Amex Rule 952 would set forth the minimum price variations for options trading. For options series trading at $3.00 per share per option or higher the minimum price variation would be $.10, and for option series trading under $3.00 the minimum price variation would be $.05.

would be allocated his portion of the remaining contracts in accordance with the percentages set forth in Amex Rule 935—ANTE (a) 4.

The Exchange believes that providing the initial ANTE Participant with executed contracts as a result of being first to submit an order would create further incentives for price improvement among market participants. Furthermore, the Exchange believes that providing a five second time period would prevent the ability of either the specialist or a well capitalized registered option trader to monopolize every order in the ANTE Central Book because they are able to provide the fastest proprietary quotation calculation system, thus creating a disincentive to other registered options traders unable to interact with orders in the ANTE Central Book. In addition, registered options traders would continue to have incentives to quote competitively since the process would only apply when the specialist and registered options traders attempt to access orders in the Central Book, that is, taking liquidity already in the marketplace. The Exchange represents that the process would have no effect on the specialist's and registered options traders' liquidity providing activities where they receive allocations of incoming orders based upon being at and/or the first to disseminate a competitive quote.

Initially, the ANTE System would not provide access to the Central Book for floor brokers representing or ''working'' a customer order in the trading crowd to participate in the post trade allocation of orders taken off the Central book. These floor broker working orders are generally for large numbers of contracts. For working orders, when the floor broker is unwilling to reveal the full size of his order (since BARS HHT does not allow large orders to be broken down into smaller orders), the floor broker would remain in the trading crowd, and the specialist would represent the floor broker's customer interest as described below.

It is anticipated that the ANTE System would provide greater functionality in accessing the Central Book through a handheld device to floor brokers by the end of 2004. In the meantime, in order to provide a floor broker who has entered a trading crowd to work a customer order with alternate access, the Amex would require: (1) The specialist to disengage the post trade allocation feature in the options series represented by the floor broker's customer order, provided the floor broker has alerted the specialist that he is working a customer order in a specified series; (2) once the floor broker's customer order has been executed or the floor broker leaves the trading crowd, the specialist to re-engage the post trade allocation feature; (3) the floor broker to alert the specialist within the five-second timeframe whenever he wants to participate on behalf of his customer in the post trade allocation of orders taken off the specialist's book; (4) floor brokers to keep a written record of when they have alerted a specialist that they want to participate in the post trade allocation; and (5) the specialist to add the customer's interest being represented by the floor broker in the post trade allocation whenever appropriate.

To accomplish an allocation to the floor broker's order, the specialist could, on a series-by-series basis, shut off the automated post trade allocation feature and manually allocate the executed contracts. While the specialist would be required to keep track of the floor broker's allocation, the ANTE System would provide an auditable record of which ANTE Participants successfully submitted orders during the five-second period and were therefore entitled to participate in post trade allocation of executed contracts.

Automated Opening, Re-Opening and Closing Rotations

The ANTE System would provide for an automated, orderly and efficient process for the opening, re-opening after a trading halt, and closing of all option classes. The opening rotation would provide the specialist with all pre-opening orders, orders on the book from the previous trading day, and a theoretical quote, based on the previous closing price, for each option series he trades. The specialist always would be required to submit a two-sided quote for each option series to be used in the opening session.

Registered options traders would be able to view the same information as the specialist in what would be known as the opening session window. To participate at the opening, registered options traders could either: (1) Submit quotes using either their Exchange provided or proprietary automated quote calculation system to calculate and submit quotes for use during the automated opening rotation; (2) join the specialist's quote; or (3) submit limit orders on a series by series basis. Registered options traders would not be able to submit market orders in the automated opening rotation.

Once the underlying stock opens, the options specialist would be able to open the overlying options by accessing the opening session window and allowing the submission of quotes and orders that have been entered. Once the opening session window is activated, no additional quotes, orders or cancellations would be permitted until the series opens. Once the series has opened, orders and quote updates would once again be permitted, and active trading would have begun. The ANTE System would automatically pair-off the opening orders at a suggested price based on previous day and pre-opening limit orders and the specialist's and registered options traders' theoretical quotes. In those situations when the ANTE System is unable to determine an appropriate opening price, the system would present the series to the specialist for the manual setting of an opening price in that series.

The automated re-opening and closing rotations would be held in the same manner as the automated opening rotation. Amex Rule 918(a)(4) provides for a closing rotation to be held on the last trading day for expiring option series. However, under proposed Amex Rule 918—ANTE(a)(4), the ANTE System would require an automated closing rotation to be held in all option series at the end of every trading day. Similar to the automated opening rotation, registered options traders would be able to view the same information as the specialist in what would be known as the closing session window. The automated closing rotation would be used to execute at-the-close orders received by the Exchange prior to the close. If no at-the-close orders are received in a particular option series, then the ANTE System's automated closing rotation would simply close trading in that series. Orders could be entered, modified or cancelled into the ANTE System up to 4:02 p.m., or 4:15 p.m. for options on Exchange Traded Fund Shares when the underlying Fund Share ceases trading at 4:15 p.m. Quotes could be submitted up until the commencement of the rotation in such series. The closing rotation could begin once the underlying security has closed. The specialist always would be required to submit a two-sided quote for each option series to be used in the closing session.

As noted above with respect to the automated opening rotation, to participate in the automated closing rotation, registered options traders could either: (1) Submit quotes using either their Exchange provided or proprietary automated quote calculation system to calculate and submit quotes for use during the automated closing rotation; (2) join the specialist's quote; or (3) submit limit orders on a series by series basis.

Implementation of the ANTE System

The Exchange currently anticipates to begin its rollout of the ANTE System during the first quarter of 2004 and to complete the rollout by the third quarter of 2005. The Exchange plans to roll out the ANTE System on a specialist's post-by-specialist's post basis. For example, beginning on or about March 1, 2004, the ANTE System would be rolled out to all specialists and registered options traders trading some or all of the 71 option classes. Approximately two weeks later, the next specialist post would be put on the ANTE System, and during the following two weeks after that, the third specialist's post would be put on the System. Altogether, the total number of classes at these three posts is 258. Assuming the ANTE System performs well at the three posts, by the end of March 2004, option classes on additional specialist's posts would begin to be rolled-out, and, by the end of April 2004, it is anticipated that three additional specialists' posts and another 200 classes would be rolled-out.

The Exchange expects that by the end of the first six months (August 31, 2004), its 300 most actively traded option classes would be trading on the ANTE System. Additional specific plans for the roll-out are being developed by the Exchange with the intention to have all equity and index option classes on the ANTE System by the second quarter of 2005.

Once rolled out, the new system would be used for all option classes traded on the Exchange. Therefore, during the roll-out period, while the Exchange has option classes trading on both systems, current rules (as they are amended from time to time) would apply to those option classes continuing to trade on its current system, while the ANTE rules (as they are amended from time to time) would apply to those option classes trading on the new trading system. Once the roll-out of ANTE is complete, the amendments to the Exchange's options rules reflecting the implementation of ANTE would replace, where applicable, the corresponding provisions in Amex Rules 900 through 958A. Once the roll-out period has ended and all option classes are trading on the ANTE System, the Exchange would submit a ''house-keeping'' filing pursuant to Rule 19b–4 of the Act,[7] which would delete rules that would not be applicable to the Exchange's then current trading environment.

The following is a brief discussion of each of the proposed ANTE rules.

Rule 900—ANTE

The implementation of ANTE would require the adoption of the definition of the terms ''ANTE System,'' ''ANTE Participant'' and ''Outside the ANTE System.'' The ANTE System would be defined as the trading system used by the Exchange to trade options contracts. The ANTE System would provide for the automatic match and execution of orders and the collection and dissemination of quotes from specialists and registered options traders. An ANTE Participant would be defined to include both the specialist and registered options traders using the ANTE System in their assigned option classes. The term ''Outside the ANTE System'' would mean those orders that occur in a crowd trade and include orders of size, spread, straddle and combination orders, solicited orders, facilitation orders and other types of orders as determined by the order flow providers.

Rule 918—ANTE

The Exchange proposes to amend Amex Rule 918 to eliminate the requirement that a specialist announce to the trading crowd: (i) Any material imbalances prior to the opening; and (ii) a price indication prior to effecting any transactions during a rotation. The Exchange believes that these announcements would not be necessary in the ANTE System since this information would be displayed to the registered options traders on their handheld devices during the opening, re-opening and closing rotations. Amex Rule 918—ANTE would set forth the automated opening, reopening and closing rotation procedures. In addition, Amex Rule 918 would be amended to reflect that a closing rotation would be held at the end of every trading day in each option series for the execution of at-the-close orders. If there are no at-the-close orders in a given option series, the closing rotation would be used to close trading in that series.

Rule 933—ANTE

The Exchange proposes to amend Amex Rule 933 to generally reflect that there would no longer be a separate Auto-Ex System, but that automatic matching and execution of eligible orders would be part of the ANTE System's Central Book. A discussion of the use of the auto-match size would be included in Amex Rule 933—ANTE (a).

Furthermore, the Options Trading Floor Committee would be renamed the Options Trading Committee. Current provisions of Amex Rule 933 relating to the Automatic Price Matching and the Automatic Price Improvement features of the Auto-Ex system refer to the Auto-Ex Enhancement Committee. The determinations made by this Committee would be given to the Options Trading Committee, and the Auto-Ex Enhancements Committee would be disbanded. Both Committees are comprised of the chairmen of the Specialists' Association, the Options Market Maker Association and the Floor Brokers Association and the Floor Governors. Therefore, to simplify the administration of the various automatic matching and execution determinations (*e.g.*, whether Automatic Price Matching offered in certain option classes or whether orders for the accounts of broker-dealers should be eligible for automatic matching and execution) the Auto-Ex Enhancement Committee would be combined with the Options Trading Committee.

In addition, paragraph (e) of Amex Rule 933 would be amended: (1) To eliminate subparagraph (i)(E) to reflect that the ANTE System would not disengage its automatic matching and execution feature when a specified number of automatic executions occur in an option class or series; and (2) to eliminate the references in subparagraph (i)(F)(i) and (ii) to reflect that the ANTE System would automatically execute orders when the bid or offer in a specific option series represents a limit order on the specialist's book.

The discussion of the allocation of contracts executed in Auto-Ex found in paragraph (h) of Amex Rule 933 would be deleted since new Amex Rule 935—ANTE and Amex Rule 958—ANTE would set forth the provisions for the allocation of executed contracts in the ANTE system. Commentary .02 to Amex Rule 933 would also be revised and Commentary .03 to Amex Rule 933 would be replaced to reflect that the eligible order size for automatic matching and executions would be set by the Options Trading Committee and could be up to the size disseminated by the Exchange. New Commentary .03 would set forth the requirement that the specialist establish for each option series the parameters for the emergency quote to be used in situations where the disseminated bid or offer size has decremented to zero.

In addition, the ANTE System would continue to provide both automatic price matching (the matching of the best bid or offer displayed by a competing exchange) and automatic price improvement (when the ABBO is also the NBBO, price improvement is provided based upon a predefined number of ''ticks'' and for orders within

[7] 17 CFR 240.19b–4.

the established order size parameter). For example, assuming that the Amex displayed quote of 2–2.10 is the NBBO, the predefined number of ticks is one, and the order size parameter is five, when an order is received on the Amex to buy 5 contracts at the market, the order would be automatically executed at an improved price of 2.05. If the buy order size is for a number of contracts that exceeds the order size parameters, then such order would be automatically executed at 2.10.

Finally Amex Rule 933—ANTE provides that the Options Trading Committee could determine on a class-by-class basis whether broker-dealer orders may be eligible for automatic matching and execution in the ANTE System. The Options Trading Committee would make this determination for all broker-dealers as a group and would not differentiate among broker-dealer firms or types of broker-dealers. The determination of the Options Trading Committee would apply to all broker-dealers equally, except that broker dealers who are market makers or specialists on an exchange and who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to section 7(c)(2) of the Act could be treated differently than all other broker-dealers.

Rule 934—ANTE

Paragraph (a) of Amex Rule 934 would remain unchanged in ANTE and paragraph (b) would be amended to reflect the elimination of a separate automatic execution system in ANTE.

Rule 935—ANTE

Amex Rule 935—ANTE provides for the allocation of all contracts executed through the ANTE System as discussed above.

Rule 941—ANTE

The text of Amex Rule 941 regarding the operation of the Options Intermarket Linkage has been included to reflect a change in the reference to Amex Rule 933—ANTE (f)(i) found in Amex Rule 941—ANTE (e).

Rule 950—ANTE

Paragraph (b) of Amex Rule 950—ANTE would provide rules for priority and parity at the opening. Many of the provisions found in the Commentary to Paragraph (d) of Amex Rule 950—ANTE would not apply to orders executed through the ANTE System (for example, the facilitation and solicitation rules) since those types of orders would need to be presented by a floor broker during crowd trading. Paragraph (e) of Amex Rule 950—ANTE would provide for two additional order types applicable to option transaction through the ANTE System—''Immediate or Cancel'' and ''Fill or Kill''. Paragraph (f) of Amex Rule 950—ANTE would eliminate the requirement that stop and stop limit orders elected by a quotation not be executed without prior approval of a floor official.

The Exchange believes that the elimination of the requirement is necessary given the high level of automation in the ANTE System. At the time the Exchange received approval to allow stop and stop limit orders to be elected by a quotation, the Exchange did not have automated quotation systems in place, and was concerned that a manually quoting specialist could inappropriately move his quote to elect a stop or stop limit order. With the advent of automated quotation systems, specialists rarely, if ever, quote manually. Further automation of the quoting and execution process in ANTE would further limit the ability of the specialist to manually quote. In those situations where the specialist is able to quote manually, surveillance would be able to detect if stop and stop limit order were elected inappropriately. The Exchange believes that obtaining floor official approval for the election of stop and stop limit orders by a quotation would be cumbersome and at times impossible for the specialist given the automated processes in the ANTE System.

Paragraph (g) of Amex Rule 950—ANTE, Commentary .01 would be added to reflect the specialist's obligation to maintain and keep active the ANTE limit order quote assist feature. The Exchange would establish the time frame within which the quote assist feature would display eligible customer limit orders. The specialist could deactivate the quote assist feature provided Floor Official approval is obtained. Such approval would be required to be obtained no later than three minutes after deactivation. Paragraph (l) of Amex Rule 950—ANTE, Commentary .03 would be revised to reflect that it remains the specialist's obligation to allocate executed contracts when an execution has occurred outside the ANTE System. Specialists would be obligated to use best efforts to attempt to ensure that the registered options trader responsible for announcing the best bid or offer during a crowd trade be appropriately allocated executed contracts in accordance with the participation provisions found in Amex Rule 950—ANTE (d), Commentary .07.

The ANTE System would automatically allocate all executed contracts when executions occur within the system. Amex Rule 950 (m), which applies Amex Rule 116 to the trading of option contracts on the Exchange, would be eliminated, since Amex Rule 116 sets forth the procedures for the Opening Automated Report Service, a system that facilitates the efficient and accurate processing of eligible orders received by the Exchange prior to the opening or reopening of trading in designated securities. The ANTE System would replace the Opening Automated Report Service.

Rule 951—ANTE

The Exchange is revising this rule to add a new Commentary .01 discussing how the ANTE System would handle a bid or offer submitted by a specialist or registered options trader that locks or crosses the ABBO.

Rule 955—ANTE

The Exchange is revising this rule to reflect that documentation of a report being sent would include electronic records within the ANTE System.

Rule 958—ANTE

New paragraph (h) would provide that registered options traders may choose to either use an Exchange provided or proprietary automated quote calculation system to calculate and disseminate quotes, or join the specialist's disseminated quotation in some or all of his assigned classes or series. Registered options traders would have to be physically present at the specialist's post on the floor of the Exchange whenever they use the ANTE System to enter quotes, join the specialist's quote or enter an order in an option class through the ANTE System. Amex Rule 958 is also being amended to reflect: (1) The assignment of ANTE classes to registered options traders, and (2) the additional requirements and obligations for registered options traders quoting and trading through the ANTE System.

Rule 958A—ANTE

The firm quote rule would be amended to provide: (1) That the registered options traders inputting their own quotes, either manually on a series by series basis or through the use of an Exchange-provided or proprietary automated quote calculation system, would be considered the responsible broker or dealer for the purposes of the rule, and (2) while the responsible broker or dealer would continue to be required to quote a minimum of ten contracts, customer limit orders representing the best bid or offer may be disseminated at less than ten contracts.

Rule 1. Hours of Business

The Exchange also proposes to amend Amex Rule 1 regarding the Exchange's hours of business to provide that the ANTE System would conduct a closing rotation after the close of trading on each trading day. The closing rotation would commence as soon as practicable after 4:02 p.m. or 4:15 p.m. depending on the option class. In addition, the Exchange takes this opportunity to correct the opening paragraph of Commentary .02 to reflect that options on select Exchange Traded Fund Shares should freely trade until 4:15 p.m. each business day.

The Exchange believes that the ANTE System would provide investors with deeper and more liquid markets, market participants with substantially enhanced incentives to quote competitively, and order entry firms with a trading system that would increase their ability to meet their best execution and due diligence obligations.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act [8] in general, and furthers the objectives of section 6(b)(5) of the Act [9] in particular, because it is 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, will impose no 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 solicited or received with respect to the proposed rule change, as amended.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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 Exchange 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2003–89. 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, comments should be sent in hard copy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Amex–2003–89 and should be submitted by April 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7144 Filed 3–30–04; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49462, File No. SR–CBOE–2004–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc., To Amend the Obvious Error Rule Relating to ''No-Bid'' Options

March 23, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On February 2, 2004, CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its obvious error rule, CBOE Rule 6.25, relating to ''no-bid'' options. Proposed new language is *italicized.*

* * * * *

Rule 6.25 Nullification and Adjustment of Electronic Transactions

(a) Trades Subject to Review

A member or person associated with a member may have a trade adjusted or nullified if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1)–(6) No change.

(7) No Bid Series: Buyers of options series quoted no bid may request that their execution be nullified provided: (a) the bid in that series immediately preceding the execution was zero; (b) at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid immediately before the execution; and (c) the bid following the execution in that series was zero.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Steve Youhn, Legal Division, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 30, 2004 (''Amendment No. 1''). Amendment No. 1 replaced and superseded the original filing in its entirety.

(b)–(e) No change.

Interpretations and Policies * * *

.01–.02 No change.

* * * * *

I. 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

Recently, the Commission approved CBOE's obvious error rule, CBOE Rule 6.25,[4] which establishes six specific objective guidelines that may be used as the basis for adjusting or nullifying a transaction. The Exchange proposes to adopt one additional guideline, relating to ''no-bid''[5] options, which may be used as a basis for nullifying trades. Under this guideline, buyers of options that were quoted no-bid may request that their execution be nullified provided:

(a) The bid in that series immediately preceding the execution(s) in question was zero;

(b) At least one strike price below (for calls) or above (for puts) in the same options class was quoted no-bid immediately before the execution(s) in question; and

(c) The bid following the execution(s) in question in that series was zero.

A ''zero-bid'' or ''no-bid'' option refers to an option where the bid price is $0.00.[6] According to CBOE, series of options quoted zero-bid are usually deep out-of-the-money series that are perceived as having little if any chance of expiring in-the-money. For this reason, relatively few transactions occur in these series and those that do are usually the result of a momentary pricing error. In some cases, the pricing error is substantial enough such that CBOE Rule 6.25(a)(1) becomes applicable. In many cases, though, the pricing error is not substantial enough to warrant adjustment under CBOE Rule 6.25(a)(1). The proposed rule would apply to these transactions.

For example, if the underlying stock trades at $21 during December expiration week, related options with the strike price of 30, 35, and 40 likely would trade no-bid at a nickel. Assume a momentary pricing anomaly occurs, resulting in a quoted price of $0.10–0.20 in the 40s and, as a result, an electronic order to sell immediately executes against the $0.10 bid. The displayed quote immediately returns to no-bid at a nickel. In this case, the market maker has just purchased a worthless option for $0.10.[7] Because the displayed quote prior to the trade was zero-bid, the 35s were zero-bid, and the quote after the erroneous transaction in question was zero-bid, this transaction would qualify for relief under the rule.

According to CBOE, the proposed rule is similar to Pacific Exchange, Inc. (''PCX'') Rule 6.87(g)(2)(F)[8] with a few notable differences, as described below. First, CBOE believes its proposed rule is more restrictive in that it requires the bid following the execution in question to return to zero. CBOE believes that this serves as an added measure of protection designed to ensure that the transaction really was erroneous.

Second, the PCX rule requires at least one strike below (calls) or above (puts) be quoted no-bid ''at the time of execution'' while CBOE uses ''immediately prior to the execution'' as the reference point. CBOE believes that this is an important distinction only if more than one series of the same class is affected. With respect to the example above, assume that at the same time the 30s, 35s, and 40s all go from no-bid to $0.10–0.20, and a few seconds later an execution occurs in each series, and then the price in each series returns to zero-bid. In this scenario, using the PCX reference point of ''at the time of execution,'' none of the trades could be adjusted because the second criteria (*i.e.*, at least one strike below is quoted zero-bid) is not satisfied.[9] Using the CBOE reference point of ''immediately prior to execution'' allows the trades in all three series, which CBOE believes clearly are erroneous, to be nullified.[10] Finally, CBOE's proposed rule only allows for the nullification of trades, whereas the PCX rule would allow for the nullification or adjustment of trades. Practically, CBOE believes that these trades cannot be adjusted because the adjusted price would be zero.

2. Statutory Basis

CBOE represents that the filing provides for the nullification of no-bid trades executed at clearly erroneous prices due to the occurrence of an inaccurate pricing anomaly. In addition, CBOE notes that a substantially similar provision has already been approved on PCX. Therefore, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[11] in general, and furthers the objectives of section 6(b)(5)[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for 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

CBOE 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

CBOE did not solicit or receive written 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

[4] Securities Exchange Act Release No. 48827 (November 24, 2003), 68 FR 67498 (December 2, 2003).

[5] ''No-bid'' is synonymous with ''zero-bid.''

[6] The offer price is typically $0.05. In this instance, the option typically is referred to as ''no bid at a nickel.''

[7] This trade does not qualify as an obvious pricing error because it is less than $0.10 from fair market value.

[8] Under PCX Rule 6.87(g)(2)(F), parties to a trade may have a trade nullified or its price adjusted if any such party makes a timely documented request and the trade resulted in an execution price in a series quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution.

[9] For example, the trade in the 40s could not be nullified, because at the time of execution the strike below (*i.e.*, the 35s) were *not* quoted no bid. Rather, they were quoted $0.10–0.20. The same goes with the trade in the 35s: at the time of execution, the 30s were not quoted zero bid.

[10] This assumes, however, that the strike below the 30s is quoted zero bid.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

publishes its reasons for so finding, or (ii) as to which the Exchange 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 proposed rule change, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2004–02. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should be submitted by April 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7143 Filed 3–30–04; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49468; File No. SR–CBOE–2004–11]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to a Pilot Program for Modification of ROS on the Settlement Date of Futures and Options on Volatility Indexes

March 24, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 20, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by CBOE. On March 15, 2004, CBOE filed Amendment No. 1 to the proposed rule change.[3] On March 18, 2004, CBOE filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change, as amended, on a pilot basis through November 17, 2004.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to modify the method by which CBOE's Rapid Opening System (''ROS'') determines the opening price of certain broad-based index options in limited circumstances on a pilot basis through November 17, 2004. The purpose of the proposed rule change is to facilitate the calculation of a final settlement price for futures and options contracts on volatility indexes. The text of the proposed rule change is set forth below. Proposed new language is in *italics.*

* * * * *

Rule 6.2A. Rapid Opening System

This rule has no applicability to series trading on the CBOE Hybrid Opening System. Such series will be governed by Rule 6.2B.

(a)–(d) No change.

* * * Interpretation and Policies

.01–.02 No change.

.03 *Modified ROS Opening Procedure for Calculation of Settlement Prices of Volatility Indexes.*

All provisions set forth in Rule 6.2A and the accompanying interpretations and policies shall remain in effect unless superseded or modified by this Rule 6.2A.03. To facilitate the calculation of a settlement price for futures and options contracts on volatility indexes, the Exchange shall utilize a modified ROS opening procedure for any index option series with respect to which a volatility index is calculated (including any index option series opened under Rule 6.2A.01). This modified ROS opening procedure will be utilized only on the final settlement date of the options and futures contracts on the applicable volatility index in each expiration month.

The following provisions shall be applicable when the modified ROS opening procedure set forth in this Rule 6.2A.03 is in effect for an index option with respect to which a volatility index is calculated: (i) all orders (including public customer, broker-dealer, Exchange market-maker and away market-maker and specialist orders), other than contingency orders, will be eligible to be placed on the Electronic Book for those option contract months whose prices are used to derive the volatility indexes on which options and futures are traded, for the purpose of permitting those orders to participate in the ROS opening price calculation for the applicable index option series; (ii) all market-makers, including any LMMs and SMMs, if applicable, who are required to log on to ROS or RAES for the current expiration cycle shall be required to log on to ROS during the modified ROS opening procedure if the market-maker is physically present in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from David Doherty, Attorney, Legal Division, CBOE, to Terri Evans, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 12, 2004 (''Amendment No. 1'') (replacing the original Form 19b–4 filing in its entirety).

[4] *See* letter from David Doherty, Attorney, Legal Division, CBOE, to Terri Evans, Assistant Director, Division, Commission, dated March 17, 2004 (''Amendment No. 2''). In Amendment No. 2, CBOE amended its initial filing to request approval of the proposed rule change on a pilot basis until November 17, 2004. CBOE also proposed to amend CBOE Rule 6.2A.03(vii) to make the description of those eligible to place orders on the electronic book for the proposed modified ROS opening procedure consistent with the description set forth in proposed CBOE Rule 6.2A.03(i). CBOE also represented that prior to implementing a systems change to prevent market makers logged onto ROS from trading with themselves, it will file a proposed rule change with the Commission pursuant to Section 19(b)(3)(A) of the Act and further clarified that Lead Market-Makers (''LLMs'') are treated the same under the modified ROS opening, except for the ability of LLMs to collectively set the AutoQuote values used by ROS.

the trading crowd for that index option class; (iii) if the ROS system is implemented in an option contract for which LMMs have been appointed, the LMMs will collectively set the Autoquote values that will be used by ROS; (iv) ROS contracts to trade for that index option series will be assigned equally, to the greatest extent possible, to all logged-on market-makers, including any LMMs and SMMs if applicable; (v) all orders for participation in the modified ROS opening procedure, and any change to or cancellation of any such order, must be received prior to 8:25 a.m. (CST) in order to participate at the ROS opening price for that index option series; (vi) all orders for participation in the modified ROS opening procedure must be submitted electronically, except that market-makers on the Exchange's trading floor may submit paper tickets for market orders only; and (vii) until the Exchange implements a ROS system change that automatically generates cancellation orders for Exchange market-maker, away market-maker, specialist, and broker dealer orders which remain on the Electronic Book following the modified ROS opening procedure, any such orders that were entered in the Electronic Book but were not executed in the modified ROS opening procedure must be cancelled immediately following the opening of the applicable option series.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to facilitate the trading of options and futures on volatility indexes intended to be traded on CBOE or on the CBOE Futures Exchange LLC (''CFE'') by modifying certain of the rules that govern the ROS procedures for index option series whose prices are used to derive the volatility indexes on which options and futures will be traded. These modifications will expand the types of orders for these index options that may be included in ROS at the time when settlement values for volatility index options and futures are being determined. CBOE believes this will permit a more accurate determination of these settlement values, and will assure that these values more closely converge with the prices of the index options from which they are derived.

This proposed rule change follows CBOE's recently filed proposal to provide for the listing and trading of options on several volatility indexes on CBOE; specifically, the CBOE Volatility Index (''VIX''); the CBOE Nasdaq 100 Volatility Index (''VXN''); and the CBOE Dow Jones Industrial Average Volatility Index (''VXD'').[5] CBOE may file additional rule changes to provide for the listing of options on other volatility indexes in the future. The CFE, which is a designated contract market approved by the Commodity Futures Trading Commission (''CFTC'') intends to file a rule change with the CFTC to provide for the listing and trading of futures on the VIX on CFE, and may list additional futures products on other volatility indexes in the future. The proposed rule change that is the subject of this filing is in anticipation of the commencement of trading in these new options and futures on volatility indexes on CBOE and on CFE.

a. Volatility Index Description

In general, CBOE states volatility indexes (including, without limitation, the VIX, VXN and VXD (each, a ''Volatility Index'')) provide investors with up-to-the-minute market estimates of expected near-term volatility of the prices of a broad-based group of stocks by extracting volatilities from real-time index option bid/ask quotes. Volatility Indexes are calculated using real-time quotes of the nearby and second nearby index puts and calls on established broad-based market indexes, referred to herein as a ''Market Index.'' For example, the VIX measures the near-term volatility of the S&P 500 Index (''SPX''), the VXN measures the near-term volatility of the Nasdaq 100 Index (''NDX'') and the VXD measures the near-term volatility of the Dow Jones Industrial Average (''DJX''). The futures and options on a Volatility Index expire on the Wednesday immediately prior to the third Friday of the month that immediately precedes the month in which the options used in the calculation of that index expire (the ''Settlement Date''). For example, April 2004 VIX futures and options would expire on Wednesday, April 14, 2004, which is the Wednesday immediately prior to the third Friday of April, which is the month preceding the expiration of the May 2004 SPX options. Since Volatility Indexes will be A.M.-settled, CBOE will utilize the ROS functionality to facilitate the calculation of a settlement price for futures and options contracts on Volatility Indexes.

b. Current Market Index Opening Procedures

ROS is CBOE's automated system for opening classes of options at the beginning of the trading day or for re-opening classes of options during the trading day. In brief, the current ROS opening procedure involves market-makers participating on ROS by logging on each morning and identifying the classes of options in which they will participate for the opening. If ROS is being employed in a Designated Primary Market-Maker (''DPM'') or LMM trading crowd, the DPM and LMM are required to participate on ROS. A single opening price for each option series is calculated based on the orders contained in the electronic book and on the AutoQuote values set by the DPM, LMM, or other market-maker, as applicable, which AutoQuote values may be adjusted based on input from other LMMs and market-makers present at the opening. ROS then determines an opening price based on an algorithm that maximizes the number of public customer orders able to be executed at the opening. Currently, public customer orders, other than public customer contingency orders, are the only orders that can be placed in the electronic book for ROS. To ensure the participation of broker-dealer orders in the opening price calculation, CBOE Rule 6.2A(ii) requires the member representing a broker-dealer order to inform the DPM or Order Book Official (''OBO''), as applicable, and the logged-in ROS market-makers of the terms of such orders prior to the time the class is locked. However, under current ROS opening procedures these broker-dealer orders are not eligible to be entered in the electronic book that is used by ROS to calculate opening prices.

c. Proposed Modified ROS Opening Procedure

Since ROS partially calculates the opening prices of Market Index option series based upon orders contained in the electronic book, and since these opening prices will be used to derive

[5] *See* Securities Exchange Act Release No. 48807 (November 19, 2003), 68 FR 66516 (November 26, 2003) (Notice of Filing of File No. SR-CBOE–2003–40).

the settlement values of corresponding Volatility Indexes for purposes of Volatility Index options and futures, CBOE believes it is necessary to modify the ROS opening procedures to permit all orders (including public customer, broker-dealer, CBOE market-maker, away market-maker, and specialist orders), other than contingency orders, to be eligible to be placed on the electronic book solely for the purpose of the ROS opening. These orders may be placed on the book in those Market Index option contract months the prices of which are used to derive the Volatility Indexes on which options and futures will be traded. CBOE believes that expanding the scope of orders eligible for entry into the electronic book for purposes of the ROS opening will make it easier for all market participants to participate fully in the establishment of the settlement values of Volatility Indexes in an efficient and automated manner. This modified ROS opening procedure will be used only on the final Settlement Date of the options and futures contracts on the applicable Volatility Index in each expiration month, which is when Volatility Index settlement values are determined. The ROS opening procedures currently set forth in CBOE rules will continue to govern ROS openings of Market Index option classes on all other days.

To ensure market-maker participation in the modified ROS opening procedure, the proposed rule change would provide that all market-makers, including LMMs and Supplemental Market-Makers (''SMMs''),[6] if applicable, who are required to log on to ROS or Retail Automatic Execution System (''RAES'') for the current expiration cycle are required to log on to ROS during the modified ROS opening procedure if the market-maker is physically present in the trading crowd for that Market Index option class. Although it has previously been CBOE's observation [7] that few, if any, non-bookable orders (including broker-dealer orders) are represented by firms for participation in the ROS opening, CBOE believes that CBOE market-makers and other broker-dealers that trade Volatility Index futures and options and that use Market Index options for hedging purposes will want their Market Index option orders to be included in ROS to ensure the convergence of the values of their settled Volatility Index positions with the values of their positions in related Market Index options.

To participate in the modified ROS opening procedure on Settlement Date, all orders for placement on the electronic book would generally be required to be submitted electronically. For market-makers on CBOE's trading floor, compliance with this requirement may be fulfilled through the submission of the order to a floor broker that has access to the CBOE's Order Routing System or through the submission of the order through a hand-held terminal that has futures and options routing functionality. CBOE will also permit market-makers on the trading floor to submit paper ticket market orders to the OBO for placement in the electronic book. In all circumstances, orders for placement on the electronic book must be received by 8:25 a.m. Paper ticket limit orders may not be submitted because CBOE believes these orders, which would rest on the electronic book if not executed at the opening, may not be able to be cancelled within the time period set forth in the proposed rule, as further explained below.

The current ROS procedures pursuant to CBOE Rule 6.2A(i) would then take effect and calculate the opening price, at which point the maximum number of orders (including broker-dealer or market-maker orders) would be crossed and the balance of orders, if any, to be traded at the opening price will be assigned to participating market-makers. If the ROS system is implemented in an option contract for which LMMs have been appointed, the LMMs will review the order imbalances and collectively set the AutoQuote values that will be used by ROS in calculating the opening prices for the Market Index option series. CBOE believes that having all of the LMMs participate in this process will contribute toward the establishment of a fair and accurate final settlement price for the Volatility Index futures and options since it will allow for the primary market-makers in the applicable Market Index option contract, as reflected by their designation as LMMs, to all have input in the ROS calculation that will ultimately derive that price. Other than the role of collectively setting the AutoQuote values that will be used by ROS, LMMs would be treated the same as market-makers in all respects under the modified ROS opening procedure provided for in proposed CBOE Rule 6.2A.03.[8]

Pursuant to proposed CBOE Rule 6.2A.03(iv), contracts traded in ROS for a Market Index option series will be assigned equally, to the greatest extent possible, to all logged-on market-makers, including any LMMs and SMMs if applicable.[9] Any customer orders not executed at the ROS opening will remain in the electronic book.

CBOE states that it is in the process of modifying the ROS system software to prevent a market-maker who is logged on to ROS from trading against an order on behalf of the market-maker or the market-maker firm that may be resting in the electronic book.[10] CBOE states that it will also implement a ROS system change to automatically generate cancellation orders for those broker-dealer and market-maker orders that are not executed during the ROS opening. CBOE expects this work to be completed in approximately six months. Meanwhile, CBOE will use an interim process whereby market-maker and broker-dealer orders remaining on the electronic book because they were not executed in ROS (*e.g.*, limit orders) would be required to be cancelled immediately following the opening of those option contracts to prevent market-maker and broker-dealer orders from remaining in the electronic book. In interpreting the requirement of immediate cancellation in this context, CBOE expects market-makers and broker-dealers to make a good faith effort to cancel these orders as soon as possible, taking into consideration the applicable circumstances. For example, it may take a member slightly longer to cancel an order submitted through a floor broker than if the member has a hand-held terminal with futures and options routing functionality.

d. Surveillance

As described in the Commission's order granting permanent approval to the ROS system,[11] CBOE currently has in place surveillance procedures that are designed to ensure, among other things, that market-makers exercise their discretion to set certain AutoQuote

[6] CBOE Rule 8.15 and Interpretation .02 to CBOE Rule 24.13 permit the appropriate Market Performance Committee to appoint one or more market-makers in good standing with an appointment in an option class for which a DPM has not been appointed as LMMs and SMMs.

[7] *See* Securities Exchange Act Release No. 48529 (September 24, 2003), 68 FR 56658 (October 1, 2003) (SR–CBOE–2002–55) (''ROS Permanent Approval Order'').

[8] *See* Amendment No. 2, *supra* note 4.

[9] For example, if the opening imbalance is twenty contracts and ten market-makers are logged on to ROS, each market-maker will be assigned two contracts. If the opening imbalance is twenty-one contracts and ten market-makers are logged on to ROS, the algorithm will assign the greatest amount to the first market-maker chosen in the rotation (three contracts) with each remaining nine market-makers receiving two contracts.

[10] CBOE has represented that prior to implementation of the system change, it will file a rule change with the Commission pursuant to section 19(b)(3)(A) of the Act to amend proposed Exchange Rule 6.2A.03 to reflect this system change. *See* Amendment No. 2, *supra* note 4.

[11] *See* ROS Permanent Approval Order, *supra* note 7.

values consistent with their obligation to price options fairly. CBOE has also established supplemental ROS surveillance procedures for the modified ROS opening.[12] In addition to these procedures, CBOE's Department of Market Regulation will conduct surveillance to identify any broker-dealer or market-maker orders that may have been improperly executed on the electronic book which should have been cancelled following the modified ROS opening procedure.

2. Statutory Basis

CBOE states that the proposed rule change is designed to facilitate the calculation of the final settlement values of Volatility Indexes in an efficient and automated fashion that reflects all buying and selling interest in the associated Market Index. Accordingly, CBOE believes that the proposed rule change is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of section 6(b)(5) of the Act[14] in particular in that it should promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2004–11, and 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, comments may be sent in hard copy or by e-mail, but not by both methods. 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 will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2004–11 and should be submitted by April 21, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act[16] that the rules of a national securities exchange, in part, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

The proposed rule change seeks to generally modify the current ROS opening procedures to allow broker-dealer orders, other than contingency orders, to be incorporated into the electronic book for purposes of the ROS opening for any index option series with respect to which a Volatility Index is calculated. CBOE also proposes to allow LLMs, when applicable, to review the order imbalances as well as collectively set AutoQuote values, and to require that all market-makers log on to ROS during the modified ROS opening procedure if the market-maker is physically present in the trading crowd for that index option class. This modified ROS opening procedure would only be used on the final Settlement Date of the options and futures contracts on the applicable Volatility Index in each expiration month, which is when Volatility Index settlement values are determined. The current, unmodified, ROS opening procedures would be applied on all other days.

The Commission believes that the proposed rule change, including incorporating these additional orders into the electronic book for purposes of the ROS opening, should ensure that broker-dealer orders are fairly incorporated into the opening, as well as contribute to the establishment of fair and accurate final settlement values of Volatility Index futures and options.[17] Further, the incorporation of broker-dealer orders into the electronic book should enable market participants that hedge Volatility Index futures or options contract positions against option positions in the related Market Index to ensure convergence of the value of those two positions at the time of settlement. The ROS modified opening procedure should allow this convergence by allowing market participants to close out their open Market Index option positions and obtain the exact price (*i.e.,* the opening price) for those series that will be used to calculate the Volatility Index settlement value. The Commission notes that CBOE has also submitted supplemental surveillance procedures designed to ensure, among other things, that market-makers exercise their discretion to set certain AutoQuote values consistent with their obligation to price options fairly and that identify whether any accounts have

[12] *See* letter from David Doherty, Attorney, Legal Division, CBOE, to Terri Evans, Assistant Director, Division, dated March 24, 2004 (''Supplemental ROS Surveillance Procedures''). CBOE requested confidential treatment for these surveillance procedures pursuant to 17 CFR 200.83.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] The Commission notes that it had previously required that CBOE develop a workable plan for the electronic incorporation of non-bookable orders in ROS. This requirement was waived in light of the limited number of non-bookable orders that are present at the open and CBOE's forthcoming ability to record information on non-bookable orders under the Consolidated Options Audit Trail (''COATS'') Plan when Phase V of COATS is implemented. CBOE has represented as part of this filing that it is still unable to incorporate non-bookable orders on a daily basis because of certain technological limitations with respect to index products. Telephone conversation between David Doherty, Attorney, CBOE, and Christopher Solgan, Attorney, Division, Commission, on March 24, 2004. The Commission expects that CBOE will continue to actively monitor the quality of executions received by non-bookable orders that are not incorporated into the modified ROS opening and that CBOE will continue to explore methods to electronically incorporate non-bookable orders in the standard ROS opening in the event that non-bookable orders are more actively represented in the opening.

engaged in manipulative or violative activity.[18]

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** CBOE has requested that the Commission grant accelerated approval of the proposed rule change on a pilot basis through November 17, 2004. The Commission notes that the CFE intends to begin trading futures contracts on VIX commencing on Friday, March 26, 2004. Since the VIX futures contracts will be settled using the modified ROS process, accelerated approval of the proposed rule change would allow CFE to inform members of the process by which settlement values would be determined in conjunction with the commencement of trading these products. For these reasons, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[19] to approve CBOE's proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change, as amended, (SR–CBOE–2004–11) is hereby approved on an accelerated basis as a pilot program to expire on November 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7147 Filed 3–30–04; 8:45 am]

BILLING CODE 8010–01–P

[18] *See* Supplemental ROS Surveillance Procedures, *supra* note 12. CBOE has represented, and the Commission expects, that the Exchange will work with the Commission's Office of Compliance Inspections and Examinations (''OCIE'') to finalize any surveillance reports used in connection with the modified ROS opening in a manner acceptable to OCIE. The Commission also expects CBOE to assess its surveillance procedures from time to time to determine whether they are adequate to ensure that market makers do not engage in manipulative or improper trading practices. Further, the Commission expects CBOE to consider whether any additional surveillance procedures are necessary to prevent manipulative or other improper practices.

[19] 15 U.S.C. 78f(b)(5) and 78s(b).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49472; File No. SR–CBOE–2003–35]

Self-Regulatory Organizations; Order Approving Proposed Rule Change, and Amendment Nos. 1, 2, and 3 Thereto by the Chicago Board Options Exchange, Inc. Relating to Non-Aggregation Treatment of Trading Units of Member Firms for Position and Exercise Limits

March 25, 2004.

On August 26, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to issue a regulatory circular containing additional guidance for member firms requesting that one or more of their internal trading units be treated as a separate aggregation unit for purposes of determining aggregate position and exercise limits for a particular option contract. On September 29 2003, the CBOE submitted Amendment No. 1 to the proposed rule change. On January 29, 2004, the CBOE submitted Amendment No. 2 to the proposed rule change. On February 9, 2004 the CBOE submitted Amendment No. 3 to the proposed rule change. The **Federal Register** published the proposed rule change, as amended, for comment on February 19, 2004.[3] The Commission received no comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[4] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Commission believes that the proposed rule change establishes reasonable conditions for the Exchange to determine whether separate trading units within the same member firm may receive non-aggregation treatment with respect to position and exercise limits. The Commission notes that the proposed rule change will require that a CBOE member seeking non-aggregation treatment create internal firewalls and information barriers between trading units that are sufficient to prevent the flow of information (*e.g.,* trades, positions, and trading strategies) between trading units that receive non-aggregation treatment and other trading units controlled by the member. In addition, the Commission believes that the proposed rule change should promote accountability of member firms receiving non-aggregation treatment. Moreover, the Commission believes that the procedures that the Exchange employs to consult with members of the Intermarket Surveillance Group before granting non-aggregation treatment to a member should promote consistent determinations of whether or not to grant non-aggregation treatment.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CBOE–2003–35), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7210 Filed 3–30–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 49213 (February 9, 2004), 69 FR 7829.

[4] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49463; File No. SR–FICC–2004–04]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Technical Corrections

March 24, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 19, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the

[1] 15 U.S.C. 78s(b)(1).

proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. 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 will make several technical corrections to FICC's Mortgage-Backed Securities Division's (''MBSD'') rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC 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

FICC proposes to make the following technical corrections to its Mortgage-Backed Securities Division's (''MBSD'') rules:

1. Minimum Financial Requirements Applicable to Dealer Participants

In Rule Filing SR–MBSCC–2001–06, FICC inadvertently created a $5 million minimum net capital or liquid capital requirement for ''registered broker-dealers.'' [2] This requirement has historically applied only to brokers, which act as intermediaries and present less risk to FICC and its participants. Notwithstanding MBSCC–2001–06, FICC has continued to subject dealers to a $10 million minimum net worth requirement and this rule filing restores the language in MBSD's rules setting forth the different minimum requirements to the language as it existed prior to Rule Filing SR–MBSCC–2001–06.

2. Reference to FICC's Office

MBSD's current rules refer to MBSCC's Chicago office. FICC no longer maintains this office and wishes to delete the reference to the Chicago office in MBSD's rules.

3. References to EPN User Fund and Basic Deposit

MBSD's rules currently reference the ''EPN User Fund'' (''Fund'') and ''Basic Deposit'' (''Deposit''). MBSCC initially had planned to supply its participants with equipment for the EPN service and intended to have each EPN user post a Deposit to the Fund for the using the equipment. The purpose of this was to create an incentive for participants to return the equipment upon terminating their MBSCC membership. However, the EPN system was developed without the need to supply users with equipment; therefore, the use of the Fund was never implemented. FICC proposes to delete all references to the Fund and to the Deposit.

FICC believes that the proposed rule change is consistent with section 17A of the Act [3] and the rules and regulations thereunder as the proposed rule change makes technical corrections to the MBSD's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC believes that the proposed rule change will not impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [4] and Securities Exchange Act Rule 19b–4(f)(4) [5] because it effects a change in an existing service of FICC that does not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which FICC is responsible and does not significantly affect the respective rights or obligations of FICC or person using the service. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appeared to the Commission that such action was 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–FICC–2004–04. 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, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at FICC's principal office and on FICC's Web site at *http://www.ficc.com/mbs/mbs.docs.jsp?NS-query=*. All submissions should refer to File No. SR–FICC–2004–04 and should be submitted by April 21, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7209 Filed 3–30–04; 8:45 am]

BILLING CODE 8010–01–P

[2] Securities Exchange Act Release No. 49156 (Jan. 30, 2004); 69 FR 5881 (Feb. 6, 2004). FICC's corporate predecessor, MBSCC, submitted this rule filing.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49471; File No. SR–NASD–2004–037]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Revising the Pilot Relating to the Issuance of Market Participant Identifiers

March 25, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as ''non-controversial'' under section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change 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 proposed rule change would enable members that are registered as market makers or electronic communications networks (''ECNs'') to request and receive up to a total of ten market participant identifiers (''MMIDs'') with which to enter Attributable Quotes/Orders in the Nasdaq Quotation Montage. In addition, to reflect the increased number of MMIDs available with attributable display privileges to an individual member, the filing proposes technical changes to the policy re-allocating attributable display privileges when Nasdaq reaches its technological limit for such privileges. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

4613. Character of Quotations

(a) Quotation Requirements and Obligations

(1) Two-Sided Quote Obligation. For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain a two-sided quotation (''Principal Quote''), which is attributed to the market maker by a special maker participant identifier (''MMID'') and is displayed in the Nasdaq Quotation Montage at all times, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) No Change.

(B) No Change.

(2) *The first MMID issued to a member pursuant to subparagraph (1) of this rule, or Rule 4623, shall be referred to as the member's ''Primary MMID.''* For a six-month pilot period beginning March 1, 2004, market makers and ECNs may request the use of [a second MMID.] *additional MMIDs that shall be referred to as ''Supplemental MMIDs.'' Market makers and ECNs may be issued up to nine Supplemental MMIDs.* A market maker may request the use of [a second] *Supplemental* MMID*s* for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of [a second] *Supplemental* MMID*s*[5] for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in Rule 4623. A market maker or ECN that ceases to meet the obligations appurtenant to its [first] *Primary* MMID in any security shall not be permitted to use [the second] *a Supplemental* MMID for any purpose in that security.

(3) Members that are permitted the use of [second] *Supplemental* MMIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (2) of this rule are subject to the same rules applicable to the members' first quotation, with two exceptions: (a) the continuous two-sided quote requirement and excused withdrawal procedures described in subparagraph (1) above, as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to market makers' [second] *Supplemental* MMIDs; and (b) [the second] *Supplemental* MMID*s* may not be used by market makers to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619.

(b)–(e) No Change.

* * * * *

IM–4613–1—Procedures for Allocation of Second Displayable MMIDs

Nasdaq has a technological limitation on the number of displayed, attributable quotations in an individual security, although it has not reached that maximum to date in any security. Therefore, Nasdaq must consider the issuance and display of [a second] *Supplemental* MMID*s* to be a privilege and not a right. Nasdaq has developed the following method for allocating the privilege of receiving and displaying [a second] *Supplemental* MMID*s with attributable display privileges (''display privileges'')* in an orderly, predictable, and fair manner on a stock-by-stock basis.

As described in Rule 4613, Nasdaq will automatically designate a market maker's first MMID as a ''Primary MMID'' and [its second] *any additional* MMID*s* as [a] ''[Secondary] *Supplemental*[6] MMIDs.'' Market makers are required to use their Primary MMID in accordance with the requirements of NASD Rule 4613(a)(1) above, as well as all existing requirements for the use of MMIDs in Nasdaq systems. Market makers' use of [Secondary] *Supplemental* MMIDs [are] *is*[7] subject to the requirements set forth in NASD Rule 4613(a)(2) and (a)(3) above, including the prohibition on passive market making. However, the two-sided quote requirement, and the excused withdrawal procedures under NASD Rule 4619, and 4710(b)(2)(B) and (b)(5) will not apply to [the secondary] *Supplemental* MMID*s.* Nasdaq will automatically designate each ECN's MMIDs as Primary and [Secondary] *Supplemental.* Each ECN MMID will be subject to the requirements of NASD Rule 4623 and the existing ECN requirements of the NASD Rule 4700 Series. Members may also use [a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Commission corrected the proposed rule text to italicize the letter ''s'' which is new language. Telephone conversation between Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, and Ann E. Leddy, Special Counsel, Division of Market Regulation (''Division''), Commission (March 16, 2004).

[6] The Commission corrected the proposed rule text to italicize the word ''Supplemental'' which is new language. Telephone conversation between Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, and Ann E. Leddy, Special Counsel, Division, Commission (March 16, 2004).

[7] The Commission corrected the proposed rule text to change ''are'' to ''is.'' Telephone conversation between Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, and Ann E. Leddy, Special Counsel, Division, Commission (March 16, 2004).

Secondary] *Supplemental* MMID*s* to enter non-attributable orders into SIZE.

Nasdaq, in conjunction with the NASD, has developed procedures to maintain a high level of surveillance and member compliance with its rules with respect to members' use of both Primary and [Secondary] *Supplemental* MMIDs to display quotations in Nasdaq systems. If it is determined that [a Secondary] one or more *Supplemental* MMID*s* [is] are being used improperly, Nasdaq will withdraw its grant of the [Secondary] *Supplemental* MMID(*s*) for all purposes for all securities. In addition, if a market maker or ECN no longer fulfills the conditions appurtenant to its Primary MMID (*e.g.,* by being placed into an unexcused withdrawal), it may not use [the Secondary] a *Supplemental* MMID for any purpose in that security.

The first priority of Nasdaq's method for allocating the privilege of displaying [a second] *Supplemental* MMID*s* is that each market maker or ECN should be permitted to register to display a single quotation in a security under [its] *a* Primary MMID before any is permitted to register to display [a second] *additional* quotations under [a Secondary] *Supplemental* MMID*s.* [Each market maker or ECN may register its Primary MMID to display a quotation in a security, on a first-come-first-served basis. After each market maker or ECN has been permitted to register its Primary MMID to display quotations in a stock,] *If all requests for Primary MMIDs have been satisfied,* Nasdaq will then register [Secondary] *Supplemental* MMIDs to display Attributed Quotes/Orders in that security on a first-come-first-served basis, consistent with the procedures listed below. If Nasdaq comes within [five] ten MMIDs *with display privileges* of its maximum in a particular security, Nasdaq will temporarily cease registering [additional Secondary] *Supplemental* MMIDs *with display privileges* in that security and reserve those [five] *ten* remaining [MMIDs] *display privileges* for members that may register their Primary MMID in that stock in the future. If Nasdaq allocates those reserved [MMIDs] *display privileges* to members requesting Primary MMIDs and then receives additional requests for Primary MMIDs, it will use the procedure described below to re-allocate [Secondary MMIDs] *display privileges* to members requesting Primary MMIDs.

For any stock in which Nasdaq has reached the maximum number of members registered to display quotations, once each month, Nasdaq will rank each of the market participants that has [two MMIDs] *more than one Supplemental MMID with display privileges* in the stock according to their monthly volume of trading, based on the [lower] volume of that participant's [two] *least used Supplemental* MMID[s] *with display privileges.* Nasdaq will withdraw the [second MMID] display privilege *associated with* [of] the lowest volume [of] *Supplemental MMID of the* participant in that ranking and assign that privilege to the first member that requested *a Primary MMID or Supplemental MMID, with Primary MMIDs always taking precedence* [the ability to display a second quotation]. Nasdaq will repeat this process as many times as needed to accommodate all pending requests for Primary and [Secondary] *Supplemental* MMIDs. *If after following this process (or at the outset of the allocation process) no member has more than one Supplemental MMID with display privileges, members will be ranked based upon the volume associated with their Supplemental MMID, and Nasdaq will withdraw the display privilege from the member with the lowest volume Supplemental MMID.*

Members that lose the display privilege associated with a Supplemental MMID [The low-ranking member(s) will lose the ability to display a second quotation in that security for that month, but] will still be permitted to use the [second] *Supplemental* MMID to enter non-attributable orders into SIZE for that security or any other, and to display [a second] *additional* quote*s* in any stocks in which [it is] *they are* properly registered to do so, subject to the conditions described in the rule and this interpretive material.

The objective of the procedure is to re-allocate the display privileges from the least used Supplemental MMIDs to those members requesting Primary or Supplemental MMIDs. For example, assume with respect to security WXYZ member A has nine Supplemental MMIDs with display privileges (which is the maximum—1 Primary MMID + 9 Supplemental MMIDs = 10 MMIDs with display privileges), member B has three Supplemental MMIDs with display privileges, and member C has three Supplemental MMIDs with display privileges and is requesting a fourth. After conducting the monthly ranking, one of B's Supplemental MMIDs is the least used in WXYZ, C has the next lowest volume Supplemental MMID with display privileges in the security, and A has the next lowest in the security after C (i.e., the order for forfeiting their display privilege is: B, C, then A). Based on this ranking, Nasdaq would re-allocate one of B's display privileges to C. As a result, A keeps its privileges for all nine of its Supplemental MMIDs in WXYZ, C adds a Supplemental MMID with display privileges in the security, and B loses a display privilege in WXYZ ''B does not lose use of the Supplemental MMID for submitting non-attributable orders in WXYZ to SIZE, and it does not lose display privileges in any other security in which it is authorized to use the Supplemental MMID.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to increase to ten the number of MMIDs available to individual market makers and ECNs to display attributable quotes and orders in the Nasdaq Quotation Montage. In addition, to reflect the increased number of MMIDs available with attributable display privileges, the filing proposes technical changes to Nasdaq's procedures for re-allocating the privileges when Nasdaq reaches its technological limit for displayed, attributable MMIDs.

Nasdaq recently established a pilot program in which market makers and ECNs can request and receive a second MMID with which they can submit Attributable Quotes/Orders to the Nasdaq Quotation Montage (*i.e.*, an additional MMID with ''display privileges'').[8] Nasdaq is proposing to increase to ten the total number of MMIDs with display privileges a market maker or ECN can be issued. Under the

[8] *See* Securities Exchange Act Release Nos. 47954 (May 30, 2003), 68 FR 34017 (June 6, 2003) (SR–NASD–2003–87) (notice of filing and immediate effectiveness of pilot program); 48619 (October 9, 2003), 68 FR 59832 (October 17, 2003) (SR–NASD–2003–137) (extension of pilot program for a six-month period beginning September 1, 2003); and 49409 (March 12, 2004) (SR–NASD–2004–035) (extension of pilot program for a six-month period beginning March 1, 2004).

current pilot program, they are limited to two. Under the revised pilot program, MMIDs two through ten would be known as ''Supplemental MMIDs,'' whereas the first MMID issued to a member would continue to be known as the member's ''Primary MMID.''

According to Nasdaq, the purpose of the current dual MMID pilot program is to provide market makers and ECNs the flexibility to route orders and quotes to SuperMontage from different units within their firms, including market making, arbitrage, retail, and institutional trading desks, among others. Increasing to ten the potential number of MMIDs with display privileges available to each market maker and ECN would provide these members even greater flexibility in managing their orders and quotes. Nasdaq believes this proposal would benefit the Nasdaq market by enabling members to contribute more liquidity, add to the transparency of trading interest, and better serve the needs of investors.[9]

The restrictions on the use of the increased number of MMIDs available with display privileges (*i.e.*, Supplemental MMIDs three through nine) would be the same as those presently applicable to a market maker's or ECN's second MMID. In other words, market makers that display additional Attributable Quotes/Orders under a Supplemental MMID would be required to comply with all rules applicable to market makers that display a single Attributable Quote/Order, and ECNs would be required to comply with all rules applicable to ECNs in their display of Attributable Quotes/Orders. There would be only two exceptions to this general principle. First, the continuous two-sided quote requirement and excused withdrawal procedures, as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5) would not apply to market makers' use of Supplemental MMIDs. Second, a market maker would be permitted to use only one MMID, its Primary MMID, to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619.[10] In all other respects, market makers and ECNs would have the same rights and obligations in using a Supplemental MMID to enter quotes and orders and to display quotations as they do today.

Just as with its decision to grant members use of a second MMID, the decision to allow members the use of up to ten MMIDs with display privileges must be balanced against the need to protect the integrity of the Nasdaq market. In this regard, market makers and ECNs would be prohibited from using a Supplemental MMID to accomplish indirectly what they are prohibited from doing directly through a single MMID. For example, members would not be permitted to use a Supplemental MMID to avoid their Manning obligations under IM–2110–2, best execution obligations under NASD Rule 2320, or their obligations under the Commission's Order Handling Rules.[11] To the extent that the allocation of Supplemental MMIDs were to create regulatory confusion or ambiguity, every inference would be drawn against the use of Supplemental MMIDs in a manner that would diminish the quality or rigor of the regulation of the Nasdaq market.[12] Accordingly, if it were to be determined that a Supplemental MMID was being used improperly, Nasdaq would withdraw its grant of all Supplemental MMIDs for all purposes for all securities.[13]

The filing also proposes technical modifications to IM–4613–1 to reflect the increased number of MMIDs available with display privileges. IM–4613–1 governs the procedures for re-allocating display privileges when Nasdaq reaches its technological limit for displayed, attributable quotations in an individual security. The filing also would add an example illustrating the re-allocation procedures. Nasdaq represents that it has not reached the maximum display privileges to date in any security.

Under the revised procedures, Nasdaq would increase from five to ten the number of display privileges it would reserve for members seeking Primary MMIDs. In addition, as explained below, Nasdaq would modify the procedures so that the rankings will be based only on the volume associated with a member's second through ninth Supplemental MMIDs with display privileges—Primary MMIDs and a member's first Supplemental MMID with display privileges would be excluded from the calculation and thus the re-allocation process. In excluding the first Supplemental MMID, Nasdaq is attempting to allow members to retain at least one Supplemental MMID.[14] When re-allocating the display privileges, requests for Primary MMIDs would continue to receive precedence over requests for Supplemental MMIDs.

Currently, members with dual MMIDs are ranked monthly based on the lower volume between their two MMIDs—their Primary MMID and their second MMID. The member with the lowest volume would be the first to lose the display privileges associated with its second MMID. The re-allocation would progress through the second, third, fourth, fifth, etc., lowest volume member until all outstanding requests for Supplemental MMIDs have been fulfilled.[15]

Under the revised procedures, after excluding their first Supplemental MMID with display privileges, members would be ranked on the basis of their lowest volume Supplemental MMID with display privileges.[16] The member with lowest volume would continue to be the first to lose the display privilege, but only with respect to the Supplemental MMID that caused them

[9] Nasdaq will assess no fees for the issuance or use of a Supplemental MMIDs, other than the Commission-approved transaction fees set forth in NASD Rule 7010.

[10] The Commission revised this sentence to clarify that the Primary MMID is the only MMID a market maker would be permitted to use to engage in passive market making or to enter stabilizing bids. Telephone conversation between Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, and Ann E. Leddy, Special Counsel, Division, Commission (March 16, 2004).

[11] Members also would be required to continue to comply with the firm quote rule, the OATS rules, and the Commission's order routing and execution quality disclosure rules. In addition, NASD Rule 4613(a) specifically prohibits firms from displaying a second Attributable Quote/Order to engage in passive market making or to enter stabilizing bids because this could violate NASD Rules 4614 and 4619 and Regulation M under the Act.

[12] The Commission revised this sentence to insert the first clause. Telephone conversation between Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, and Ann E. Leddy, Special Counsel, Division, Commission (March 16, 2004).

[13] The Commission revised this sentence to clarify that all Supplemental MMIDs would be withdrawn in the event that any Supplemental MMID was used improperly. Telephone conversation between Thomas Moran, Associate Vice President and Associate General Counsel, Nasdaq, and Terri Evans, Assistant Director, Division, Commission (March 24, 2004).

[14] Members' display privileges associated with their first Supplemental MMIDs would be included in the ranking and re-allocation process when no member has more than one Supplemental MMID, whether at the outset of a re-allocation process or when additional requests for Primary or Supplemental display privileges remain unfilled after the routine process re-allocates the display privileges associated with Supplemental MMIDs two through nine of all members. In these situations members would be ranked based upon the volume associated with their first Supplemental MMID, and Nasdaq would withdraw the display privilege from the member with the lowest volume Supplemental MMID.

[15] This same process would be used to re-allocate display privileges if a member requests a Primary MMID. As discussed earlier, requests for Primary MMIDs always receive precedence over requests for Supplemental MMIDs.

[16] The Commission revised this sentence to clarify members would be ranked on the basis of their lowest volume, rather than least used, Supplemental MMID with display privileges. Telephone conversation between Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, and Ann E. Leddy, Special Counsel, Division, Commission (March 16, 2004).

to have the lowest ranking; the member would not lose its authority to use the Supplemental MMID in that security to submit quotes and orders to SIZE or the display privileges associated with that Supplemental MMID with respect to other securities in which it is permitted to use the identifier. The objective of the procedure is to re-allocate the display privileges from the least used Supplemental MMIDs to those members requesting Supplemental MMIDs.

For example, assume with respect to security WXYZ member A has nine Supplemental MMIDs with display privileges (which is the maximum—1 Primary MMID + 9 Supplemental MMIDs = 10 MMIDs with display privileges), member B has three Supplemental MMIDs with display privileges, and member C has three Supplemental MMIDs with display privileges and is requesting a fourth. After conducting the monthly ranking, one of B's Supplemental MMIDs is the least used Supplemental MMID in WXYZ, C has the next lowest volume Supplemental MMID with display privileges in the security, and A has the next lowest in the security after C (*i.e.*, the order for forfeiting their display privilege is: B, C, then A). Based on this ranking, Nasdaq would re-allocate one of B's display privileges to C. As a result, A keeps its privileges for all nine of its Supplemental MMIDs in WXYZ, C adds a Supplemental MMID with display privileges in the security, and B loses a display privilege in WXYZ—B does not lose use of the Supplemental MMID for submitting orders in WXYZ to SIZE, and it does not lose display privileges in any other security in which it is authorized to use the Supplemental MMID.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including section 15A(b)(6) of the Act,[17] which requires, among other things, that a national securities association's rules be 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 mechanisms of a free and open market and a national market system, and, in general to protect investors and the public interest. Nasdaq believes that the proposed rule change is consistent with these requirements because it would facilitate transactions in securities, remove impediments to a free and open market, and protect investors by improving the transparency and efficiency of transactions. Nasdaq believes that increasing to ten the potential number of MMIDs with display privileges available to each market maker and ECN would provide members greater flexibility in how they route orders and quotes to SuperMontage from different units within their firms, including market making, arbitrage, retail, and institutional trading desks, among others. As a result, Nasdaq believes this proposal would benefit its market by enabling members to contribute more liquidity, add to the transparency of trading interest, and better serve the needs of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. Nasdaq will disseminate a Head Trader Alert informing members of the operative date of the proposal.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2004–037. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2004–037 and should be submitted by April 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7149 Filed 3–30–04; 8:45 am]

BILLING CODE 8010–01–U

[17] 15 U.S.C. 78*o*–3(b)(6).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). The Commission notes that Nasdaq provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49452; File No. SR–NASD–2004–040]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend, for an Additional Six-Month Period, a Pilot Rule Regarding Waiver of California Arbitrator Disclosure Standards

March 19, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19–4 thereunder,[2] notice is hereby given that on March 5, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a ''non-controversial'' rule change pursuant to Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon receipt of this filing by 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

NASD is proposing to extend the pilot rule in IM–10100(f) of the NASD Code of Arbitration Procedure, which requires industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers, and associated persons with claims against other industry parties, for a six-month period.

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. The 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

Effective July 1, 2002, the California Judicial Council adopted a set of rules, ''Ethics Standards for Neutral Arbitrators in Contractual Arbitration'' (''California Standards''),[4] which contain extensive disclosure requirements for arbitrators. The rules were designed to address conflicts of interest in private arbitration forums that are not part of a federal regulatory system overseen on a uniform, national basis by the SEC. The California Standards imposed disclosure requirements on arbitrators that conflict with the disclosure rules of NASD and the New York Stock Exchange (''NYSE''). Because NASD could not both administer its arbitration program in accordance with its own rules and comply with the new California Standards at the same time, NASD initially suspended the appointment of arbitrators in cases in California, but offered parties several options for pursuing their cases.[5]

NASD and NYSE filed a lawsuit in federal district court seeking a declaratory judgment that the California Standards are inapplicable to arbitration forums sponsored by self-regulatory organizations (''SROs'').[6] That litigation is currently pending on appeal. Since then, other lawsuits relating to the application of the California Standards to SRO-sponsored arbitration have been filed, some of which are still pending.

To allow arbitrations to proceed in California while the litigation was pending, NASD implemented a pilot rule to require all industry parties (member firms and associated persons) to waive application of the California Standards to the case, if all the parties in the case who are customers, or associated persons with claims against industry parties, have done so.[7] In such cases, the arbitration proceeds under the NASD Code of Arbitration Procedure, which already contains extensive disclosure requirements and provisions for challenging arbitrators with potential conflicts of interest.[8]

The pilot rule, which was originally approved for six months on September 26, 2002, has been extended and is now due to expire on March 31, 2004. Because the pending litigation regarding the California Standards is unlikely to be resolved by March 31, 2004, NASD requests that the effectiveness of the pilot rule be extended through September 30, 2004, in order to prevent NASD from having to suspend administration of cases covered by the pilot rule.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that expediting the appointment of arbitrators under the waiver rule, at the request of customers and associated persons with claims against industry respondents will allow those parties to exercise their contractual rights to proceed in arbitration in California, notwithstanding the confusion caused by the disputed California Standards.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] California Rules of Court, Division VI of the Appendix.

[5] These measures included providing venue changes for arbitration cases, using non-California arbitrators when appropriate, and waiving administrative fees for NASD-sponsored mediations.

[6] See Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California*, filed in the United States District Court for the Northern District of California, No. C 02 3486 SBA (July 22, 2002), available on the NASD Web site at: *http://www.nasdadr.com/pdf-text/072202_ca_complaint.pdf.*

[7] Originally, the pilot rule only applied to claims by customers, or by associated persons asserting a statutory employment discrimination claim against a member, and required a written waiver by the industry respondents. In July 2003, NASD expanded the scope of the pilot rule to include all claims by associated persons against another associated person or a member. At the same time, the rule was amended to provide that when a customer, or an associated person with a claim against a member or another associated person, agrees to waive the application of the California Standards, all respondents that are members or associated persons will be deemed to have waived the application of the standards as well. The July 2003 amendment also clarified that the pilot rule applies to terminated members and associated persons. See Securities Exchange Act Rel. No. 48187 (July 16, 2003), 68 FR 43553 (July 23, 2003) (File No. SR–NASD–2003–106).

[8] The NYSE has a similar rule; Rule 600(g).

[9] 15 U.S.C. 78o–3(b)(6).

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

NASD has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[12] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. NASD has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[13] Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program that is designed to provide investors, and associated persons with claims against industry respondents, with a mechanism to resolve their disputes. During the period of this extension, the Commission and NASD will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative on March 31, 2004.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2004–040. 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, comments should be sent in hard copy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should be submitted by April 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

FR Doc. 04–7208 Filed 3–30–04; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49458; File No. SR–NQLX–2004–02]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by NQLX LLC To Amend Its Rule 419 Relating to Block Trades

March 23, 2004.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on March 4, 2004, NQLX LLC (''NQLX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared by NQLX. On March 16, 2004, NQLX filed an amendment to the proposed rule changes.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons. On March 3, 2004, NQLX filed the proposed rule changes with the Commodity Futures Trading Commission (''CFTC''), together with a written certification under section 5c(c) of the Commodity Exchange Act [4] (''CEA'') in which NQLX indicated that the effective date of the proposed rule changes would be March 4, 2004.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

NQLX is proposing changes to its Rule 419 to explicitly permit orders for block trades at the Daily Settlement Price for the Exchange Contract, at the fair value [5] derived from that day's last sale price of the security underlying the Security Futures Contract, or at the fair value of the Security Futures Contract derived from the volume weighted average price (''VWAP'') [6] of

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* letter from Robert Ledvora, Executive Vice President and Chief Financial Officer, NQLX, to the Office of Market Supervision, Division of Market Regulation (''Division''), Commission, dated March 16, 2004 (''Amendment No. 1'').

[4] 7 U.S.C. 7a–2(c).

[5] The fair value of a security future is the current security price plus the interest rate cost of carry to the future's expiration minus the value of the expected dividend. Transaction costs make this an inexact number. Therefore, the fair value must be represented as an approximation.

[6] ''Volume Weighted Average Price'' means the average price of a security over an agreed upon time segment computed by multiplying the price per share of each transaction by the number of shares

Continued

transactions during an agreed upon time segment for that trading day in the underlying security. According to NQLX, these changes will provide a technical means for members to enter block trades during trading hours with a price indicator of whether the price will be the futures settlement price, the last sale price of the underlying security or the fair value of the Security Futures Contract derived from the VWAP of the underlying security.

The text of the proposed rule change appears below. New text is in *italics.* Deleted text is in [brackets].

* * * * *

Rule 419 Block Trades [7]

(a)–(f) No change

(g) Information Recording, Submission, and Dissemination

(1)–(7) No change

(8) For Orders for Block Trades at the Daily Settlement Price for the Exchange Contract, at the fair value derived from that day's last sale price of the security underlying the Security Futures Contract, or at the fair value of the Security Futures Contract derived from the volume weighted average price (VWAP) of transactions during an agreed upon time segment for that trading day in the underlying security, the Member for the Initiator must as soon as practicable but no later than 8 minutes after negotiations end submit the Block Trade through the ATS with all the information required by Rule 419(g)(2) and indicating the price as:

(i) ''0.00'' for the Daily Settlement Price for the Exchange Contract,

(ii) ''0.01'' for the fair value of that day's last sale price for the security underlying the Security Futures Contract, or

(iii) ''0.02'' for the fair value of the Security Futures Contract derived from the VWAP of transactions during an agreed upon time segment for that trading day in the underlying security.

As soon as practicable but no later than 10 minutes after the close of trading for the Exchange Contract, the Member for the Initiator must provide through the ATS the Daily Settlement Price, the fair value of that day's last sale price for the security underlying the Security Futures Contract, or the fair value of the Security Futures Contract derived from the VWAP, in the underlying securities as applicable. Nothing in this Rule 419(g)(8) relieves Members from complying with the provisions of Rules 419(g)(6) and 419(g)(7).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

NQLX has prepared statements concerning the purpose of, and statutory basis for, the proposed rule changes, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

NQLX proposes revising Rule 419—Block Trades—to permit its members to submit orders for block trades at the Daily Settlement Price for the Exchange Contract, at the fair value derived from that day's last sale price of the security underlying the Security Futures Contract or at the fair value of the Security Futures Contract derived from the VWAP of transactions during an agreed upon time segment for that trading day in the underlying security. NQLX is amending this rule to provide a technical means for members to enter block trades during trading hours with a price indicator. The actual price of the block trade must be submitted as soon as practicable, but not later than 10 minutes after the close of trading for the Exchange Contract.

NQLX believes that the proposed rule changes are consistent with the requirements, where applicable, under section 6(h)(3)(J) of the Act [8] and the criteria, where applicable, under section 2(a)(1)(D)(i)(IX) of the CEA,[9] as modified by joint orders of the Commission and the CFTC.[10]

2. Statutory Basis

NQLX files these proposed rule changes pursuant to section 19(b)(7) of the Act.[11] NQLX believes that these proposed rule changes are consistent with the requirements of the Commodity Futures Modernization Act of 2000,[12] including the requirement that NQLX have audit trails necessary and appropriate to facilitate coordinated surveillance to detect, among other things, manipulation.[13] NQLX further believes that its proposed rule change complies with the requirements under section 6(h)(3) of the Act [14] and the criteria under section 2(a)(1)(D)(i) of the CEA,[15] as modified by joint orders of the Commission and the CFTC. In addition, NQLX believes that its proposed rule change is consistent with the provisions of section 6 of the Act,[16] in general, and section 6(b)(5) of the Act,[17] in particular, in that it will prevent fraudulent and manipulative acts and practices, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NQLX 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.

C. Self-Regulatory Organization's Statement on Comments on Proposed Rule Changes Received From Members, Participants, or Others

NQLX neither solicited nor received written comment on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The proposed rule changes became effective on March 4, 2004. Within 60 days of the date of effectiveness of the proposed rule changes, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule changes and require that the proposed rule changes be refiled in accordance with the provisions of section 19(b)(1) of the Act.[18]

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traded in that transaction, then dividing the sum of these values for all the transactions in the security during the agreed upon time segment by the total number of shares traded during that period.

[7] Pursuant to a telephone conversation between De'Ana Dow, Associate Vice President and Chief Counsel, Futures and Options Regulation, National Association of Securities Dealers and Marisol Rubecindo, Law Clerk, Division, Commission, on March 18, 2004, NQLX amended rule text language to conform with language published in its Rule Book.

[8] 15 U.S.C. 78f(h)(3)(J).

[9] 7 U.S.C. 2(a)(1)(D)(i)(IX).

[10] *See* Joint Order Granting the Modification of Listing Standards Requirements (Exchange-Traded Funds, Trust-Issued Receipts and Shares of Closed-End Funds), Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002) *and* Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001), 67 FR 42760 (June 25, 2002).

[11] 15 U.S.C. 78s(b)(7).

[12] P.L. 106–554, 114 Stat. 2763 (2000).

[13] 15 U.S.C. 78f(h)(3)(J).

[14] 15 U.S.C. 78f(h)(3).

[15] 7 U.S.C. 2(a)(1)(D)(i).

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(1). For purposes of calculating the sixty-day abrogation period, the Commission

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes conflict with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NQLX–2004–02. 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, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 these filings will also be available for inspection and copying at the principal office of NQLX. All submissions should refer to File No. SR–NQLX–2004–02 and should be submitted by April 21, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7142 Filed 3–30–04; 8:45 am]

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considers the period to commence on March 16, 2004, the date on which NQLX filed Amendment No. 1.

[19] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49470; File No. SR–OCC–2004–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Amending OCC's Rules To Provide for Use of a Give-Up Service Provider and Revising OCC's Fee Schedule

March 25, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 16, 2004, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to provide for OCC's use of a ''give-up service provider'' that will act as an intermediary in reporting certain futures and futures option transactions to OCC and to amend OCC's fee schedule to offset the costs OCC will incur in utilizing a give-up service provider.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Introduction

The proposed rule change responds to a request by CBOE Futures Exchange, LLC (''CFE'') that OCC provide its clearing members with the ability to accept or reject on a trade-by-trade basis trades executed on CFE and given up for the account of a clearing member by another clearing member.

Although the ability to accept or reject give-ups on a trade-by-trade basis is standard in the futures markets, OCC's clearing system is not currently configured to provide these capabilities. In order to make this function available to clearing members that trade or clear trades executed on CFE, OCC has entered into a Master Processing Services Agreement (''Services Agreement'') with The Clearing Corporation (''TCC'').

As part of the Services Agreement, OCC has agreed to pay TCC certain fees in connection with the services provided by TCC. OCC will pass some of these fees through to CFE pursuant to terms of the Implementation Agreement for Clearing and Settlement Services (''Implementation Agreement''). OCC will pass per-transaction fees charged by TCC through to clearing members in accordance with OCC's fee schedule. To the extent that the revenues generated from such transaction fees do not cover OCC's minimum transaction payment obligations to TCC, CFE will compensate OCC for the shortfall pursuant to the Implementation Agreement.

2. Give-Up Services

Transactions given up by one OCC clearing member to another OCC clearing member are currently governed by OCC's Clearing Member Trade Assignment (''CMTA'') processing and CMTA agreements that are standard in the options industry. Under a CMTA agreement, an OCC clearing member (''carrying clearing member'') authorizes another clearing member (''executing clearing member'') to give up the name of the carrying clearing member with respect to any trade executed on a specific exchange. Unless the CMTA agreement has been revoked, the carrying clearing member is responsible for all trades given up to it by the executing clearing member on that exchange. A carrying clearing member may return positions to the executing clearing member only under the very limited circumstances specified in the CMTA agreement. If one of those

circumstances arises and the carrying clearing member notifies OCC before a specified cutoff time, OCC will return the position to the executing clearing member. Because CMTA agreements do not require contract-by-contract acceptance of give-up trades but rather presume that the trade is properly given-up to the carrying clearing member, OCC's clearing system accepts as final and accurate trades received in matched trade reports from an exchange unless OCC is notified of a return by the carrying clearing member before the cutoff time.

In contrast to the CMTA processing used by OCC, futures clearinghouses typically allow a carrying clearing member to accept or reject on a trade-by-trade basis trades given up to the carrying clearing member by an executing clearing member. CFE has requested that, in accordance with futures industry custom, OCC carrying clearing members be provided with the opportunity to accept or reject on a trade-by-trade basis trades executed on CFE and given up for their accounts by executing clearing members. Because OCC's clearing system is not currently configured to require a carrying clearing member to review and accept a trade after the trade has been reported to OCC, OCC has entered into the Services Agreement with TCC. Pursuant to the Services Agreement, TCC will provide certain post trade execution services to OCC in support of certain futures and futures options contracts traded on CFE. The Services Agreement provides a process by which TCC may agree to provide similar services for other futures and futures options contracts traded on CFE and for other futures markets that are affiliated with OCC's current participant exchanges (''affiliated futures markets'').

Pursuant to the Services Agreement, TCC will receive all matched trades reported by an affiliated futures market, advise clearing members of those trades on a real-time basis, accept any clearing member changes to noncritical trade data, accept clearing member give-ups and responses to give-ups, permit clearing members to enter average pricing information for their transactions, and permit clearing members to give-up trades as of the trade date on a date after the trade date. TCC will also send real-time trade and give-up data to OCC in a matched trade layout and at the end of each trading day will report final trade data to OCC. OCC will accept for clearance all trades reported by TCC to OCC in accordance with the Services Agreement as if the trades had been reported directly by the exchange to OCC. TCC will not guarantee or otherwise have any financial responsibility for such trades. In essence, TCC functions as a front end service provider to OCC's system, providing certain trade processing services that neither the exchanges' nor OCC's systems currently provide.

The Services Agreement is essentially an agreement for TCC to provide computer services to OCC on a contract basis. It contains provisions typical of a computer services outsourcing agreement. Of note with respect to the parties' roles in the clearing process are Section 3(b) which states that OCC and its clearing members will have financial responsibility for the clearance and settlement of all trades processed by TCC and Section 3(c) which states that OCC will require the affiliated futures exchanges to report matched trade information to TCC. Sections 5(b) and (c) require that TCC have and maintain a disaster recovery plan and audit TCC's system of receiving trades from the affiliated futures markets to ensure that the system is functioning properly. Section 9 describes the fees payable by OCC for TCC's services including: (a) Start-up fees; (b) fees of 6 cents per matched contract with minimum guaranteed transaction fees of $150,000 per year per market for the first two markets for which TCC provides services and of $50,000 per year for each additional market; and (c) fees for additional work requested by OCC. Under Section 10, the term of the Services Agreement is three years with annual renewal terms of one year.

OCC has the right to terminate the Services Agreement without cause before the end of the three-year term. The Services Agreement will terminate automatically on May 1, 2005, if trading in contracts as to which TCC provides services under the Services Agreement has not yet begun. Under either of those termination scenarios, OCC would be required to make certain payments to TCC as provided in Section 10 of the Services Agreement, but under the Implementation Agreement, the affiliated futures market would be required to reimburse OCC for those payments. Section 15 mandates that OCC include certain language in its rules limiting the liability of TCC.

OCC will be responsible for payment to TCC of all fees required under the Services Agreement. OCC will also accept responsibility to perform or to require performance of those tasks required of OCC or an affiliated futures market. In order to ensure that affiliated futures markets accept ultimate responsibility for fees and other requirements set forth in the Services Agreement that are appropriately attributable to those markets, OCC will enter into an Implementation Agreement with each affiliated futures market that requests that OCC use TCC's services. OCC has already entered into an Implementation Agreement with CFE.

The Implementation Agreement establishes the financial and other obligations of OCC and passes through to the affiliated futures market certain costs and other obligations that are the responsibility of OCC under the Services Agreement. The Implementation Agreement provides that each affiliated futures market will be required to guarantee payment to OCC of any deficiency that might result between the amount paid by OCC to TCC and the yearly transaction fee minimum. For example, assume the yearly applicable minimum is $150,000 (which at 6 cents/contract represents 2.5 million contracts). If only 2 million contracts are processed by TCC during the applicable year, the affiliated futures market will be obligated to pay OCC $30,000 (500,000 contracts at 6 cents/contract). OCC will pay TCC on a monthly basis throughout the year and will receive any payments due from an affiliated futures market at the end of the calendar year. An affiliated futures market will also be obligated to reimburse OCC for any money OCC pays to TCC to expand the scope of TCC's give-up services, provided the request for such work was initiated by the affiliated futures market and for any fees payable by OCC to TCC in connection with the early termination of the Services Agreement.

In order to implement the give-up process outlined above under OCC's By-Laws and Rules, OCC is adding the terms ''affiliated futures market'' and ''give-up service provider'' as defined terms in Article I, Section 1 of OCC's By-Laws. A futures market or security futures market is an ''affiliated futures market'' if it is at least 50% owned by a participant exchange or is under the ownership of an entity which also owns, directly or indirectly, at least 50% of a participant exchange. Changes are also being made to Article XII, Section 1 to incorporate the new ''affiliated futures market'' term.

''Give-up service provider'' refers generically to TCC and any other entity that has agreed with OCC to provide post trade execution services to OCC in support of futures and futures options trading on one or more affiliated futures markets. New language is added to Rule 401 to indicate that if a give-up service provider is reporting to OCC transactions executed on an affiliated futures market, matched trade

information from the give-up service provider shall be deemed to be submitted to OCC by such affiliated futures market for all purposes of OCC's By-Laws and Rules. OCC will not be obligated with respect to any transaction until it receives matched trade information from the give-up service provider as required in OCC's By-Laws and Rules. Proposed Rule 404(a) is added to describe a give-up service provider and its functions. Proposed Rules 404(b)–(d) set forth specific services that will be provided to clearing members as well as the rights and obligations of clearing members who take advantage of those services. Proposed Rules 404(e)–(g) add provisions limiting the liability of TCC as provided in Section 15 of the Services Agreement with TCC.

Interpretation and Policy .01 following Rule 404 makes provision for clearing members to submit ''as-of give-up'' trades to the extent not inconsistent with exchange rules or applicable law. An as-of give-up is typically used where a trade was given-up or intended to be given up on the trade date but either the ''Give-Up Clearing Member'' inadvertently failed to do so or the ''Given-Up Clearing Member'' neglected to accept the give-up.

Interpretation and Policy .02 provides that clearing members may give average pricing information to TCC to the extent not prohibited by exchange rules or applicable law. Average pricing is permitted under the Commodity Exchange Act in certain circumstances. In those circumstances, a clearing member may submit instructions to TCC to report the average price for two or more transactions in the same series of futures or options that were executed at different prices. OCC will use the average price in clearing and settling the trades.

3. Revised Fee Schedule

Futures clearing transaction fees are based on a fee election made by each futures market. OCC currently permits futures markets to elect between a 7 cent fixed rate schedule (7 cents/side with a sliding scale discount for large transactions) and the fee schedule applicable to securities options (9 cents ''floating''). OneChicago and Nasdaq Liffe Markets, LLC (''NQLX''), the futures markets currently cleared by OCC, have both elected the 7 cent fixed rate schedule.

Affiliated futures markets that request that OCC utilize TCC's services will also be able to elect between the two fee schedules. However, in order to help offset the additional costs that OCC will incur to make TCC's services available, a ''give-up charge'' of 7 cents per give-up will be implemented by OCC. This fee is effectively one-half the fee charged by other futures clearinghouses, including TCC, because OCC will only charge the executing side of the give-up rather than both sides as do other futures clearinghouses.

OCC is also making two changes to the 7 cent fixed rate futures clearing fee schedule when TCC's services are being used. First, OCC is removing the cap applicable to large futures block transactions. The current cap provides that a trade totaling greater than two thousand contracts is assessed a flat $85 clearing fee. However, under Section 9(a) of the Services Agreement, TCC charges OCC a 6 cent per contract clearing fee with no fee break for block size transactions. If OCC does not modify its fee schedule, it will be required to pay out to TCC more than it receives for large trades that generate fees for TCC in excess of $85. To avoid this result, OCC is amending its fee schedule so that trades greater than two thousand contracts will be charged 3 cents per side (6 cents total). Second, OCC is removing the fee break it gives to new futures contracts. OCC currently does not charge a fee for the first month a contract trades and implements a graduated phase-in of fees for the second and third months of trading in such contracts. However, Section 9(a) of the Services Agreement does not provide a similar fee waiver, and OCC will therefore not waive fees with respect to new contracts for which TCC's services are used.

The proposed rule change is consistent with the requirements of Section 17A of the Act [3] and the rules and regulations thereunder applicable to OCC because it is designed to promote the prompt and accurate clearance and settlement of derivative transactions, assure the safeguarding of securities and funds which are in the custody or control of OCC, and, in general, to protect investors and the public interest by allowing OCC to provide its clearing members with the ability to accept or reject on a trade-by-trade basis trades executed on CFE and given-up for their account by another clearing member.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[4] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest. The Commission finds that the approval of OCC's rule change is consistent with this section because it will allow OCC to protect itself, its clearing members, and ultimately investors, by providing its clearing members with the ability to accept or reject on a trade-by-trade basis trades in certain futures and futures options executed on CFE and given-up for their accounts by other clearing members.

OCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow OCC to implement the proposed rule change before March 26, 2004, when CFE commences trading certain futures and futures options to be cleared and settled by OCC.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–OCC–2004–03. This file number should be included on the subject line

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78q–1(b)(3)(F).

if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent either in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com.* All submissions should refer to File No. SR–OCC–2004–03 and should be submitted by April 21, 2004.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–OCC–2004–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7148 Filed 3–30–04; 8:45 am]

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[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49466; File No. SR–PCX–2004–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

March 24, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on March 11, 2004, the Pacific Exchange, Inc. (''PCX'') 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 PCX. 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 Pacific Exchange, Inc., through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its fee schedule for services provided to ETP Holders[3] and Sponsored Participants[4] that use the Archipelago Exchange (''ArcaEx'') by: (1) Imposing a per-share transaction fee of $0.001 for round lot orders for NYSE listed securities that take liquidity from the ArcaEx Book, and (2) reducing the per-share transaction fee for round lot orders for NYSE listed securities routed outside the ArcaEx Book from $0.004 to $0.001. The fee schedule will remain unchanged for NYSE round lot orders residing in the ArcaEx Book that execute against inbound orders, NYSE odd lots, NYSE Cross Orders and credits, NASDAQ, Amex and other Tape B listed stocks. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES—ARCHIPELAGO EXCHANGE: TRADE RELATED CHARGES

Exchange Transactions:	
ETP Holders and Sponsored Participants[1]	
Round Lots	
NYSE Listed Securities	[No transaction fee for orders executed in the Book]. No transaction fee for orders executed in the Book against Listed inbound orders. *$0.001 per share for orders that take liquidity from the Book.* *$0.001 per share for orders routed outside the Book.*
Listed Securities (except NYSE Listed Securities.	$0.003 per share (applicable to inbound orders executed against orders residing in the Book).
Nasdaq Securities	$0.003 per share (applicable to inbound orders executed against orders residing in the Book).
Routing Service	$0.004 per share (applicable to orders in listed*, except NYSE Listed Securities,* and Nasdaq securities routed away and executed by another market center or participant).

[1] These transaction fees do not apply to: (1) Directed Orders, regardless of account type, that are matched within the Directed Order Process; (2) Directed Orders for the account of a retail public customer that are executed partially or in their entirety via the Directed Order, Display Order, Working Order, and Tracking Order processes (however, any unfilled or residual portion of a retail customer's order that is routed away and executed by another market center or participant will incur this transaction fee); (3) orders executed in the Opening Auction and the Market Order Auction; (4) Cross Orders; (5) commitments received through ITS; and (6) participants in the Nasdaq UTP Plan that transmit orders via telephone.

* * * * *

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 PCX 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 PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX proposes to modify the per-share round lot transaction fees for NYSE listed securities charged to ETP Holders and Sponsored Participants that execute trades on ArcaEx. The PCX currently does not charge ETP Holders

[3] *See* PCXE Rule 1.1(n) (defining ''ETP Holder'').

[4] *See* PCXE Rule 1.1(tt) (defining ''Sponsored Participant'').

or Sponsored Participants a transaction fee when round lot orders in NYSE listed securities entered by the ETP Holder or the Sponsored Participant take liquidity from the ArcaEx Book. The PCX proposes to implement a $0.001 transaction fee for round lot orders that take liquidity from the ArcaEx Book. The PCX also proposes to reduce the transaction fee it charges for round lot orders in NYSE listed securities routed outside the ArcaEx book to $0.001 from $0.004 per share. The rationale for these changes is to make the pricing for executions on the ArcaEx in NYSE listed securities more competitive.[5] The PCX evaluated the economics of modifying transaction fees for NYSE listed securities and determined that this was feasible and appropriate, given the costs involved and competitive concerns.

2. Statutory Basis

The PCX believes that the proposal is consistent with section 6(b) of the Act,[6] in general, and section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder because it changes a fee imposed by the PCX. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–PCX–2004–21, and 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, comments may be sent in hard copy or by e-mail, but not by both methods. 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 will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2004–21 and should be submitted by April 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7145 Filed 3–30–04; 8:45 am]

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[5] The PCX believes that the proposed rule change will cause its fees to be more closely comparable to those of its competitors, and states that the reduction in the routing fee will enhance its competitive position. Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, Bridget Farrell, Regulatory Analyst, Archipelago Holdings, LLC, and Tim Elliott, Regulatory Counsel, Archipelago Holdings, LLC, and Elizabeth MacDonald, Attorney, Division of Market Regulation (''Division''), Commission, March 16, 2004, and telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, Tim Elliott, Regulatory Counsel, Archipelago Holdings, LLC, and Terri Evans, Assistant Director, Division, and Elizabeth MacDonald, Attorney, Division, March 22, 2004.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] *See* 15 U.S.C. 78(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49467; File No. SR–Phlx–2004–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Equity and Index Option Fees

March 24, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On March 23, 2004, the Phlx filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to: (1) extend its current specialist unit fixed monthly fee (''fixed monthly fee'') and related Nasdaq-100 Index Tracking Stock (''QQQ'')SM[4] license fee for a six-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Cynthia Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 22, 2004 (''Amendment No. 1''). In Amendment No. 1, the Phlx clarified that the election of the fixed monthly fee program applies to the program's entire six-month period; explained that the volume used to determine the fixed monthly fee is determined on a per specialist unit basis; explained that in the event that a new specialist unit acquires the QQQ options and elects to enter the fixed monthly fee program from March 1, 2004 through August 31, 2004, the Exchange will file a separate proposed rule change to set forth the applicable months for the calculation of the volume; and made some minor changes to clarify the text of the proposed rule change.

[4] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the ''Index'') is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. According to the Phlx, Nasdaq has complete control and sole

Continued

month period to those specialist units enrolled in the Exchange's fixed monthly fee program;[5] (2) offer a new fixed monthly fee program for a six-month period to those specialist units who are not enrolled in the current specialist unit fixed monthly fee program; and (3) make minor amendments to the fixed monthly fee program, such as allowing for specialist units to opt out of the fixed monthly fee program during the six-month period. The text of the proposed rule change, as amended, is available at the Phlx and at the Commission.

Current Fee Structure Regarding the Fixed Monthly Fee and QQQ License Fee

Currently, the Exchange offers specialist units[6] the opportunity to elect to pay a fixed monthly fee in lieu of paying fees currently in effect for equity option and index option transaction charges and equity option specialist deficit (shortfall) fee (''shortfall fee'') (collectively ''variable fees'').[7] The fixed monthly fee program applies to specialist units who have been actively trading an equity option or index option book on the Phlx trading floor in their capacity as a specialist unit in at least one equity option or index option book for at least one year from September 1, 2002. In addition, a $0.10 charge per contract side for specialist unit transactions in the QQQ equity options (''QQQ license fee'') is imposed if the specialist unit elects to pay the fixed monthly fee. This fee is in addition to the fixed monthly fee.[8] The current fixed monthly fee and QQQ license fee were scheduled to be in effect through February 29, 2004. Phlx proposes to extend the current fixed monthly fee and related QQQ license fee for an additional six-month period until August 31, 2004.

Proposed New Fixed Monthly Fee

In addition, the Phlx proposes to offer a new fixed monthly fee program to specialist units who are not enrolled in the current program, but who have been trading an equity option or index option book on the Phlx trading floor in their capacity as a specialist unit with Phlx equity option or index option transactions in at least one equity option or index option book for at least nine months as of March 1, 2004. These specialist units may elect to enter into the proposed fixed monthly fee program and pay the fixed monthly fee, in lieu of the variable fees, based on the calculation listed below:

1. Compute the equity options and index options volume that each specialist unit transacted in October 2003, November 2003 and December 2003 (''Volume'') provided it has been a Phlx specialist unit for at least nine months as of March 1, 2004;

2. Multiply the Volume by the specialist transaction charges currently in effect (*i.e.*, $0.21 per contract for equity options and $0.24 per contract for index options). The total of these transaction charges are added together to arrive at a total for the period (''Total Transaction Charges'');[9]

3. For equity options, calculate for that month the shortfall fee at the current rate (currently 12%, with a monthly limit of $10,000 per option, if applicable) for the months of October 2003, November 2003 and December 2003;[10]

4. Add the Total Transaction Charges with the shortfall fee calculation, if applicable, divide the total by three, and multiply the quotient by 1.062, which will produce the fixed monthly fee.

For both the extension of the current fixed monthly fee and the proposed fixed monthly fee, a specialist unit or its successor organization may, by the 15th day of the billing month, select the fixed monthly fee applicable to that specialist unit for subsequent months.[11] A specialist unit being charged the fixed monthly fee may return to the variable fee method, if it notifies the Exchange, in writing, thirty days prior to the beginning of the calendar month in which the specialist unit wishes to return to the variable fee method.[12]

The other methodologies relating to the fixed monthly fee, such as acquiring an equity option or index option book already traded on the Exchange, obtaining a book as a result of a new Exchange listing or trading an equity option or index option book that does not have a complete two month volume, as outlined on the Exchange's fee schedule, will remain unchanged.[13]

The Exchange also proposes to make minor amendments to its fee schedule to clarify existing language and to delete superfluous language.

The current fixed monthly fee and related QQQ license fee and the proposed new fixed monthly fee as described in this proposal are scheduled to become effective for transactions settling on or after March 1, 2004 through August 31, 2004.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any

discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[5] *See* Securities Exchange Act Release No. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003) (SR–Phlx–2003–61).

[6] The Exchange uses the terms ''specialist'' and ''specialist unit'' interchangeably herein.

[7] The fixed monthly fee program does not affect additional charges, such as non-transaction and membership-related charges listed on Appendix A of the Exchange's schedule of dues, fees and charges. *See* Securities Exchange Act Release No. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003) (SR–Phlx–2003–61).

[8] The $0.10 fee does not apply if the specialist unit elects to pay the current equity option and index option transaction charges, and the applicable shortfall fees.

[9] This calculation is comparable to the current fixed monthly fee program except in the case of a specialist unit trading QQQ options. Currently for QQQ options, the May 2003 and June 2003 QQQ equity options volume is subtracted from the May 2003 and June 2003 total equity and index option volumes; that figure is then multiplied by the current equity option transaction charge and then added to the product of $0.11 multiplied by the May 2003 and June 2003 QQQ equity options volume (the $0.10 license fee owed to Nasdaq subtracted from the $0.21 charge). Steps 3 and 4 are then followed, using the applicable months of May 2003 and June 2003. Then, all QQQ equity option transactions to which the specialist unit is a party incurs an additional $0.10 per contract, which is added to the specialist unit's fixed fees. This calculation is used due to the fact that the specialist unit currently trading the QQQ options has elected the fixed monthly fee program and therefore there are no changes to the QQQ options calculation at this time. In the unlikely event that a new specialist unit acquires the QQQ options from March 1, 2004 through August 31, 2004 and elects to enter the fixed monthly fee program during this time period, the Exchange will file a separate proposed rule change to set forth the applicable volume statistics.

[10] *See* Securities Exchange Act Release Nos. 48207 (July 22, 2003), 68 FR 44558 (July 29, 2003) (notice of filing and immediate effectiveness of SR–Phlx–2003–47) and 48206 (July 22, 2003), 68 FR 44555 (July 29, 2003) (notice of filing and immediate effectiveness of SR–Phlx–2003–45).

[11] For example, if a specialist unit wishes to select the fixed monthly fee beginning April 1, 2004, it must notify the Exchange in writing by March 15, 2004. The fixed monthly fee will not be implemented retroactively. If the 15th of a month is not a business day, the specialist unit may select the fixed monthly fee program by the next business day. The requirement that a specialist unit elect the fixed rate by the 15th of the billing month will be waived for the first month. Therefore, due to the fact that this proposal is scheduled to become effective for transactions settling on or after March 1, 2004, specialists will have the opportunity to select the applicable fixed monthly fee until 9 a.m. on March 1, 2004.

[12] The Exchange intends to distribute administrative procedures to the specialist units to follow in connection with choosing the fixed monthly fee or returning to the variable fee method.

[13] *See* Securities Exchange Act Release No. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003) (SR–Phlx–2003–61). While the calculation methodology will remain the same, the applicable time periods (*i.e.*, May and June 2003 or October, November, and December 2003) will be used in the calculations.

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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to allow the current fixed monthly fee program and the related QQQ license fee to continue for an additional six-month period and allow additional specialist units the opportunity to elect the fixed monthly fee program. According to the Exchange, the fixed monthly fee program should create an incentive for specialist units to bring in more business, above the fixed monthly fee amount, which would be free of additional transaction charges assessed on specialist units. Additional order flow may generate transaction fees on the contra side that, in turn, may generate additional revenue for the Exchange. The additional six-month period should also give the Exchange the opportunity to further evaluate the fixed monthly fee program. According to the Phlx, making minor amendments to its monthly fixed fee program and to its fee schedule to clarify existing language and delete superfluous language should minimize member confusion relating to the implementation of the fixed monthly fee.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section (6)(b)(4) of the Act [15] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange continues to believe that the fixed monthly fee program offers a fee alternative that has attracted additional business to the Exchange and therefore believes that the program should be extended for an additional six-month period. The Exchange believes that offering the fixed monthly fee program to additional specialist units should similarly attract additional business. The Exchange has determined to use volumes from a more recent time period (October through December 2003 as opposed to May through June 2003) to calculate the applicable fee for specialist units selecting the fixed monthly fee for the first time, in order to utilize a more current benchmark. The Exchange believes that it is reasonable and fair to apply to specialists not enrolled in the current fixed monthly fee program volumes from a more recent time period than for specialists previously subject to the program, because specialists previously subject to the program have known and relied upon the way the program operated in the original pilot to attract order flow and build their business model. The Exchange believes that if it were to change the time periods from which the volumes are calculated, particularly if the resulting fixed monthly fee is higher, it would change the specialist units' expectation and adversely affect their business decisions with a financial penalty for accomplishing the objectives of bringing new business to the Exchange. Therefore the Exchange believes that offering the fixed monthly fee program to additional specialist units, although with volume statistics attributable to a more recent time period, should give them the opportunity to enter the fixed monthly fee program based on more recent activity which, in turn, should reflect their current business objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition.

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 with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [16] and Rule 19b–4(f)(2)[17] thereunder, because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Phlx–2004–17. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2004–17 and should be submitted by April 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7146 Filed 3–30–04; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] For purposes of calculating the sixty-day abrogation period, the Commission considers the period to commence on March 23, 2004, the date on which the Phlx filed Amendment No. 1.

[19] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended Altered System of Records and New Routine Use Disclosure

AGENCY: Social Security Administration (SSA).

ACTION: Altered system of records, including proposed new routine use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to alter an existing system of records, the *Medicare Savings Programs Information System, 60–0310.* The proposed alterations will result in the following changes to the system of records:

(1) Expansion of the categories of individuals covered by the system to include individuals who may be eligible for transitional assistance under the Medicare Prescription Drug Discount Card Program and premium and cost-sharing subsidies under the Prescription Drug Card Part D Program;

(2) Expansion of the purposes for which SSA uses information maintained in the system; and

(3) A proposed new routine use disclosure providing for the release of information to the Centers for Medicare & Medicaid Services in the Department of Health and Human Services.

All of the proposed alterations are discussed in the Supplementary Information section below. We invite public comments on this proposal.

DATES: We filed a report of the proposed altered system of records and routine use with the Chairman of the Senate Committee on Governmental Affairs, the Chairman of the House Government Reform Committee, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB on March 19, 2004. The proposed altered system of records, including the proposed new routine use will become effective on April 28, 2004 unless we receive comments that would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Willie J. Polk, Team Leader, Strategic Issues Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone (410) 965–1753, e-mail: *willie.j.polk@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed Alterations to the Medicare Savings Programs Information System

A. General Background

The *Medicare Savings Programs Information System* was established to implement provisions of section 1144 of the Social Security Act (Act) (42 U.S.C. 1320b–14). This statute requires the Commissioner of Social Security to conduct outreach efforts to identify individuals entitled to benefits, under the Medicare program under Title XVIII of the Act, who may be eligible for medical assistance for payment of the cost of Medicare cost-sharing under the Medicaid program. We published a notice of the *Medicare Savings Programs Information System* in the **Federal Register** (FR) on May 17, 2002. *See* 67 FR 35179. This system covered Medicare Parts A and B under Title XVIII of the Act.

On December 8, 2003, the President signed into law Public Law 108–173, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. This new law amended section 1144 of the Act to require the Commissioner of Social Security to conduct additional outreach efforts to identify individuals entitled to benefits, or enrolled under the Medicare program under title XVIII, who may be eligible for transitional assistance under the Medicare Prescription Drug Discount Card Program and premium and cost-sharing subsidies under the Prescription Drug Card Part D Program. The outreach responsibility to low-income Medicare beneficiaries for payment of Medicare cost-sharing under the Medicaid program continues.

In conducting the outreach efforts under section 1144 of the Act, SSA will furnish the agency of each State responsible for the administration of the Medicaid program, and any other appropriate State agency, with information consisting of the name and address of individuals residing in the State that the SSA determines may be eligible for these types of assistance. Additionally, information may be disclosed to the General Accounting Office for its evaluation of the effort as required by the statute.

B. Discussion of Proposed Alterations to the Altered Medicare Savings Programs Information System

1. Expansion of the Categories of Individuals Covered by the Medicare Savings Programs Information System

We are adding two new categories of individuals to the *Medicare Savings Programs Information System:* (1) Individuals eligible for transitional assistance under the Medicare Prescription Drug Discount Card Program and premium and cost-sharing subsidies under the Prescription Drug Card Part D Program, and (2) individuals eligible for premium and cost-sharing subsidies under the Prescription Drug Part D Program. In addition, we are clarifying language in the ''Categories of individuals covered by the system'' section of the *Medicare Savings Programs Information system* to indicate that the individuals covered by the system include Social Security beneficiaries who have attained age 65, disabled Social Security beneficiaries with amyotrophic lateral sclerosis, disabled Social Security beneficiaries who have received 24 months of benefits, and persons who meet certain eligibility criteria with end-stage renal disease. See the ''Categories of individuals covered by the system'' section in the *Medicare Savings Programs Information System* notice below for a full description of the information maintained.

2. Additional Use of Information in the Medicare Savings Programs Information System

We are expanding the purposes for which we use the information maintained in the *Medicare Savings Programs Information System* to include use of the information to determine individuals' eligibility for transitional assistance under the Medicare Prescription Drug Discount Card Program and premium and cost-sharing subsidies under the Prescription Drug Card Part D Program.

II. Proposed New Routine Use Disclosure of Data Maintained in the Medicare Savings Programs Information System

A. Establishment of New Routine Use

We are proposing to establish a new routine use which allows disclosure of information maintained in the *Medicare Savings Programs Information System* to the Centers for Medicare and Medicaid Services (CMS) in the Department of Health and Human Services to assist CMS in determining individuals' eligibility for transitional assistance under the Medicare Prescription Drug Discount Card Program and premium and cost-sharing subsidies under the Prescription Drug Card Part D Program. The proposed new routine use, numbered 8, provides for disclosure of information—

To the Centers for Medicare and Medicaid Services in the Department of Health and Human Services for the purpose of

determining individuals' eligibility for transitional assistance under the Medicare Prescription Drug Discount Card Program and premium and cost-sharing subsidies under the Prescription Drug Card Part D Program.

The disclosures to CMS will assist that agency in establishing individuals' eligibility for the transitional assistance under the Medicare Prescription Drug Discount Card Program and premium and cost-sharing subsidies under the Prescription Drug Card Part D Program, provide information necessary to enforce eligibility restrictions in those programs, and combat and prevent fraud, waste and abuse in those programs.

B. Compatibility of Proposed New Routine Use Disclosure

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR part 401) permit us to disclose information under a published routine use for a purpose which is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulations permits us to disclose information under a routine use where necessary to carry out SSA programs or assist other agencies in administering similar programs. The proposed new routine use, numbered 8, will assist CMS in establishing individuals' eligibility for the transitional assistance under the Medicare Prescription Drug Discount Card Program and premium and cost-sharing subsidies under the Prescription Drug Card Part D Program. Thus, the proposed new routine use disclosure is appropriate and meets the relevant statutory and regulatory criteria.

C. Revision of Language in Routine Use, Numbered 5, Providing for Disclosure of Information to the Department of Justice (DOJ), a Court or Other Tribunal, or Another Party Before Such Court or Tribunal

We have revised the language in this routine use as follows:

• In discussing the circumstances under which SSA will disclose information under this routine use, the current routine use states, in part: ''* * * SSA determines that the use of such records by DOJ, a court or other tribunal is relevant and necessary to the litigation * * *'' We are revising this phrase to include the bolded text below:

• ''* * * SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal is relevant and necessary to the litigation * * *''

See routine use, numbered 5, in the notice below for the full text of the routine use statement.

• This routine use contains the statement: ''Wage and other information which are subject to the disclosure provisions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.'' We are revising this language to state:

• ''Disclosures of any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be made unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.''

III. Records Storage Medium and Safeguards for the Information Maintained in the Medicare Savings Programs Information System

The *Medicare Savings Programs Information System* maintains information in electronic and paper form. Only authorized SSA personnel and contractor personnel who have a need for the information in the performance of their official duties are permitted access to the information. Security measures include the use of access codes to enter the computer systems that will maintain the data, and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Manually maintained records are kept in locked cabinets or in otherwise secure areas. Contractor personnel having access to data in the proposed system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA and contractor personnel having access to the data on this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. *See* 5 U.S.C. 552a(i)(1).

IV. Effect of the Proposed Alterations to the Medicare Savings Programs Information System on the Rights of Individuals

The proposed alterations to the *Medicare Savings Programs Information System* pertain to SSA's responsibilities in collecting, maintaining, and disclosing information about individuals' potential eligibility for transitional assistance under the Medicare Prescription Drug Discount Card Program and premium and cost-sharing subsidies under the Prescription Drug Card Part D Program. We will adhere to all applicable statutory requirements, including those under the Social Security Act and the Privacy Act, in carrying out our responsibilities. Therefore, we do not anticipate that the proposed system of records will have an unwarranted adverse effect on the rights of individuals.

V. Minor Housekeeping Changes Relating to the Notice of the Medicare Savings Programs Information System

1. System name—we have revised the name of the Medicare Savings Programs Information System to reflect the name of the SSA component having substantive responsibility for the system (*see* the System name section of the notice below).

2. Authority for maintenance of the system—we have revised this section of the notice of the *Medicare Savings Programs Information System* by deleting reference to the Public Law, Public Law 106–554, that established the authority for the system. This section now simply cites the statutory authority for the system, section 1144 of the Act (42 U.S.C. 1320b–14).

3. System manager(s) and address(es)—we have revised this section of the notice of the *Medicare Savings Programs Information System* to reflect the name of the current manager of the system.

Dated: March 19, 2004.

Jo Anne B. Barnhart,

Commissioner.

Notice of System of Records Required by the Privacy Act of 1974; as Amended

System number: 60–0310

SYSTEM NAME:

Medicare Savings Programs Information System, Social Security Administration, Office of Income Security Programs.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems Operations, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Social Security beneficiaries who have attained age 65 or are about to attain age 65; disabled Social Security beneficiaries who have received 24 months of Social Security benefits; disabled Social Security beneficiaries with amyotrophic lateral sclerosis; beneficiaries with a disabling impairment(s) who lost entitlement to free Medicare Part A because of work and certain individuals who suffer from

end-stage renal disease; beneficiaries who may be eligible for subsidized transitional assistance prescription drug cards; and beneficiaries who may be eligible for subsidized payment of the cost of Medicare cost-sharing for voluntary prescription drug coverage under Medicare Part D.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information about the beneficiary from records available to SSA. This information may include the individual's name, Social Security number (SSN), date of birth, address, marital status and income. Information will be obtained from other SSA systems of records (*e.g., Master Beneficiary Record, 60–0090,* and *Supplemental Security Income Record and Special Veterans Benefits, 60–0103*) and from other databases available to SSA, such as the Department of Veterans Affairs and Office of Personnel Management benefits files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1144 of the Social Security Act (42 U.S.C. 1320b–14).

PURPOSE(S):

Information in this system will be used to determine a beneficiary's potential eligibility for Medicare Part B buy-in; for subsidized purchase of Medicare Part A; for potential eligibility for subsidized transitional assistance prescription drug cards and for potential eligibility for subsidized Medicare Part D coverage. Information kept in the system will be used to increase Medicare buy-in applications and enrollments, and may be used by the General Accounting Office (GAO) for its evaluation of the effort as required by the statute.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure may be made for routine uses as indicated below. However, disclosure of any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be made unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To third parties in situations where the party to be contacted has, or is expected to have, information relating to the individual's eligibility for, or entitlement to, benefits under a Social Security Act program when the data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(a) His or her eligibility for benefits under a Social Security Act program;

(b) The amount of his or her benefit payment;

(c) Any case in which the evidence is being reviewed as a result of suspected fraud, concern for program integrity, quality appraisal, or evaluation and measurement activities.

4. To State or local agencies (or agents on their behalf), for the purpose of assisting SSA in the efficient administration of its programs.

5. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA of any of its components, is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Disclosures of any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be made unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

6. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

7. Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984, for the use of those agencies in conducting records management studies.

8. To the Centers for Medicare and Medicaid Services in the Department of Health and Human Services for the purpose of determining individuals' eligibility for subsidized transitional assistance under the Medicare Prescription Drug Discount Card Program and premium and cost-sharing subsidies under the Prescription Drug Card Part D Program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in paper form and on magnetic media (*e.g.,* discs).

RETRIEVABILITY:

Records in this system are indexed and retrieved by the SSN and/or name, and/or address.

SAFEGUARDS:

Security measures include the use of access codes to enter the computer system which will maintain the data, and storage of the computerized records in secured areas which are accessible only to employees who require the information in performing their official duties. Any paper records will be kept in locked cabinets or in otherwise secured areas. Contractor personnel having access to data in the system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data. SSA and contractor personnel having access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system of records.

RETENTION AND DISPOSAL:

Electronic files and other files with personal identifiers are retained in secure areas accessible only to authorized personnel and will be disposed of as soon as they are determined to be no longer needed for contractor or SSA analysis. Means of disposal will be appropriate to the storage medium; *e.g.,* deletion of magnetic discs or shredding of paper records. Records used in administering the demonstration and experimental programs will be retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director, Office of Beneficiary Determinations and Services, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE(S):

An individual can determine if this system of records contains a record about him/her by writing to the systems manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license. If an individual does not have identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

RECORD ACCESS PROCEDURE(S):

Same as Notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with SSA Regulations (20 CFR 401.50).

CONTESTING RECORD PROCEDURE(S):

Same as Notification procedures. Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought, and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Data for the system are secured from other SSA systems of records (*e.g. Master Beneficiary Record, 60–0090* and *Supplemental Security Income Record and Special Veterans Benefits, 60–0103*) and from other databases available to SSA, such as the Veterans Administration and the Office of Personnel Management benefits files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 04–7069 Filed 3–30–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 19, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–17342.
Date Filed: March 15, 2004.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote 366,
PTC12 NMS–AFR 0186 dated 16 March 2004,
PTC12 Special Passenger Amending Resolution between South Atlantic and Africa r1–r2,
Intended effective date: 01 May 2004

Docket Number: OST–2004–17368.
Date Filed: March 19, 2004.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote 367,
PTC23 AFR–TC3 0216 dated 23 March 2004,
Special Passenger Amending Resolution 010n between Africa and TC3 r1–r35,
Intended effective date: 01 April 2004

Docket Number: OST–2004–17369.
Date Filed: March 19, 2004.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR–AFR 0189 dated 02 March 2004,
PTC2 Europe-Africa Resolutions r1–r28,
PTC2 EUR–AFR 0191 dated 09 March 2004,
Technical Corrections to Resolutions 002 and 072mw,
PTC2 EUR–AFR 0193 dated 19 March 2004,
Technical Corrections to Resolution 084ss,
PTC2 EUR–AFR 0192 dated 19 March 2004,
PTC2 EUR–AFR 0112 dated 09 March 2004,
Intended effective date: 01 May 2004

Andrea M. Jenkins,
Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–7108 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 19, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–10052, OST–2004–17348.
Date Filed: March 15, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 5, 2004.
Description: Application of ASTAR Air Cargo, Inc., requesting renewal and amendment of its certificate of public convenience and necessity for Route 725, Segments 7 through 9, to engage in

scheduled foreign air transportation of property and mail between points in the United States and points in Mexico.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–7107 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Midland International Airport, Midland, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Midland International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before April 29, 2004.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Marvin Esterly, Director of Aviation, at the following address: City of Midland, Department of Airports, 9506 La Force Blvd., P.O. Box 60305, Midland, Texas 79711–0305.

FOR FURTHER INFORMATION CONTACT: Mr. Marcelino Sanchez, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5652, e-mail: *marcelino.sanchez@faa.gov*, fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Midland International Airport under the provisions of the AIR 21.

On November 12, 2003, the FAA determined that the request to release property at Midland International Airport, submitted by the City, met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, 30 days from the posting of this **Federal Register** notice.

The following is a brief overview of the request:

The City of Midland requests the release of 64.5 acres of non-aeronautical airport property. The land is part of a War Assets Administration deed of airport property to the City in 1948. The funds generated by the release will be used for upgrading, maintenance, operation and development of the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Midland International Airport, telephone number (432) 560–2200, ext. 3001.

Issued in Fort Worth, Texas, on March 10, 2004.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 04–7115 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–22]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–5174.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 25, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2004–16974.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 25.562(b)(2).

Description of Relief Sought/Disposition: To grant relief from the floor warpage testing requirement for flightdeck seats on the Boeing Model 767–200C airplanes. *Grant of Exemption, 03/12/2004, Exemption No. 8269.*

[FR Doc. 04–7113 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–23]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 25, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2002–11949.

Petitioner: Aviation Services Group, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Aviation Services Group, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 3/16/04, Exemption No. 7807A.*

Docket No.: FAA–2004–17018.
Petitioner: Clifford S. Kamm d.b.a. SeaWind Aviation.
Section of 14 CFR Affected: 14 CFR 135.203(a)(1).
Description of Relief Sought/ Disposition: To permit Clifford S. Kamm d.b.a. SeaWind Aviation to conduct operations under visual flight rules outside controlled airspace, over water, at an altitude below 500 feet above the surface, subject to certain conditions and limitations. *Grant, 3/16/04, Exemption No. 8274.*

Docket No.: FAA–2003–15584.
Petitioner: Pacific Coast Air Museum Flight Foundation.
Section of 14 CFR Affected: 14 CFR 91.315, 91.319(a), 119.5(g), and 119.21(a)
Description of Relief Sought/ Disposition: To permit Pacific Coast Air Museum Flight Foundation to operate its North American B–25 Mitchell and Douglas A–26 Invader for the purpose of carrying passengers for compensation or hire, subject to certain conditions and limitations. *Grant, 3/16/04, Exemption No. 8273.*

Docket No.: FAA–2004–17338.
Petitioner: Experimental Aircraft Association, Inc., and EAA Aviation Foundation, Inc.
Section of 14 CFR Affected: 14 CFR 119.5(g), 119.21(a), 135.251, 135.255, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit the Experimental Aircraft Association, Inc., and EAA Aviation Foundation, Inc., to operate its Douglas DC–3, Ford Tri-Motor, and various single-engine aircraft for the purpose of carrying passengers for compensation or hire. *Denial, 3/16/04, Exemption No. 8272.*

Docket No.: FAA–2003–14731.
Petitioner: Planes of Fame Air Museum.
Section of 14 CFR Affected: 14 CFR 91.315, 91.319(a), 119.5(g), and 119.21(a).
Description of Relief Sought/ Disposition: To permit the Planes of Fame Air Museum to operate its former military North American B–25 and Douglas SDB–5 airplanes, for the purpose of exhibition, to be used for the carriage of passengers on local educational flights for compensation or hire. *Grant, 3/16/04, Exemption No. 8271.*

Docket No.: FAA–2004–17267.
Petitioner: Spirit Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.299(a).
Description of Relief Sought/ Disposition: To permit Spirit Aviation, Inc., pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft. *Denial, 3/11/04, Exemption No. 8275.*

Docket No.: FAA–2004–17268.
Petitioner: Windham Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.299(a).
Description of Relief Sought/ Disposition: To permit Windham Aviation, Inc., pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft. *Denial, 3/10/04, Exemption No. 8276.*

Docket No.: FAA–2001–10441.
Petitioner: Taylor Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Taylor Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 3/22/04, Exemption No. 8277.*

Docket No.: FAA–2002–11559.
Petitioner: Brim Equipment Leasing, Inc., d.b.a. Brim Aviation.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Brim Equipment Leasing, Inc., d.b.a. Brim Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 3/22/04, Exemption No. 7176B.*

Docket No.: FAA–2001–10814.
Petitioner: Eagle Canyon Airlines, Inc., d.b.a. Scenic Airlines.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Eagle Canyon Airlines, Inc., d.b.a. Scenic Airlines to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 3/22/04, Exemption No. 7147B.*

[FR Doc. 04–7114 Filed 3–30–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Almanor Railroad (AL)

(Waiver Petition Docket Number FRA–2004–17030)

The Almanor Railroad has petitioned for a permanent waiver of compliance for one (1) locomotive, specifically Locomotive #165, from the requirements of Safety Glazing Standards, 49 CFR 223.11. Section 223.11 states, ''(a) Locomotives, other than yard locomotives built or rebuilt prior to July 1, 1980 which are equipped in the forward and rearward end facing glazing locations of the locomotive cab windshield with a glazing material that meets the criteria for either portion of the impact testing required for a Type I test under the provisions of appendix A of this part, will not require the installation of certified glazing in the windshield location except to replace windshield glazing material that is broken or damaged. (b) Locomotives other than yard locomotives built or rebuilt prior to July 1, 1980 which are equipped in all locomotive cab side facing glazing locations with a glazing material that meets the criteria for either portion of the impact testing required for a Type II test under the provisions of appendix A of this part, will not require the installation of certified glazing in the side facing glazing location except to replace side facing glazing material that is broken or damaged.

The locomotive was purchased from the Lions Club in Spokane, Washington, as POVA 103, 70-Ton GE manufactured in 1956; it is now AL Locomotive #165. The Lions Club maintained a FRA waiver for safety glazing on this locomotive prior to the AL purchasing the locomotive.

The AL Railroad operates in a private yard and over 13 miles of private track to the main line junction in Plumas County.

The AL has also recently taken Locomotive #166 out of commission. This locomotive also had an FRA waiver for safety glazing in place during its tenure.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since

the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2004–17030) and must be submitted to the Docket Clerk, DOT Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 22, 1000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington DC on March 25, 2004.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 04–7120 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Dubois County Railroad (DCR)

(Waiver Petition Docket Number FRA–2004–16890)

The Dubois County Railroad has petitioned for a permanent waiver of compliance for one (1) locomotive, specifically DCRR 78, from the requirements of Safety Glazing Standards, 49 CFR 223.11. Section 223.11 states, (a) Locomotives, other than yard locomotives, built or rebuilt prior to July 1, 1980, which are equipped in the forward and rearward end facing glazing locations of the locomotive cab windshield with a glazing material that meets the criteria for either portion of the impact testing required for a Type I test under the provisions of appendix A of this part, will not require the installation of certified glazing in the windshield location except to replace windshield glazing material that is broken or damaged. (b) Locomotives, other than yard locomotives built or rebuilt prior to July 1, 1980 which are equipped in all locomotive cab side facing glazing locations with a glazing material that meets the criteria for either portion of the impact testing required for a Type II test under the provisions of appendix A of this part, will not require the installation of certified glazing in the side facing glazing location except to replace side facing glazing material that is broken or damaged.

The locomotive, an ALCO S–2 1,000 HP switcher manufactured in 1950, presently has safety glass in good condition, but operating without FRA approved safety glazing.

The DCR operates over 16 miles of railroad in a rural area between Huntingburg, IN and Dubois, IN, under yard limit rules for the entire 16 miles of the operation. Maximum operating speed is 10 miles per hour. The DCRR has experienced no problems with vandalism. Presently, the DCRR maintains an FRA waiver for safety glazing on locomotive DCRR 101.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2004–16890) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

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

Issued in Washington, DC, on March 25, 2004.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 04–7119 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Nebraska Railroad Museum (NRRM)

(Waiver Petition Docket Number FRA–2004–17098)

The Nebraska Railroad Museum (NRRM) seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all windows. The NRRM operates 1–3 trains per week over 9.5 miles of track

in primarily rural territory at speeds of less than twenty miles per hour.

This request is for four locomotives, specifically locomotive numbers 2, 316, 481, and 1219. All units were built prior to 1956. At the present time, all locomotives are equipped with shatterproof glass. The railroad claims that there has never been an instance of personal injury to any of its railroad employees due to glazing or vandalism.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2004–17098) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

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

Issued in Washington, DC on March 25, 2004.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 04–7117 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 33]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of the Railroad Safety Advisory Committee (RSAC) meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics will include updates on the Highway-Rail Crossing Action Plan, Railroad Security, the Switching Operations Fatality Analysis, and the Collision Analysis Working Group. Status reports will be given on the Passenger Safety Working Group, the Positive Train Control (PTC) Roadway Worker Task Group, and other active working groups. The Committee will be briefed on the Roadway Worker Protection Safety Advisory, PTC Peer Review, and the Report to Congress on Remote Control.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4 p.m. on Tuesday, April 27, 2004.

ADDRESSES: The meeting of the RSAC will be held at the Washington Plaza, 10 Thomas Circle, NW., Washington, DC 20005, (202) 842–1300. The meeting is open to the public on a first-come, first-serve basis and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Trish Butera or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW., stop 25, Washington, DC 20590, (202) 493–6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The meeting is scheduled to begin at 9:30 a.m. and conclude at 4 p.m. on Tuesday, April 27, 2004. The meeting of the RSAC will be held at the Washington Plaza, 10 Thomas Circle, NW., Washington, DC 20005, (202) 842–1300. All times noted are Daylight Savings Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual voting representatives and five associates representatives drawn from among 30 organizations representing various rail industry perspectives, two associate representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico and other diverse groups. Staffs of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

See the RSAC website for details on pending tasks at: *http://rsac.fra.dot.gov/.* Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on March 25, 2004.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 04–7118 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2004–17396]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ADIOS.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17396 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag

vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17396. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ADIOS is:

Intended Use: ''Charter.''

Geographic Region: ''East and Gulf Coast of the United States.''

Dated: March 25, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–7154 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2004–17397]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FISH–N–FRIENDS.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17397 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–17397. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FISH–N–FRIENDS is:

Intended Use: ''Charter for sport fishing.''

Geographic Region: ''Great Lakes.''

Dated: March 25, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–7153 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2004–17399]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HERON.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17399 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17399. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will

be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HERON is:

Intended Use: ''Oceanographic research and marine surveys.''

Geographic Region: ''Alaska.''

Dated: March 25, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–7155 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2004–17398]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TESLA.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17398 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–17398. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TESLA is:

Intended Use: ''Small skippered day and overnight charters for pleasure sailing, whale watching.''

Geographic Region: ''California.''

Dated: March 25, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–7156 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17413]

Notice of Receipt of Petition for Decision That Nonconforming 2004 Porsche 911(996) GT3 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2004 Porsche 911(996) GT3 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2004 Porsche 911(996) GT3 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 30, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St. SW., Washington, DC 20590. Docket hours are from 9 a.m. to 5 p.m. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition.

At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

J.K. Technologies of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 2004 Porsche 911(996) GT3 passenger cars are eligible for importation into the United States. The vehicles that J.K. believes are substantially similar are 2004 Porsche 911(996) GT3 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it compared non-U.S. certified 2004 Porsche 911(996) GT3 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2004 Porsche 911(996) GT3 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2004 Porsche 911(996) GT3 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* 302 *Flammability of Interior Materials,* and 401 *Interior Trunk Release.*

With regard to the Bumper Standard found at 49 CFR part 581, petitioner states that the vehicles are equipped with bumpers and support structures that are identical to those found on their U.S.-certified counterparts.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Installation of a U.S.-model instrument cluster.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies, which incorporate rear sidemarker lights.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* inscription of the required warning statement on the passenger side rearview mirror, or replacement of that mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Programming of the vehicles to activate the key warning and seat belt warning systems.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* Programming of the vehicles so that they comply with the standard.

Standard No. 208 *Occupant Crash Protection:* Programming of the vehicles to ensure that the seat belt warning system activates in the proper manner. The petitioner states that the vehicles are equipped with a seat belt warning lamp that is identical to the component used on the vehicles' U.S.-certified counterparts. The petitioner further states that the vehicles are equipped with dual front air bags and combination lap and shoulder belts at the front outboard seating positions that are self-tensioning and released by means of a single red push button.

Standard No. 225 *Child Restraint Anchorage Systems:* Inspection of all vehicles and modification, as necessary, to ensure compliance with the standard. The petitioner expressed the belief that the vehicle does in fact comply with the standard.

The petitioner states that all vehicles must be inspected to ensure compliance with the Theft Prevention Standard at 49 CFR part 541, and that anti-theft marking will be added as necessary to ensure compliance with this standard.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 9 a.m. to 5 p.m. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 25, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–7246 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 212X)]

Union Pacific Railroad Company—Discontinuance of Service and Trackage Rights Exemption—in Los Angeles and Orange Counties, CA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service and trackage rights over two segments of a rail line known as the Paramount Industrial Lead, owned by the Los Angeles County Metropolitan Transportation Authority and the Orange County Transportation Authority. The line segments extend: (1) Between milepost 495.18 and milepost 495.83 northwest of the intersection of Garfield and Rosecrans; and (2) between milepost 497.11 near Crutcher and milepost 507.87 in North Stanton, for a total distance of 11.41 miles in Los Angeles and Orange Counties, CA. The line traverses United States Postal Service Zip Codes 90623, 90630, 90680, 90701, 90703, 90706, 90715, 90723, and 92804.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (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 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 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[1]

As a condition to this exemption, any employee adversely affected by the 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 April 30, 2004,[2] unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] must be filed by April 12, 2004.[4] Petitions to reopen must be filed by April 20, 2004, 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 UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 24, 2004.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–7201 Filed 3–30–04; 8:45 am]

BILLING CODE 4915–01–P

[1] Because UP's discontinuance of service and of trackage rights will merely result in the cessation of service over the line, the proceeding is exempt from the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports) and 49 CFR 1105.11 (transmittal letter).

[2] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The applicant initially indicated a proposed consummation date of April 16, 2004, but because the verified notice was filed on March 11, 2004, consummation may not take place prior to April 30, 2004.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding, trail use/rail banking and public use conditions are not applicable.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. BTS–2004–17371]

Request for OMB Clearance of an Information Collection; Customer Satisfaction Surveys Program

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS' Customer Satisfaction Surveys.

DATES: Written comments should be submitted by June 1, 2004.

ADDRESSES: You may submit a comment (identified by DMS Docket Number BTS–2004–17371) through one of the following methods:

Web site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

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

Instructions: All comments must include the agency name and docket number. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*

Docket: For access to the docket to read background documents or comments, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT.

Comments: Comments should identify the associated OMB approval #2139–0007. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2139–0007. The postcard will be date/time stamped and returned. We particularly request your comments on the accuracy of the estimated burden; ways to enhance the quality, usefulness, and clarity of the collected information; and ways to minimize the collection burden without reducing the quality of the information collected including additional use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Putman, Office of Survey Programs, K–23, Room 4432, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–5336.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2139–0007.

Title: Customer Satisfaction Surveys.

Form No.: None.

Type of Review: Renewal of a currently approved collection.

Respondents: U.S. Households.

Number of Respondents: 22,000.

Estimated Time per Response: 5–17 minutes.

Total Annual Burden: 8700 hours (estimate).

Needs and Uses: In 1993, Executive Order #12862 was implemented by the President to insure the highest quality service possible to the American people. Federal agencies are required to establish and implement customer service standards to guide the operations of the agency, to judge the performance of the agency, and to make appropriate resource allocations. To fulfill the requirements of this mandate, the Bureau of Transportation Statistics (BTS) immediately implemented plans and requirements for measuring

customer satisfaction with BTS and Department of Transportation programs and services. As the statistical agency of the Department of Transportation, BTS is charged with fulfilling a wide variety of user needs. BTS has implemented a wide range of customer satisfaction surveys. The approaches include the Omnibus Survey Programs and the BTS Customer Satisfaction Survey, all of which are covered by this clearance request. Consistent with the requirements of Executive Order #12862, BTS plans to continue data collections at several levels to better assess and evaluate customer satisfaction within products, services, and overall performance of the agency over the next three years.

Description of Survey Topics: The Omnibus Surveys Program is comprised of several different surveys—A monthly Household Survey and periodic targeted surveys. The primary purpose of the Omnibus Household Survey are: (1) To determine the public's level of satisfaction with the nation's transportation system in light of the Department's strategic objectives, (2) to determine the public's satisfaction with the Department of Transportation products and services; and (3) to be a vehicle for the Operation Administrations within the Department of Transportation to survey the public about Administration-specific topics.

The Omnibus targeted surveys are designed on an ''as needed'' basis to address specific, emerging transportation issues. Although there is no schedule for such surveys, this submission requests clearance for a maximum of 8 targeted surveys per year. In the past, BTS has conducted such targeted surveys as the Mariner's Survey (which collects data about the Merchant Marines to be used in the event of a national emergency), the Highway User Survey (which collects data on highway usage) and the Bicycle/Pedestrian Survey (which collects data on bicycle usage and on walking as transportation). Data collection for targeted surveys may be one time only or recurring.

The BTS Customer Satisfaction Survey was implemented in 1998. The resulting data identified customers who are served by the Bureau of Transportation Statistics; determined the kind of quality of services they want; and measured their level of satisfaction with existing services. The surveys covered by this request do not duplicate information currently being collected by any other agency or component within the Department of Transportation. The information to be collected by these surveys is not currently available in any other format or from any other source or combination of sources.

Burden Statement: The total annual respondent burden estimate is 8,700 hours. The number of respondents and average burden hour per response will vary with each survey.

Issued in Washington, DC, on March 24, 2004.

Michael Cohen,

Assistant Director, Survey Programs, Bureau of Transportation Statistics.

[FR Doc. 04–7242 Filed 3–30–04; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 28, 2004, from 12 noon e.d.t. to 1 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, April 28, 2004, from 12 noon e.d.t. to 1 p.m. e.d.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 26, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–7217 Filed 3–30–04; 8:45 am]

BILLING CODE 4830–01–P

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 31, 2004

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:
- Miscellaneous provisions; removal; published 3-1-04

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Bacillus thurigiensis Cry2Ab2; published 3-31-04
- Bacillus thurigiensis CryIF protein in cotton; published 3-31-04
- Bacillus thuringiensis Cry3Bb1; published 3-31-04
- Bacillus thuringiensis VIP3A; published 3-31-04
- Flumioxazin; published 3-31-04
- Rhamnolipid biosurfactant; published 3-31-04
- Zoxamide; published 3-31-04

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Wireless telecommunications services—
  - 71-76 GHz, 81-86 GHz, and 92-95 GHz bands allocations and service rules; published 3-31-04

Radio stations; table of assignments:
- Georgia; correction; published 3-31-04

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- Florida; published 3-1-04

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:
- Government property—
  - NASA Form 1018 preparation instructions; published 3-31-04

Grant and Cooperative Agreement Handbook:
- Announcement numbering; published 3-31-04

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
- Approved spent fuel storage casks; list; published 1-16-04

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
- Approved spent fuel storage casks; list; published 3-31-04

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Melons grown in—
- Texas; comments due by 4-6-04; published 3-22-04 [FR 04-06323]

Olives grown in—
- California; comments due by 4-9-04; published 2-9-04 [FR 04-02654]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Bovine spongiform encephalopathy; minimal risk regions and importation of commodities; comments due by 4-7-04; published 3-8-04 [FR 04-05265]

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:
- Pecans; comments due by 4-9-04; published 3-10-04 [FR 04-05238]

AGRICULTURE DEPARTMENT

Forest Service

Healthy Forests Restoration Act:
- Hazardous fuel reduction projects; predecisional administrative review process; comments due by 4-8-04; published 1-9-04 [FR 04-00473]

AGRICULTURE DEPARTMENT

Farm Service Agency

Special programs:
- Direct Farm Loan Programs; regulatory streamlining; comments due by 4-9-04; published 2-9-04 [FR 04-01891]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Caribbean, Gulf, and South Atlantic fisheries—
  - South Atlantic shrimp; comments due by 4-5-04; published 3-4-04 [FR 04-04875]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

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- Stratospheric ozone protection—
  - HCFC-141b use in foam blowing applications; data availability; comment request; comments due by 4-9-04; published 3-10-04 [FR 04-05285]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Pennsylvania; comments due by 4-5-04; published 3-4-04 [FR 04-04818]

Environmental statements; availability, etc.:
- Coastal nonpoint pollution control program—
  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

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- Delaware; comments due by 4-5-04; published 3-4-04 [FR 04-04820]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Bifenazate; comments due by 4-5-04; published 2-4-04 [FR 04-02271]

Solid wastes:
- Hazardous waste; identification and listing—
  - Exclusions; comments due by 4-5-04; published 2-20-04 [FR 04-03600]
  - Solvent-contaminated reusable shop towels, rags, disposable wipes, and paper towels; conditional exclusion; comments due by 4-9-04; published 2-24-04 [FR 04-03934]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Satellite communications—
  - Portable earth-station transceivers and out-of-band emission limits for mobile earth stations; equipment authorization; comments due by 4-6-04; published 2-6-04 [FR 04-02530]

Radio frequency devices:
- Interference temperature operation; comments due by 4-5-04; published 1-21-04 [FR 04-01192]

Radio stations; table of assignments:
- Maryland; comments due by 4-5-04; published 3-2-04 [FR 04-04616]

FEDERAL DEPOSIT INSURANCE CORPORATION

Community Reinvestment Act regulations; definition amended, abusive lending practices and other issues addressed; comments due by 4-6-04; published 2-6-04 [FR 04-02354]

FEDERAL ELECTION COMMISSION

Political committee status; comments due by 4-5-04; published 3-11-04 [FR 04-05290]

FEDERAL RESERVE SYSTEM

Community Reinvestment Act regulations; definition amended, abusive lending practices and other issues addressed; comments due by 4-6-04; published 2-6-04 [FR 04-02354]

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- Ophthalmic practice rules; contact lens prescriptions; comments due by 4-5-04; published 2-4-04 [FR 04-02235]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

HOMELAND SECURITY DEPARTMENT

Coast Guard

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INTERIOR DEPARTMENT

National Park Service

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Lake Roosevelt National Recreation Area, WA; personal watercraft use; comments due by 4-6-04; published 2-6-04 [FR 04-02556]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

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Excess spoil fills, construction requirements; stream buffer zones, clarification

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Mine Safety and Health Administration

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Federal Aviation Administration

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Boeing; comments due by 4-5-04; published 2-19-04 [FR 04-03493]

Bombardier; comments due by 4-5-04; published 3-5-04 [FR 04-04932]

Cessna; comments due by 4-5-04; published 1-27-04 [FR 04-01658]

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Empresa Brasileira de Aeronautica, S.A. (EMBRAER); comments due by 4-5-04; published 3-5-04 [FR 04-04929]

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Fuel economy standards:

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TREASURY DEPARTMENT

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Community Reinvestment Act regulations; definition amended, abusive lending practices and other issues addressed; comments due by 4-6-04; published 2-6-04 [FR 04-02354]

TREASURY DEPARTMENT

Thrift Supervision Office

Community Reinvestment Act regulations; definition amended, abusive lending practices and other issues addressed; comments due by 4-6-04; published 2-6-04 [FR 04-02354]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 506/P.L. 108–208

Galisteo Basin Archaeological Sites Protection Act (Mar. 19, 2004; 118 Stat. 558)

H.R. 2059/P.L. 108–209

Fort Bayard National Historic Landmark Act (Mar. 19, 2004; 118 Stat. 562)

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