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Contents

Federal Register

Vol. 69, No. 245

Wednesday, December 22, 2004

Agency for Toxic Substances and Disease Registry
NOTICES
Reports and guidance documents; availability, etc.:
Assessment of joint toxic action of chemical mixtures; guidance manual and interaction profiles, 76768–76769

Agricultural Marketing Service
RULES
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida, 76597–76599
NOTICES
Grants and cooperative agreements; availability, etc.:
Federal-State Marketing Improvement Program, 76684

Agriculture Department
See Agricultural Marketing Service
See Commodity Credit Corporation
See Forest Service

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 76769–76770
Immunization Practices Advisory Committee, 76770

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
NOTICES
Domestic Sugar Program:
2005-crop sugar marketing allotments and allocations, 76684–76686

Defense Department
See Engineers Corps
See Navy Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76693–76694

Education Department
PROPOSED RULES
Postsecondary education:
Higher education discretionary grant programs; selection criteria, 76636–76642
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76694

Election Assistance Commission
NOTICES
Help America Vote Act:
State election plans; list, 76695–76716
Meetings; Sunshine Act, 76716

Employment and Training Administration
NOTICES
Adjustment assistance:
Alphatech, Inc., 76782–76783
BMC Software Inc., 76783–76784
Burrows Paper Corp., et al., 76784–76787
Cherry Electrical Products, 76787
Hamilton Sundstrand, 76787
Invista S.a.r.l. et al., 76787–76789
JVS Fabrics, 76789
Oxford Automotive, 76789–76790
Set Enterprises, 76790
Thermal & Interior Vandalia Operations of Delphi Corp., 76790

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 76790–76791

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Lower Snake and Clearwater Rivers, WA and ID; reservoirs navigation maintenance; correction, 76833

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Various States, 76617–76619
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bacillus pumilus GB34, 76619–76625
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Test methods; Method 301 for field validation of pollutant measurement methods from various waste media, 76642–76655
Air programs:
Stratospheric ozone protection—
Essential use allowances allocation, 76655–76660
NOTICES
Pesticide, food, and feed additive petitions:
Valent U.S.A. Corp., 76724–76729
Pesticide registration, cancellation, etc.:
Monsanto Co., 76716–76718
MycoLogic Inc. et al., 76718–76719
Nichino America, Inc., 76719–76724
Pesticides; emergency exemptions, etc.:
Sodium chlorate, etc., 76729–76732
Pesticides; experimental use permits, etc.:
Monsanto Co. et al., 76732–76733
Reports and guidance documents; availability, etc.:
Clean Water Act—
Watershed projects; section 319 nonpoint source grants awarded to Indian tribes; guidelines, 76733–76739
Superfund reimbursement of resonable costs petitions; submission and review procedures; revised guidance, 76739

Water pollution control:
National Pollutant Discharge Elimination System—
Gulf of Mexico OCS operations; eastern portion; oil and gas extraction category; general permit, 76740–76743
Storm water discharges from construction activities; general permit, 76743–76749

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Export-Import Bank
NOTICES
Greece; U.S. equipment, technology, and services exports to photovoltaic modules fabrication facility; finance application, 76749

Federal Aviation Administration
RULES
Airworthiness directives:
Eagle Aircraft (Malaysia) Sdn. Bhd., 76603–76605
Empresa Brasileira de Aeronautica, S.A. (EMBRAER), 76605–76610
GE Aircraft Engines, 76610–76611
PROPOSED RULES
Airworthiness directives:
Teledyne Continental Motors, 76632–76635
NOTICES
Advisory circulars; availability, etc.:
Repair Station Training Program, 76829
Meetings:
Aging Transport Systems Rulemaking Advisory Committee, 76829–76830

Federal Election Commission
PROPOSED RULES
Corporate and labor organization activity:
Trade association's separate segregated fund; payroll deduction contributions; comment request, 76628–76632
Designations, reports, and statements; timely filing by priority mail, express mail, and overnight delivery service, 76626–76628

Federal Emergency Management Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Emergency Preparedness Demonstration Program, 76772–76774

Federal Housing Finance Board
NOTICES
Federal home loan bank system:
Community support review; members selected for review; list, 76749–76765

Federal Maritime Commission
NOTICES
Agreements filed, etc., 76765–76766
Ocean transportation intermediary licenses:
Ace Forwarding et al., 76766
Fidelity Logistics Corp. et al., 76766–76767
Universe Freight Brokers, Inc., 76767

Federal Motor Carrier Safety Administration
PROPOSED RULES
Motor carrier safety standards:
Household goods brokers; motor vehicle transportation regulations; comment request, 76664–76672

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 76767

Federal Trade Commission
RULES
Federal claims collection:
Civil monetary penalties; inflation adjustment, 76611–76612
NOTICES
Fair Credit Reporting Act:
Disclosure charges, 76767–76768

Forest Service
NOTICES
Environmental statements; notice of intent:
Eldorado National Forest, CA, 76686–76687
Meetings:
Black Hills National Forest Advisory Board, 76687–76688

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See National Institutes of Health

Homeland Security Department
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76775

Interior Department
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Optional 10-year writeoff of certain tax preferences, 76614–76617
S corporations; section 1374 effective dates, 76612–76614
PROPOSED RULES
Income taxes:
S corporations; section 1374 effective dates; cross-reference, 76635–76636
NOTICES
Meetings:
Taxpayer Advocacy Panels, 76831–76832

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Labor Statistics Bureau

Labor Statistics Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76791–76794

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Alaska, 76775
Survey plat filings:
Wisconsin, 76775

National Institutes of Health
NOTICES
Meetings:
National Center for Research Resources, 76770
National Institute of Allergy and Infectious Diseases, 76772
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 76771–76772
National Institute of Child Health and Human Development, 76771
National Institute on Aging, 76770–76771

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; correction, 76682–76683
Marine mammals:
Southern Resident killer whales; threatened status listing, 76673–76682
NOTICES
Meetings:
Carribean Fishery Management Council, 76688
Gulf of Mexico Fishery Management Council, 76688–76690
Hydrographic Services Review Panel, 76690
New England Fishery Management Council, 76690–76691
Western Pacific Fishery Management Council, 76691–76693

National Park Service
NOTICES
Native American human remains, funerary objects; inventory, repatriation, etc.:
Agriculture Department et al., 76775–76777
American Museum of Natural History, New York, NY, 76777–76779
Arizona State Museum, University of Arizona, Tucson, AZ, 76779–76780
Colorado College, Colorado Springs, CO, 76780–76781
Interior Department—
Indian Affairs Bureau, Washington, DC, and Arizona State Museum, University of Arizona, Tucson, AZ, 76781–76782
Nebraska State Historical Society, Lincoln, NE, 76782

Navy Department
NOTICES
Meetings:
Ocean Research Advisory Panel, 76694

Nuclear Regulatory Commission
RULES
Miscellaneous amendments, 76599–76601
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76794–76795
Environmental statements; availability, etc.:
AmerGen Energy Co., LLC, 76795–76796
Meetings:
Medical Uses of Isotopes Advisory Committee, 76796

Office of United States Trade Representative
See Trade Representative, Office of United States

Presidential Documents
PROCLAMATIONS
Special observances:
Wright Brothers Day (Proc. 7856), 76595–76596

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 76796–76797
Public Utility Holding Company Act of 1935 filings, 76797–76798
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 76798–76803
Chicago Board Options Exchange, Inc., 76803–76804
Chicago Stock Exchange, Inc., 76804–76806
New York Stock Exchange, Inc., 76806–76807
Pacific Exchange, Inc., 76807–76815
Philadelphia Stock Exchange, Inc., 76816–76822

State Department
PROPOSED RULES
Acquisition regulations:
Miscellaneous amendments, 76660–76664
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76822
Environmental statements; availability, etc.:
Tornillo-Guadalupe New International Bridge, El Paso County, TX; international vehicular and pedestrian bridge; construction, operation, and maintenance, 76822–76827

Surface Transportation Board
NOTICES
Rail carriers:
Control exemptions—
Permian Basin Railways, Inc., 76830

Thrift Supervision Office
RULES
Technical amendments, 76601–76603

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Trade Representative, Office of United States
NOTICES
Trade Policy Staff Committee:
U.S.-Oman; free trade negotiations; environmental review, 76827–76828
U.S.-United Arab Emirates; free trade negotiations; environmental review, 76828–76829

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Surface Transportation Board
See Transportation Statistics Bureau

Transportation Statistics Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76830–76831

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
7856 76595

7 CFR
905 76597

10 CFR
19 76599
34 76599
40 76599
55 76599
60 76599

11 CFR
Proposed Rules:
100 76626
104 76626
114 76628

12 CFR
506 76601
516 76601
541 76601
560 76601
563 76601
564 76601
567 76601
570 76601

14 CFR
39 (3 documents) 76603, 76605, 76610
Proposed Rules:
39 76632

16 CFR
1 76611

26 CFR
1 (2 documents) 76612, 76614
602 76614
Proposed Rules:
1 76635

34 CFR
Proposed Rules:
606 76636
607 76636
611 76636
637 76636
648 76636
656 76636
657 76636
658 76636
660 76636
661 76636
662 76636
663 76636
664 76636
669 76636

40 CFR
52 76617
180 76619
Proposed Rules:
63 76642
82 76655

48 CFR
Proposed Rules:
619 76660
625 76660
628 76660
652 76660

49 CFR
Proposed Rules:
371 76664

50 CFR
Proposed Rules:
223 76673
679 76682

Federal Register
Vol. 69, No. 245
Wednesday, December 22, 2004

Presidential Documents

Title 3—

The President

Proclamation 7856 of December 17, 2004

Wright Brothers Day, 2004

By the President of the United States of America

A Proclamation

On Wright Brothers Day, we honor the achievement and imagination of Orville and Wilbur Wright, two bicycle mechanics from Dayton, Ohio, who changed the world with their optimism, creativity, and persistence. On this day, we recall a monumental event in the history of our Nation and in the story of mankind.

On a cold December morning in 1903 on the Outer Banks of North Carolina, a small wood and canvas aircraft sent America on a journey far beyond the sands of Kitty Hawk. The flight spanned 120 feet and lasted just 12 seconds, yet it ushered in a new era of unimaginable advances in aviation and aerospace technology. Today, air travel is vital to our country, helping bring people together and sustain our security. In addition, the aviation industry strengthens our economy by supporting millions of jobs.

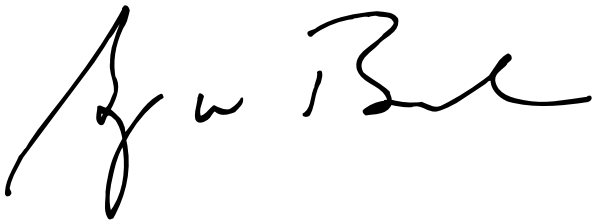
The spirit that led the Wright Brothers to powered flight continues today in America's space program. From providing surveys of the sun to images of the planets, our spacecraft are exploring the outer edges of our solar system and revolutionizing our view of the universe. Under my Vision for Space Exploration Program, we will proudly carry on the Wright Brothers' tradition of innovation. As we embark on the next century of flight, that spirit of discovery will help our Nation and the world realize the full promise of tomorrow.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 143) as amended, has designated December 17 of each year as ''Wright Brothers Day'' and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim December 17, 2004, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of December, in the year of our Lord two thousand four, and of the

Independence of the United States of America the two hundred and twenty-ninth.



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Rules and Regulations

Federal Register
Vol. 69, No. 245
Wednesday, December 22, 2004

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV05–905–1 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Change in the Minimum Maturity Requirements for Fresh Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule reduces the minimum maturity requirements for fresh grapefruit under the marketing order for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida (order). The Citrus Administrative Committee (Committee), which locally administers the order, recommended this change. This rule reduces the minimum maturity requirement for soluble solids (sugars) from 8.0 percent to 7.5 percent until July 31, 2005. This action makes additional quantities of grapefruit available for the fresh market and will help reduce the losses sustained by the grapefruit industry during the recent hurricanes in Florida.

DATES: Effective December 23, 2004; comments received by February 22, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; Telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule reduces the minimum maturity requirement for soluble solids (sugars) from 8.0 percent to 7.5 percent until July 31, 2005. This action makes additional quantities of grapefruit available for the fresh market and will help reduce the losses sustained by the grapefruit industry during the recent hurricanes in Florida. This action was unanimously recommended by the Committee at its meeting on November 16, 2004.

Section 905.52 of the order provides authority for the establishment of grade and size requirements for Florida citrus. One element of grade is maturity. Section 905.306 of the order specifies, in part, the minimum maturity requirements for grapefruit. The current minimum maturity requirements for Florida grapefruit are 8.0 percent soluble solids (sugars) and 7.5 to 1 solids to acid ratio with a sliding scale minimum ratio of 7.2 to 1.

This rule reduces the minimum maturity requirement for soluble solids (sugars) from 8.0 percent to 7.5 percent soluble solids for the remainder of the 2004–05 season which ends July 31, 2005. On August 1, 2005, the requirement returns to 8.0 percent soluble solids. The 7.5 to 1 solids to acid ratio with a sliding scale minimum of 7.2 to 1 remains unchanged by this action.

During the months of August and September the major grapefruit growing regions in Florida suffered significant damage and fruit loss from multiple hurricanes. The strong winds from the storms blew substantial volumes of the setting fruit off the trees. The impact of the storms also produced a much higher than normal fruit drop. The extent of the loss is evident in the official USDA crop estimate for this season which reflects a

64 percent decrease from last year's estimate.

In inspecting groves following the storms, growers have found that the younger trees retained their fruit better compared to trees in established groves. However, based on Committee discussion, the fruit from younger trees has more difficulty meeting the current maturity requirement. To address the situation, the Committee considered how the maturity requirements might be adjusted so that more fruit from the younger trees would be available for the fresh market.

The Committee considered several options to address this issue including a one-point reduction in the soluble solids and a reduction in the minimum ratio. Several members were concerned about reducing requirements too much and believed that reducing maturity requirements by a full point would impact the quality of the fruit. It was also stated that the industry should not pack inferior fruit just because there is a shortage of volume. The Committee agreed that the current maturity standards have been well received by the market. However, Committee members also recognized that the special circumstances surrounding this season were unprecedented in the history of the grapefruit industry, and based on that, if it was possible, some allowances should be made to assist growers and provide some additional volume to the market.

The Committee reached a compromise position where the soluble solid requirement was reduced by a half a point and the ratios were maintained at current levels. The Committee stressed that this change be made for the remainder of the current season only, and starting August 1, 2005, the maturity retirements return to their current level. The Committee believes by reducing the soluble solids level and maintaining the minimum ratio combinations at the current levels for the remainder of the season, additional quantities of grapefruit can be made available for the fresh market without a significant reduction in quality. Therefore, the Committee voted unanimously to reduce the minimum soluble solid level from 8.0 to 7.5 until July 31, 2005. This change benefits both growers and consumers by increasing the available supply of fresh grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. As this rule changes the minimum maturity requirements under the domestic handling regulations, a corresponding change to the import regulations must be considered. Such change to the import regulations would be made under a separate action.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 producers of citrus in the regulated area. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida grapefruit during the 2003–04 season was approximately $8.00 per 4/5-bushel carton, and total fresh shipments for the 2003–04 season are estimated at 26 million cartons of grapefruit. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit shipments. Using the average f.o.b. price, at least 69 percent of the grapefruit handlers could be considered small businesses under SBA's definition. In addition, based on production and grower prices reported by the National Agricultural Statistics Service, and the total number of grapefruit growers, the average annual grower revenue is approximately $20,600. In view of the foregoing, it can be concluded that the majority of handlers and producers of Florida grapefruit may be classified as small entities.

This rule reduces the minimum maturity requirement for soluble solids (sugars) from 8.0 percent to 7.5 percent until July 31, 2005. This action makes additional quantities of grapefruit available for the fresh market and will help reduce the losses sustained by the grapefruit industry during the recent hurricanes in Florida. This action was unanimously recommended by the Committee at its meeting on November 16, 2004. This rule modifies the maturity requirements specified in § 905.306. Authority for this action is provided for in § 905.52 of the order.

With respect to the impact of this action, it is anticipated that this temporary change will not result in any increase in grower or handler costs. However, it will make some additional quantities of grapefruit available for the fresh market. This will help growers maximize their fresh shipments in a year where there may be potential shortages of grapefruit. This will help increase grower returns and address some of the losses sustained from the storms.

The Committee believes by reducing the soluble solids level and maintaining the minimum ratio combinations at the current levels for the remainder of the 2004–05 season, additional quantities of grapefruit will be made available for the fresh market without a significant reduction in quality. This change benefits both growers and consumers by increasing the available supply of fresh grapefruit.

The purpose of this rule is to help improve producer returns and provide some additional volume of grapefruit to the market. The opportunities and benefits of this rule are expected to be available to all grapefruit handlers and producers regardless of their size of operation.

The Committee considered several alternatives to taking this action. One alternative considered was a reduction in maturity requirements to 7.0 percent soluble solids with 7.0 to 1 solids to acid ratio. Committee members believed that this was too much of a change and that it would negatively impact the quality of the fruit. Therefore, this option was rejected. Another alternative considered was making no change to the maturity requirement. However, the Committee believed that some adjustment should be made to accommodate fruit from young trees. The Committee also recognized the special circumstances surrounding this season as a result of the hurricanes. Consequently, the Committee unanimously supported the action taken by this rule.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and

duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 16, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. In addition, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a reduction in the minimum maturity requirements prescribed under the order until July 31, 2005. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers began shipping grapefruit in late September; (2) Florida grapefruit growers need to know as soon as possible that they can begin picking this fruit; (3) the Committee recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 905.306, paragraph (e) is amended as follows:

■ a. By designating the current text preceding Table III as paragraph (e)(1);

■ b. By adding new paragraph (e)(2) to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulations.

* * * * *

(e) * * *

(2) Notwithstanding the provision of paragraph (e)(1) of this section, for the period December 23, 2004 to July 31, 2005, all grapefruit shipped under the order shall meet minimum maturity requirements of 7.5 percent soluble solids (sugars) and 7.5 to 1 solids to acid ratio or shall comply with one of the alternate equivalent soluble solids and solids to acid ratio combinations set forth in Table III: Provided, That the minimum ratio shall not drop below 7.2 even if the soluble solids (sugars) reaches a level higher than 9.6.

Dated: December 15, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–27892 Filed 12–17–04; 4:47 pm]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 34, 40, 55, and 60

RIN 3150–AH58

Minor Correction Amendments for FY2004

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to correct several miscellaneous errors in the NRC Rules and Regulations. This document is necessary to inform the public of these corrective changes to NRC regulations.

DATES: *Effective Date:* December 22, 2004.

FOR FURTHER INFORMATION CONTACT: Alzonia Shepard, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6864.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission is amending the regulations in 10 CFR Parts 19, 34, 40, 55 and 60 to correct several miscellaneous errors in regulatory text. These changes occurred in the process of preparing and printing rulemaking documents.

Because these amendments constitute minor administrative corrections to the regulations, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(B). The amendment are effective upon publication in the **Federal Register**. Good cause exists under 5 U.S.C. 553(d) to dispense with the usual 30-day delay in the effective date of the final rule, because the amendments are of a minor and administrative nature dealing with corrections to certain CFR sections, which do not require action by any person or entity regulated by the NRC. Nor does the final rule change the substantive responsibilities of any person or entity regulated by the NRC.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0053; 3150–0044; 3150–0010; 3150–0130; 3150–0020; and 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information of an information collection requirement unless the requesting document displays a currently valid OMB control number.

List of Subjects

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and record-keeping requirements, Sex discrimination.

10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

■ For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 19, 34, 40, 55, and 60.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

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

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 2. In § 19.3, the definition of ''Licensee'' is added in alphabetical order to read as follows:

§ 19.3 Definitions.

* * * * *

Licensee means the holder of such a license.

* * * * *

PART 34—LICENSES FOR INDUSTRIAL RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

■ 3. The authority citation for Part 34 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 34.45 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 4. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, Secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); Secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 5. In § 40.66, paragraphs (b)(5) and (c) are revised to read as follows:

§ 40.66 Requirement for advance notice of export shipment of natural uranium.

* * * * *

(b) * * *

(5) A certification that arrangements have been made to notify the Division of Nuclear Safety, Office of Nuclear Security and Incident Response when the shipment is received at the receiving facility.

(c) A licensee who needs to amend a notification may do so by telephoning the Division of Nuclear Safety, Office of Nuclear Security and Incident Response at (301) 816–5100.

■ 6. In § 40.67, the first sentence in paragraph (a), and paragraphs (c), and (d) are revised to read as follows:

§ 40.67 Requirement for advance notice for importation of natural uranium from countries that are not party to the Convention on the Physical Protection of Nuclear Material.

(a) Each licensee authorized to import natural uranium, other than in the form of ore or ore residue, in amounts exceeding 500 kilograms, from countries not party to the Convention on the Physical Protection of Nuclear Material (see appendix F to Part 73 of this chapter) shall notify the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, using an appropriate method listed in § 40.5. * * *

* * * * *

(c) The licensee shall notify the Division of Nuclear Security by telephone at (301) 816–5100 when the shipment is received in the receiving facility.

(d) A licensee who needs to amend a notification may do so by telephoning the Division of Nuclear Security at (301) 816–5100.

PART 55—OPERATOR'S LICENSES

■ 7. The authority citation for Part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953 , as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); Secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under Sacs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

§ 55.40 [Amended]

■ 8. In § 55.40(a), footnote 1, remove ''2120 L Street, NW (Lower Level), Washington, DC.'' and insert ''One White Flint North, 11555 Rockville Pike (0–1F23), Rockville, MD.''

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGICREPOSITORIES

■ 9. The authority citation for Part 60 continues to read as follow:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); Secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); Secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 10. In § 60.2, the term ''NRC Public Document Room'' is revised to read as follows:

§ 60.2 Definitions.

* * * * *

NRC Public Document Room means the facility at One White Flint North, 11555 Rockville Pike, Room 0–1F23, Rockville, Maryland, where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agency wide Documents Access and Management System, commonly referred to as ADAMS, will remain available for public inspection. It is also the place where computer terminals are available to access the Electronic Reading Room components of ADAMS on the NRC Website, *http://www.nrc.gov,* where copies can be made or ordered as set forth in § 9.35 of this chapter. The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:30 am to 4:15 pm, Monday through Friday, except on Federal holidays, Reference service and access to documents may also be requested by telephone (1–800–397–4209) between 8:30 am and 4:15 pm, or by e-mail (*PDR@nrc.gov*), fax (301–415–3548), or letter (NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 0–1F23, Rockville, Maryland 20852).

* * * * *

Dated at Rockville, Maryland this 16th day of December, 2004.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Division of Administrative Services, Office of Administration.

[FR Doc. 04–27946 Filed 12–21–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 516, 541, 560, 563, 564, 567 and 570

[No. 2004–59]

Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. They include clarifications and corrections of typographical errors.

EFFECTIVE DATE: December 22, 2004.

FOR FURTHER INFORMATION CONTACT: Marilyn K. Burton, Senior Paralegal (Regulations), (202) 906–6467, or Karen A. Osterloh, Special Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS is amending its regulations to incorporate a number of technical and conforming amendments. OTS is making the following miscellaneous changes:

- *Part 506—Information Collection Requirements under the Paperwork Reduction Act (PRA).* The final rule updates the table displaying the OMB control numbers assigned to various OTS regulations under the PRA by correcting references to two control numbers. *See* 12 CFR 506.1(b).
- *Part 516—Application Processing Guidelines and Procedures.* The final rule updates § 516.40 to include the current address for OTS's Northeast Regional Offices and makes technical changes to the addresses for OTS's Midwest and West Regions.
- *Part 541—Definitions for Regulations Affecting Federal Savings Associations.* The final rule revises the definition of single family dwelling in § 541.25 to conform to the structure of other definitions in the part.
- *Part 560—Lending and Investment.* The final rule corrects a typographical error in § 560.93(b)(9).
- *Part 563—Savings Associations—Operations.* The final rule corrects a typographical error in § 563.43(f).
- *Part 564—Appraisals.* The final rule removes an outdated note from part 564.
- *Parts 567—Capital.* This final rule reinstates subsections (a)(2)(v)(B) and (C) to § 567.6, which were inadvertently removed by the final rule published on July 28, 2004 (69 FR 44908).
- *Part 570—Safety and Soundness Guidelines and Compliance Procedures.* The final rule updates references in § 570.1(c).

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

OTS finds that there is good cause to dispense with prior notice and comment on this final rule and with the 30-day delay of effective date mandated by the Administrative Procedure Act.[1] OTS believes that these procedures are unnecessary and contrary to public interest because the rule merely makes technical changes to existing provisions. Because the amendments in the rule are not substantive, these changes will not affect savings associations.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides that regulations that impose additional reporting, disclosure, or other new requirements may not take effect before the first day of the quarter following publication. [2] This section does not apply because this final rule imposes no additional requirements and makes only technical changes to existing regulations.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[3] the OTS Director certifies that this technical corrections regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

OTS has determined that this rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 516

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 541

Savings associations.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and

[1] 5 U.S.C. 553.

[2] Pub. L. No. 103–325, 12 U.S.C. 4802.

[3] Pub. L. No. 96–354, 5 U.S.C. 601.

recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 564

Appraisals, Mortgages, Real estate appraisal, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 567

Capital, Savings associations.

12 CFR Part 570

Accounting, Administrative practice and procedure, Bank deposit insurance, Holding companies, Reporting and recordkeeping requirements, Safety and soundness, Savings associations.

■ Accordingly, the Office of Thrift Supervision amends title 12, chapter V of the Code of Federal Regulations, as set forth below.

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. Amend the table in § 506.1(b) by revising the entries for §§ 544.2 and 559.11 to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
* * * * *	
544.2	1550–0018
* * * * *	
559.11	1550–0077
* * * * *	

PART 516—APPLICATION PROCESSING PROCEDURES

■ 3. The authority citation for part 516 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464, 2901 *et seq.*

■ 4. Revise the Office Addresses for the Northeast, Midwest and West Regions in the chart at § 516.40(a)(2) to read as follows:

§ 516.40 Where do I file my application?

(a) * * *

(2) The addresses of each Regional Office and the states covered by each office are:

Region	Office address	States served
Northeast	Office of Thrift Supervision, Harborside Financial Center Plaza Five, Suite 1600, Jersey City, New Jersey 07311.	* * * * *
*	* * * * * * *	
Midwest	Office of Thrift Supervision, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062–2326 (Mail to: P.O. Box 619027, Dallas/Ft. Worth, Texas 75261–9027).	* * * * *
West	Office of Thrift Supervision, Pacific Plaza, 2001 Junipero Serra Boulevard, Suite 650, Daly City, California 94014–1976 (Mail to: P.O. Box 7165, SanFrancisco, California 94120–7165).	* * * * *

* * * * *

PART 541—DEFINITIONS FOR REGULATIONS AFFECTING FEDERAL SAVINGS ASSOCIATIONS

■ 5. The authority citation for part 541 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

■ 6. Revise § 541.25 to read as follows:

§ 541.25 Single-family dwelling.

The term *single-family dwelling* means a structure designed for residential use by one family, or a unit so designed, whose owner owns, directly or through a non-profit cooperative housing organization, an undivided interest in the underling real estate, including property owned in common with others which contributes to the use and enjoyment of the structure or unit.

PART 560—LENDING AND INVESTMENT

■ 7. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

§ 560.93 [Amended]

■ 8. Amend § 560.93(b)(9) by removing ''§ 541.20'' and by adding in lieu thereof ''§ 541.25''.

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 9. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 31 U.S.C. 5318; 42 U.S.C. 4106.

§ 563.43 [Amended]

■ 10. Amend § 563.43(f) by removing ''§ 563.93(b)(11)'' and by adding in lieu thereof ''§ 560.93(b)(11)''.

PART 564—APPRAISALS

■ 11. The authority citation for part 564 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828(m), 3331 *et seq.*

PART 564—[AMENDED]

■ 12. Amend part 564 by removing the note immediately following the authority citations.

PART 567—CAPITAL

■ 13. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note)

■ 14. Revise § 567.6(a)(2)(v) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(2) * * *

(v) *Zero percent credit conversion factor (Group E).* (A) Unused portions of commitments with an original maturity of one year or less, except for eligible ABCP liquidity facilities;

(B) Unused commitments with an original maturity greater than one year, if they are unconditionally cancelable at any time at the option of the savings association and the savings association has the contractual right to make, and in fact does make, either:

(*1*) A separate credit decision based upon the borrower's current financial condition before each drawing under the lending facility; or

(*2*) An annual (or more frequent) credit review based upon the borrower's current financial condition to determine whether or not the lending facility should be continued; and

(C) The unused portion of retail credit card lines or other related plans that are unconditionally cancelable by the savings association in accordance with applicable law.

* * * * *

PART 570—SAFETY AND SOUNDNESS GUIDELINES AND COMPLIANCE PROCEDURES

■ 15. In the Table of Contents for part 570, the heading for appendix B is revised by removing ''Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness'' and inserting ''Interagency Guidelines Establishing Standards for Safeguarding Customer Information''.

■ 16. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1831p–1.

■ 17. Revise § 570.1(c) to read as follows:

§ 570.1 Authority, purpose, scope and preservation of existing authority.

* * * * *

(c) *Scope.* This part and the Interagency Guidelines Establishing Standards for Safety and Soundness as set forth at appendix A to this part and the Interagency Guidelines Establishing Standards for Safeguarding Customer Information at appendix B to this part implement the provisions of section 39 of the FDI Act as they apply to savings associations.

* * * * *

Dated: December 17, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–27978 Filed 12–21–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19222; Directorate Identifier 2004–CE–29–AD; Amendment 39–13912; AD 2004–26–01]

RIN 2120–AA64

Airworthiness Directives; Eagle Aircraft (Malaysia) Sdn. Bhd. Model Eagle 150B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Eagle Aircraft (Malaysia) Sdn. Bhd. Model Eagle 150B airplanes. This AD requires you to inspect the port and starboard undercarriage attach bracket for unwelded areas and replace the attach bracket if unwelded areas are found. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Malaysia. We are issuing this AD to detect and correct inadequate welding of the undercarriage, which could result in cracks. This failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on January 31, 2005.

As of January 31, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Eagle Aircraft (Malaysia) Sdn. Bhd., P.O. Box 1028, Pejabat Pos Besar, Melanka, Malaysia, 75150; telephone: 011 606 317 4105; facsimile: 011 606 317 7213. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19222.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Rm 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4149.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Department of Civil Aviation, Malaysia (DCA), which is the airworthiness authority for Malaysia, recently notified FAA that an unsafe condition may exist on all Eagle Aircraft Sdn. Bhd. Model Eagle 150B airplanes. The DCA reports one case of finding cracks on a port main undercarriage attach bracket during a routine inspection. An unwelded area on the adjoining plates of the bracket may have caused stress that resulted in the cracking.

What is the potential impact if FAA took no action? Inadequate welding of the undercarriage attach bracket could result in cracks. This failure could lead to loss of control of the airplane.

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 Eagle Aircraft Sdn. Bhd. Model Eagle 150B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 22, 2004 (69 FR 62003). The NPRM proposed to require you to inspect the port and starboard undercarriage attach bracket for unwelded areas and replace the attach bracket if unwelded areas are found.

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 minor editorial corrections. We have determined that these 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 13 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
.5 work hours × $65 per hour = $32.50	N/A	$32.50	$422.50

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

Labor cost	Parts cost	Total cost per airplane
1 work hour × $65 per hour = $65	If the attach bracket requires replacement, Eagle Aircraft has agreed to provide the parts without cost.	$65

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

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 ''Docket No. FAA–2004–19222; Directorate Identifier 2004–CE–29–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:

2004–26–01 Eagle Aircraft (Malaysia) SDN. BHD.: Amendment 39–13912; Docket No. FAA–2004–19222; Directorate Identifier 2004–CE–29–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on January 31, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model Eagle 150B airplane, serial numbers 016 through 044, M1001 through M1003, and M1005, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of unwelded areas on the undercarriage attach bracket. The actions specified in this AD are intended to detect and correct inadequate welding of the undercarriage, which could result in cracks. This failure could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect the port and starboard undercarriage attach bracket for unwelded areas.	Within 50 hours time-in-service after January 31, 2005 (the effective date of this AD).	Follow Eagle Aircraft Alert Service Bulletin SB 1123, dated August 8, 2004.
(2) If unwelded areas are found:		

Actions	Compliance	Procedures
(i) Contact the manufacturer for replacement parts at mailing address Eagle Aircraft, P.O. Box 1028, Pejabat Pos Besar, Melaka, Malaysia 75150; telephone: (606) 317–4105, facsimile: (606) 317–7213;		
(ii) Install the replacement parts.	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Follow Eagle Aircraft Alert Service Bulletin SB 1123, dated August 8, 2004.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Rm 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4149.

Is There Other Information That Relates to This Subject?

(g) DCA CAM AD 001–08–2004, dated August 12, 2004, also addresses the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Eagle Aircraft Alert Service Bulletin SB 1123, dated August 8, 2004. 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. To get a copy of this service information, contact Eagle Aircraft, P.O. Box 1028, Pejabat Pos Besar, Melaka, Malaysia, 75150; *telephone: 011 606 317 4105; facsimile: 011 606 317 7213.* To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19222.

Issued in Kansas City, Missouri, on December 13, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27814 Filed 12–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–97–AD; Amendment 39–13909; AD 2004–25–21]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model EMB–135 and –145 series airplanes. This AD requires modification of the pitch trim system, which includes replacing certain components of the system with new or serviceable components, and upgrading certain software to a newer version. This action is necessary to prevent the temporary loss of the pitch trim command, which could result in reduced controllability of the airplane and consequent injury to the flightcrew and passengers. This action is intended to address the identified unsafe condition.

DATES: Effective January 26, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 26, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), PO Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. 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 National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

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 certain Model EMB–135 and –145 series airplanes was published in the **Federal Register** on February 6, 2004 (69 FR 5759). That action proposed to require modification of the pitch trim system, which includes replacing certain components of the system with new or serviceable components, and upgrading certain software to a newer version.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Include New Revision of Service Bulletin 145–31–0042

One commenter requests that we use EMBRAER Service Bulletin 145–31–0042, Revision 01, dated January 7, 2004, as the appropriate source of service information for replacing certain integrated computers (IC) in paragraph (b)(4) of the proposed AD. The commenter states that the ICs in this service bulletin are upgrades, and classified as optional replacements for the IC–600 computers referenced in EMBRAER Service Bulletin 145–31–0033, Revision 03, dated August 25, 2003, which is the appropriate source of service information for replacing certain IC–600 computers per paragraph (b)(4) of the proposed AD.

We partially agree with the commenter's request. We agree that EMBRAER Service Bulletin 145–31–0042, Revision 01, may be used as an optional source of service information for doing the actions in paragraph (b)(4)

of the AD. Additionally, the manufacturer has also issued Revision 02, dated June 23, 2004, and it may also be used as an optional source of service information. Since these revisions are not the only source of appropriate service information, operators may still choose to do the replacement in accordance with the service information in the proposed AD. Therefore, we have revised paragraph (b)(4) of this final rule to include EMBRAER Service Bulletin 145–31–0042, Revision 01 and Revision 02, as sources of service information for operators of airplanes listed in that service bulletin to choose as an optional way to replace the IC–600 computers as proposed in paragraph (b)(4). This optional replacement includes reidentifying IC–600 #1 and IC–600 #2, and loading a new configuration file to the IC–600 #1 and IC–600 #2 configuration modules.

EMBRAER Service Bulletin 145–31–0042 references Honeywell Service Bulletin 7017000–22–6102, dated November 25, 2003, as an additional source of service information for accomplishing the upgrade and re-identification. EMBRAER Service Bulletin 145–31–0042 also contains other procedures that are not applicable to the IC–600 upgrade, but these actions are not required by this final rule.

EMBRAER Service Bulletin 145–31–0042 specifies that the following service bulletins must be accomplished previously, as applicable, on the airplanes listed in these service bulletins:

- EMBRAER Service Bulletin 145–31–0020, Change 03, dated July 30, 2002, which contains procedures for replacing the IC–600 #1 and IC–600 #2, and the data acquisition unit (DAU); and for upgrading the engine indicating and crew alerting system (EICAS) to version 17.
- EMBRAER Service Bulletin 145–25–0210, dated March 30, 2001, which describes procedures for removing and/or replacing certain placards in the cockpit. These placards are related to the EICAS.
- EMBRAER Service Bulletin 145–45–0003, dated July 5, 2000, which describes procedures for modifying and re-identifying the central maintenance computer (CMC). This service bulletin refers to Vibro-Meter Service Bulletin 145–45–0503, dated March 20, 2000, as an additional source of service information for modifying and re-identifying the CMC. The Vibro-Meter service bulletin is included with EMBRAER Service Bulletin 145–45–0003.

Request To Include New Revision of Service Bulletin 145LEG–27–0002

Another commenter requests that we refer to EMBRAER Service Bulletin 145LEG–27–0002, Revision 01, dated April 15, 2003, as the appropriate source of service information for accomplishing the actions in paragraphs (b)(1) and (b)(7) of the proposed AD on Model EMB–135BJ series airplanes. The commenter advises that this is the latest revision of the service bulletin with the most current information.

We agree with the commenter. The new revision of the service bulletin identifies two new and improved horizontal stabilizer control units (HSCU), and reduces the number of airplanes to which this service bulletin applies. We have revised the applicability section, paragraphs (b)(1) and (b)(7), and Table 1 of the final rule to include references to EMBRAER Service Bulletin 145LEG–27–0002, Revision 01. We have also revised Table 2 of the final rule to include a reference to the original issue of EMBRAER Service Bulletin 145LEG–27–0002, dated February 5, 2003. EMBRAER Service Bulletin 145LEG–27–0002 is applicable to Model EMB–135BJ series airplanes, and describes procedures for replacing the HSCU with a new unit having improved features. This service bulletin also describes procedures for connecting the HSCU and the DAU (including the replacement of the pitch trim system circuit breakers with new circuit breakers sized for the new system load capacity, as applicable).

Request To Extend Compliance Time

One commenter, an airplane operator, requests that the compliance time for accomplishing the seven actions in paragraph (b) of the proposed AD be extended to better accommodate the commenter's existing maintenance program. The compliance time, as proposed, is: ''Within 18 months or 5,000 flight hours after the effective date of this AD, whichever occurs first.'' The commenter requests that the statement be revised to say, ''Within 18 months or 5,000 flight hours after the effective date of this AD, whichever occurs later,'' or, ''Within 36 months or 5,000 flight hours after the effective date of this AD, whichever occurs first.'' The commenter states that 5,000 flight hours work better with its existing maintenance program, and that 36 months is approximately equivalent to 5,000 flight hours for its operation. The commenter requests the extension in order to comply with the requirements of the proposed AD in a smooth and effective manner, and to reduce the time and effort to the commenter and the FAA in requesting and addressing alternative methods of compliance (AMOCs).

We do not agree with the commenter's request to extend the compliance time. The commenter provides no technical justification that extending the compliance time will still maintain an appropriate level of safety. In developing an appropriate compliance time for this proposed AD, we considered safety issues as well as the recommendations of the manufacturer and the Departmento de Aviacao Civil, (which is the airworthiness authority for Brazil), the availability of necessary parts, and the practical aspects of accomplishing the required actions within an interval of time that corresponds to the normal maintenance schedules of most affected operators. We do not find it necessary to change this proposal in this regard; however, the commenter still may apply for approval of an AMOC to extend the compliance time.

Request To Shorten Compliance Time

Another commenter supports the proposal and requests that the compliance time for accomplishing the proposed actions be shortened substantially. The commenter states that the unsafe condition is severe enough to warrant a more immediate compliance time. In addition, the commenter understands that the parts necessary to complete the modification are readily available and, therefore, the parts should be available to accomplish the proposed actions more quickly.

We do not agree that the unsafe condition is severe enough to justify shortening the compliance time substantially. The proposed compliance time was determined to be appropriate in consideration of the safety implications, the average utilization rate of the affected fleet, the practical aspects of modifications during regular maintenance periods, and the availability of required modification parts. We do agree with the commenter that parts are available to accomplish the actions in the allotted time in the original NPRM. We have not revised the proposal to shorten the compliance time.

Request To Remove ''Interim Action''

Another commenter, the airplane manufacturer, requests that we remove the section of the NPRM that describes this proposal as ''interim action.'' The commenter states that the corrective action in the proposal completely addresses the specific unsafe conditions identified during the development of the Brazilian airworthiness directive

and the FAA NPRM. In addition, the commenter states that recent pitch trim failures induced by airspeed miscompares will be addressed by a new HSCU that is under development. Therefore, the commenter believes that it is not appropriate to label this proposal as ''interim action.''

We agree that the NPRM was issued to correct the stated known unsafe condition. In stating that the proposal is ''interim action,'' we are advising the public that rulemaking on this subject may be issued in the future. This additional rulemaking could include a new HSCU that is under development. We have not changed the proposal to remove the reference to ''interim action.''

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. 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 365 airplanes of U.S. registry affected by this AD.

For all affected airplanes, we estimate that it will take approximately 1 work hour per airplane to replace the HSCU, and that the average labor rate is $65 per work hour. The manufacturer will provide replacement parts at no cost. Based on these figures, the cost impact of this replacement on U.S. operators is estimated to be $23,725, or $65 per airplane.

For airplanes subject to EMBRAER Service Bulletin 145–27–0091, we estimate that it will take approximately 6 work hours per airplane to replace the horizontal stabilizer actuator, and that the average labor rate is $65 per work hour. The manufacturer will provide replacement parts at no cost. Based on these figures, the cost impact of this replacement is estimated to be $390 per airplane.

For airplanes subject to EMBRAER Service Bulletin 145–31–0028, we estimate that it will take approximately 2 work hours per airplane to replace the aural warning unit, and that the average labor rate is $65 per work hour. Required parts will cost approximately $1,100 per airplane. Based on these figures, the cost impact of this replacement is estimated to be $1,230 per airplane.

For airplanes subject to EMBRAER Service Bulletin 145LEG–31–0001 or 145–31–0033; or on which the optional action in EMBRAER Service Bulletin 145–31–0042 is done, we estimate that it will take between 1 and 6 work hours per airplane to install the new EICAS/electronic flight information system, and that the average labor rate is $65 per work hour. Required parts will cost between $10 and $25 per airplane. Based on these figures, the cost impact of this action is estimated to be between $75 and $415 per airplane.

For airplanes subject to EMBRAER Service Bulletin 145LEG–27–0004 or 145–27–0096, we estimate that it will take between 4 and 5 work hours per airplane to replace the yoke pitch trim switch, and that the average labor rate is $65 per work hour. Required parts will cost between $1,042 and $1,056 per airplane. Based on these figures, the cost impact of this action is estimated to be between $1,302 and $1,381 per airplane.

For airplanes subject to EMBRAER Service Bulletin 145–27–0073, we estimate that it will take approximately 3 work hours per airplane to replace the pitch trim back-up control switch, and that the average labor rate is $65 per work hour. Required parts will cost approximately $371 per airplane. Based on these figures, the cost impact of this replacement is estimated to be $566 per airplane.

For airplanes subject to the requirements in EMBRAER Service Bulletin 145–27–0083, we estimate that it will take approximately 38 hours to accomplish the modifications, and that the average labor rate is $65 per work hour. Required parts will cost approximately $448. Based on these figures, the cost impact of these modifications is estimated to be $2,918 per airplane.

For airplanes subject to the requirements in EMBRAER Service Bulletin 145–31–0020, we estimate that it will take between 9 and 56 hours to accomplish the proposed upgrade, and that the average labor rate is $65 per work hour. Required parts will cost between $3 and $5,100. Based on these figures, the cost impact of this action is estimated to be approximately between $588 and $8,740 per airplane.

For all affected airplanes, we estimate that it will take between 1 and 3 hours per airplane to accomplish the connection between the HSCU and the DAU specified in EMBRAER Service Bulletin 145LEB–27–0002, and that the average labor rate is $65 per work hour. Required parts will cost between $3 and $52 per airplane. Based on these figures, the cost impact of this action is estimated to be between $24,820 and $90,155, or between $68 and $247 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 adding the following new airworthiness directive:

2004–25–21 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–13909. Docket 2003–NM–97–AD.

Applicability: Model EMB–135 and –145 series airplanes, as listed in EMBRAER Service Bulletin 145LEG–27–0002, Revision 01, dated April 15, 2003; EMBRAER Service Bulletin 145–27–0084, Revision 04, dated October 21, 2003; and EMBRAER Service Bulletin 145–27–0096, Revision 03, dated September 2, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the temporary loss of the pitch trim command, which could result in reduced controllability of the airplane and consequent injury to the flightcrew and passengers, accomplish the following:

Prior or Concurrent Requirements

(a) Prior to the accomplishment of the actions in paragraph (b) of this AD, accomplish any applicable prior or concurrent requirement listed in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes listed in EMBRAER Service Bulletin 145–31–0020, Change 03, dated July 30, 2002, that are equipped with engine indicating and crew alerting system/electronic flight information system (EICAS/EFIS) software version 16.5 or earlier: Upgrade to software version 17 of the EICAS/EFIS software, in accordance with the Accomplishment Instructions of the service bulletin.

(2) For airplanes listed in EMBRAER Service Bulletin 145–27–0083, Change 04, dated November 27, 2002: Install electrical provisions for the new pitch trim system in accordance with the Accomplishment Instructions of the service bulletin.

Modification of the Pitch Trim System: Replacement, Installation, and Connection

(b) Within 18 months or 5,000 flight hours after the effective date of this AD, whichever occurs first, but following any applicable prior or concurrent requirement listed in paragraph (a)(1) or (a)(2) of this AD: Modify the pitch trim system for the affected airplanes by accomplishing the actions in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7), as applicable. Accomplish the actions in the sequence specified in this AD.

(1) For all airplanes: Replace the horizontal stabilizer control unit (HSCU) with a new unit with improved features, and having a new part number, in accordance with paragraph 3.J. (Part I) of EMBRAER Service Bulletin 145LEG–27–0002, Revision 01, dated April 15, 2003 (for Model EMB–135BJ series airplanes); or paragraph 3.J. (Part I) of EMBRAER Service Bulletin 145–27–0084, Revision 04, dated October 21, 2003 (for Model EMB–135ER, –135LR, –135KE, and –135KL series airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP series airplanes); as applicable.

(2) For airplanes listed in EMBRAER Service Bulletin 145–27–0091, Change 02, dated November 27, 2002: Replace the horizontal stabilizer actuator (HSA) with a new HSA having a new part number in accordance with the Accomplishment Instructions of the service bulletin.

(3) For airplanes listed in EMBRAER Service Bulletin 145–31–0028, Change 04, dated December 20, 2002: Replace the aural warning unit (AWU) with an AWU having improved features and a new part number in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: EMBRAER Service Bulletin 145–31–0028 references Grimes Aerospace Company Service Bulletin 80–0694–33–SB01, dated January 1, 2002, as an additional source of service information for accomplishment of the replacement. The Grimes Aerospace service bulletin is included in the EMBRAER service bulletin.

(4) Replace the IC–600 units in accordance with paragraph (b)(4)(i) or (b)(4)(ii) of this AD.

(i) For airplanes listed in EMBRAER Service Bulletin 145LEG–31–0001, dated August 19, 2002 (for Model EMB–135BJ series airplanes); or EMBRAER Service Bulletin 145–31–0033, Revision 03, dated August 25, 2003 (for Model EMB–135ER, –135LR, –135KE, and –135KL series airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP series airplanes): Replace any IC–600 units having part numbers (P/N) 7107000–82407, –82407 MODS–B, –82427, –83407, and –83407 MODS–B, with new IC–600 MOD AB units having P/Ns 7107000–82428 or –83428, as applicable; and install a new software version 18.5 (phase 8.5) of the EICAS/EFIS system for all IC–600 MOD AB hardware. Accomplish the actions in accordance with the Accomplishment Instructions of the applicable service bulletin.

(ii) For airplanes listed in EMBRAER Service Bulletin 145–31–0042, Revision 01, dated January 7, 2004: Replace any IC–600 units having P/N 7107000–82428 and –82438 with new IC–600 units having P/Ns 7017000–82430 or –83430, in accordance with EMBRAER Service Bulletin 145–31–0042, Revision 01, dated January 7, 2004, or Revision 02, dated June 23, 2004. Prior to or concurrently with the actions specified in Revision 01 or 02 of EMBRAER Service Bulletin 145–31–0042, remove or replace certain placards in the cockpit in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–25–0210, dated March 30, 2001; and modify and re-identify the central maintenance computer in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–45–0003, dated July 5, 2000.

Note 2: EMBRAER Service Bulletins 145LEG–31–0001 and 145–31–0033 reference Honeywell Service Bulletin 7017000–22–6089, Revision 003, dated October 16, 2003, as an additional source of service information for accomplishment of the replacement and installation. EMBRAER Service Bulletin 145–31–0042 references Honeywell Service Bulletin 7017000–22–6102, dated November 25, 2003, as an additional source of service information for accomplishment of the replacement with P/Ns 7017000–82430 or –83430.

(5) For airplanes listed in EMBRAER Service Bulletin 145LEG–27–0004, dated January 21, 2003 (for Model EMB–135BJ series airplanes); or EMBRAER Service Bulletin 145–27–0096, Revision 03, dated September 2, 2003 (for Model EMB–135ER, –135LR, –135KE, and –135KL series airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP series airplanes): Replace the control yoke pitch trim switch with a new switch having a new part number; and replace the placard around the switch knob, as applicable, with a new placard having a new part number in accordance with the Accomplishment Instructions of the applicable service bulletin.

(6) For airplanes listed in EMBRAER Service Bulletin 145–27–0073, Change 02, dated February 26, 2002: Replace the pitch trim back-up control switch with a new switch having a new part number (including reidentifying the trim control panel) in accordance with the Accomplishment Instructions of the service bulletin.

(7) For all airplanes: Connect the HSCU and the data acquisition unit (DAU) (including the replacement of the pitch trim system circuit breakers with new circuit breakers sized for the new system load capacity, as applicable) in accordance with paragraph 3.K. (Part II) of EMBRAER Service Bulletin 145LEG–27–0002, Revision 01, dated April 15, 2003 (for Model EMB–135BJ series airplanes); or paragraphs 3.K., 3.L., 3.M., and 3.N. (Parts II, III, IV, and V) of EMBRAER Service Bulletin 145–27–0084, Revision 04, dated October 21, 2003 (for Model EMB–135ER, –135LR, –135KE, and –135KL series airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP series airplanes).

Parts Installation

(c) As of the effective date of this AD, no person may install, on any airplane, a part unless it has been modified in accordance with the applicable paragraph of the affected service bulletins listed in Table 1 of this AD.

TABLE 1.—PARTS INSTALLATION PARAGRAPHS

EMBRAER service bulletin	Parts installation paragraph
145–27–0084, Revision 04, dated October 21, 2003	1.C.(1)(a).
145LEG–27–0002, Revision 01, dated April 15, 2003	1.C.(1)(a).
145–27–0091, Change 02, dated November 27, 2002	1.C.(1)(a).
145–31–0028, Change 04, dated December 20, 2002	1.C.(a).
145–31–0033, Revision 03, dated August 25, 2003	1.C.(1).

Actions Accomplished Previously in Accordance With Certain Service Bulletins

(d) Actions accomplished before the effective date of this AD in accordance with the service bulletins listed in Table 2 of this AD are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 2.—PREVIOUS ISSUES OF SERVICE BULLETINS

EMBRAER service bulletin	Change/revision level	Date
145–27–0083	Original	October 4, 2001.
145–27–0083	01	March 15, 2002.
145–27–0083	02	April 11, 2002.
145–27–0083	03	July 16, 2002.
145–27–0084	01	December 20, 2002.
145–27–0084	02	February 25, 2003.
145–27–0084	03	July 15, 2003.
145–27–0096	01	April 7, 2003.
145–27–0096	02	July 1, 2003.
145–31–0028	Original	December 13, 2001.
145–31–0028	01	January 22, 2002.
145–31–0028	02	April 2, 2002.
145–31–0028	03	August 22, 2002.
145–31–0033	02	April 17, 2003.
145LEG–27–0002	Original	February 5, 2003.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with the service bulletins in Table 3 of this AD.

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

EMBRAER service bulletin	Page No.	Change/revision level	Date
145–25–0210	1–12	Original	March 30, 2001.
145–27–0073	1, 2	02	February 26, 2002.
	3, 4	01	August 29, 2000.
	5–9	Original	June 30, 2000.
145–27–0083	1, 2	04	November 27, 2002.
	3–8, 15–30, 33–54	01	March 15, 2002.
	9–12	03	July 16, 2002.
	13, 14, 31, 32	02	April 11, 2002.
145–27–0084	1–4, 6, 11, 12, 15	04	October 21, 2003.
	5, 7–10, 13, 14, 16–40	03	July 15, 2003.
145–27–0091	1, 2	02	November 27, 2002.
	3–11	Original	February 8, 2002.
145–27–0096	1–2	03	September 2, 2003.
	3, 5–8, 12, 14, 15, 17–22	Original	December 18, 2002.
	4, 13, 16	02	July 1, 2003.
	9–11	01	April 7, 2003.
145–31–0020	1–81	03	July 30, 2002.
145–31–0028	1–17	04	December 20, 2002.
145–31–0033	1–5, 9–11, 15, 16, 21–24, 56–58	03	August 25, 2003.
	6–8, 12–14, 17–20, 25-55, 59	02	April 17, 2003.
145–31–0042	1–114	01	January 7, 2004.
145–31–0042	1–10, 21–24, 99, 100	02	June 23, 2004.
	11–20, 25–98, 101–114	01	January 7, 2004.
145LEG–27–0002	1, 5	01	April 15, 2003.
	2–4, 6–15	Original	February 5, 2003.
145–45–0003	1–15	Original	July 5, 2000.
145LEG–27–0004	1–16	Original	January 21, 2003.

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE—Continued

EMBRAER service bulletin	Page No.	Change/revision level	Date
145LEG–31–0001	1–12	Original	August 19, 2002.

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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), PO Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2003–03–01, dated April 3, 2003.

Effective Date

(g) This amendment becomes effective on January 26, 2005.

Issued in Renton, Washington, on December 6, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27509 Filed 12–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–67–AD; Amendment 39–13914; AD 2004–26–02]

RIN 2120–AA64

Airworthiness Directives; GE Aircraft Engines (GE) CF34–3A, CF34–3A2, CF34–1A, CF34–3A1, CF34–3B, and CF34–3B1 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for GE CF34–3A, CF34–3A2, CF34–1A, CF34–3A1, CF34–3B, and CF34–3B1 series turbofan engines. This AD requires removal from service of certain high pressure compressor (HPC) forward spools, at the first piece-part level exposure after 6,000 cycles since new (CSN); but not later than 20,000 CSN for CF34–3B engines, and not later than 22,000 CSN for CF34–3A, CF34–3A2, CF34–1A, CF34–3A1, and CF34–3B1 engines. This AD results from an updated low-cycle fatigue (LCF) analysis performed on certain HPC forward spools. We are issuing this AD to prevent LCF cracks and failure of the HPC forward spool, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective January 26, 2005.

ADDRESSES: You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7757; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF34–3A, CF34–3A2, CF34–1A, CF34–3A1, CF34–3B, and CF34–3B1 series turbofan engines. We published the proposed AD in the **Federal Register** on May 18, 2004 (69 FR 28093). That action proposed to require removal from service of certain HPC forward spools, at the first piece-part level exposure after 6,000 CSN, but not later than 20,000 CSN for CF34–3B engines and not later than 22,000 CSN for CF34–3A, CF34–3A2, CF34–1A, CF34–3A1, and CF34–3B1 engines. That action results from GE updating the LCF analysis for these HPC forward spools.

Examining the AD Docket

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

Comments

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

Request for Definition Clarification of Serviceable HPC Forward Spool

One commenter requests that we clarify the definition of a serviceable HPC forward spool. The commenter states that a clarification would ensure that operators are not led to believe that HPC forward spools installed in their engines are not serviceable based on the AD's definition of a serviceable HPC forward spool.

We partially agree. As written in the proposal, the compliance requires replacing certain HPC forward spools with a serviceable HPC forward spool at next piece-part level exposure, and then defines what a serviceable HPC forward spool is and what it is not. We agree that this definition could cause confusion. We do not agree that a clarification to the existing definition is the best approach to ensure that the AD is understandable. For clarification, we have rewritten the compliance in the final rule to require operators to remove certain specific spools from service. We have also added a paragraph in the final rule to clarify that after the effective date of this AD, do not install any HPC forward spool, P/N 6078T56P03. We have also clarified the requirement that after the effective date of this AD, do not install any HPC forward spool, P/N 6078T56P04, with more than 0 CSN. We have also deleted from the final rule the definition which described serviceable spools.

Conclusion

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

Costs of Compliance

There are about 2,681 GE CF34–3A, CF34–3A2, CF34–1A, CF34–3B and CF34–3B1 series turbofan engines of the affected design in the worldwide fleet. We estimate that 1,826 engines installed on airplanes of U.S. registry would be affected by this AD. We also estimate that 59% of the replacements will not be done at piece-part exposure, and will require approximately 650 work hours per engine to perform the actions, and that the average labor rate is $65 per work hour. Required parts will cost about $16,000 per engine (a prorated cost of the unused spool life to the original life). Based on these figures, we estimate the total cost of the AD to U.S. operators to be $74,420,000.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–67–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–26–02 GE Aircraft Engines (GE): Amendment 39–13914. Docket No. 2003–NE–67–AD.

Effective Date

(a) This AD becomes effective January 26, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to GE CF34–3A, CF34–3A2, CF34–1A, CF34–3A1, CF34–3B, and CF34–3B1 series turbofan engines with high pressure compressor (HPC) forward spool, part number (P/N) 6078T56P03 or 6078T56P04, installed. These engines are installed on, but not limited to, Bombardier series Business Jet Model CL–600–2A12 (CL–601), Bombardier series Business Jet Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604), and Bombardier series Regional Jet Model CL–600–2B19 (Regional Jet Series 100 and 440) airplanes.

Unsafe Condition

(d) This AD results from an updated low-cycle fatigue (LCF) analysis performed on HPC forward spools, P/Ns 6078T56P03 and 6078T56P04, by GE. We are issuing this AD to prevent LCF cracks and failure of the HPC forward spool, which could result in an uncontained engine failure and damage to the airplane.

Compliance

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

HPC Spool Replacement

(f) For CF34–3B engines, remove from service HPC forward spools, P/Ns 6078T56P03 and 6078T56P04 at the first piece-part exposure after 6,000 cycles-since-new (CSN), but no later than 20,000 CSN.

(g) For CF34–3A, CF34–3A2, CF34–1A, CF34–3A1, and CF34–3B1 engines, remove from service HPC forward spools, P/Ns 6078T56P03 and 6078T56P04 at the first piece-part exposure after 6,000 CSN, but no later than 22,000 CSN.

(h) After the effective date of this AD:

(1) Do not install any HPC forward spool, P/N 6078T56P03.

(2) Do not install any HPC forward spool, P/N 6078T56P04, with more than 0 CSN.

Definition

(i) For the purpose of this AD, the definition of piece-part exposure for the HPC forward spool is when the spool is completely disassembled.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(k) None.

Related Information

(l) None.

Issued in Burlington, Massachusetts, on December 15, 2004.

Francis A. Favara,

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

[FR Doc. 04–27948 Filed 12–21–04; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 1

Federal Civil Penalties Inflation Adjustment Act

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule amendments.

SUMMARY: The FTC is making adjustments to certain civil penalty amounts within its jurisdiction, as required by law. These adjustments reflect inflation since the penalty amounts were last adjusted.

EFFECTIVE DATE: January 21, 2005.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2447, *atang@ftc.gov*.

SUPPLEMENTARY INFORMATION: As required at least once every four years by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–134, § 31001, 110 Stat. 1321–373, the FTC is making certain regulatory adjustments to civil penalty amounts within its jurisdiction. The civil penalty amounts adjusted by the FTC are set forth in Commission Rule 1.98, 16 CFR 1.98. The FTC published the original adjustments in 1996. *See* 61 FR 54548 (Oct. 21, 1996), 55840 (Oct. 29, 1996). No adjustments were warranted under the law in 2000. See 65 FR 69665 (Nov. 20, 2000).

Adjustments are based on the increase in the Consumer Price Index (CPI) between June of the year in which the prior adjustment was made and June of the year preceding the year in which the adjustment is being made. Thus, for the relevant period between June 1996 and

June 2003, the CPI has increased from 156.7 to 183.7, or 17.2%. Applying this percentage increase to currently adjusted civil penalty amounts, the FTC is adjusting civil penalty amounts currently set at $5,500 under two statutes: Clayton Act § 11(*l*), for violations of cease-and-desist orders issued under § 11(b) of that Act; and § 525(a) of the Energy Policy and Conservation Act, for recycled oil labeling violations. Each will be adjusted to $6,500, in accordance with the rounding rules of the adjustment statute, and the FTC is amending paragraphs (b) and (*l*) of Rule 1.98 to reflect these adjustments, which will become effective thirty days following publication. The FTC is thus deleting the second sentence of the Rule's introductory text, regarding the prior effective date, which is potentially confusing and, in any event, superfluous.

The statute's rounding rules do not authorize the FTC at this time to increase the amounts of the other civil penalties within its jurisdiction. Increases in civil penalties of greater than $10,000 and less than or equal to $100,000 must be in $5,000 increments, and the increase in the CPI was not high enough to round up any adjustment to $5,000. Likewise, increases in civil penalties of greater than $100 and less than or equal to $1,000 must be in $100 increments, and the increase in the CPI was not high enough to round up any adjustment to $100. Accordingly, all other paragraphs of Rule 1.98 remain unchanged.

Likewise, the FTC is not adding any new adjustments to the rule for other statutory civil penalty amounts that have been enacted since the last adjustments, such as § 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s, or § 1115(a) of the Medicare Act, Pub. L. 108–173. These authorities are too recent to warrant adjustments for inflation.

In light of the ministerial nature of the adjustments, the public comment requirements of the Administrative Procedure Act (APA) do not apply to this action. 5 U.S.C. 553(b)(B) (exception when public comment is unnecessary). For this reason, the requirements of the Regulatory Flexibility Act also do not apply. 5 U.S.C. 603, 604 (no regulatory flexibility analyses required where the APA does not require public comment).

List of Subjects for 16 CFR Part 1

Administrative practice and procedure, Penalties, Trade practices.

■ For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapter A, of the Code of Federal Regulations, as follows:

PART 1—GENERAL PROCEDURES

Subpart L—Civil Penalty Adjustments Under the Federal Civil Penalties Inflation Adjustment Act of 1990 as Amended by the Debt Collection Improvement Act of 1996

■ 1. The authority citation for subpart L continues to read as follows:

Authority: 28 U.S.C. 2461 note.

■ 2. Revise the introductory text of § 1.98 and paragraphs (b) and (*l*) to read as follows:

§ 1.98 Adjustment of civil monetary penalty amounts.

This section makes inflation adjustments in the dollar amounts of civil monetary penalties within the Commission's jurisdiction.

* * * * *

(b) Section 11(l) of the Clayton Act, 15 U.S.C. 21(*l*)—$6,500;

* * * * *

(*l*) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively—$6,500 and $11,000, respectively; and

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–27980 Filed 12–21–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9170]

RIN 1545–BD99

Section 1374 Effective Dates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: These temporary regulations provide guidance concerning the applicability of section 1374 to S corporations that acquire assets in carryover basis transactions from C corporations on or after December 27, 1994, and to certain corporations that terminate S corporation status and later elect again to become S corporations. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 22, 2004.

Applicability Dates: Section 1.1374–8T applies to any transaction described in section 1374(d)(8) that occurs on or after December 27, 1994. Section 1.1374–10T applies for taxable years beginning after December 22, 2004. The applicability of § 1.1374(d)–8T and § 1.1374(d)–10T will expire on or before December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Stephen R. Cleary; (202) 622–7750, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

1. Section 1374 and Its Effective Dates

Under the *General Utilities* doctrine, see *General Utilities & Operating Co.* v. *Helvering,* 296 U.S. 200 (1935), a C corporation, in certain cases, could distribute appreciated assets to its shareholders or sell appreciated assets without recognizing gain. Section 1374 of the Internal Revenue Code of 1986 (Code), amended in the Tax Reform Act of 1986 (TRA) as part of the repeal of the *General Utilities* doctrine, prevents a corporation from circumventing *General Utilities* repeal by converting to S corporation status before distributing appreciated assets to its shareholders or selling appreciated assets.

Section 1374 generally imposes a corporate level tax on an S corporation's net recognized built-in gain attributable to assets that it held on the date it converted from a C corporation to an S corporation. This tax is imposed on built-in gain recognized during the 10-year period beginning on the first day the corporation is an S corporation. Section 1374(d)(8), which was added by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), imposes a corporate level tax on an S corporation's net recognized built-in gain attributable to assets that it acquired in a carryover basis transaction from a C corporation for the 10-year recognition period beginning on the day of the carryover basis transaction.

Under section 1374(d)(9), which also was added by TAMRA, any reference in section 1374 to the first taxable year the corporation was an S corporation is a reference to the first taxable year it was an S corporation pursuant to its most recent S corporation election under section 1362.

Section 1019 of TAMRA states that, except as otherwise provided, any amendments made by TAMRA are effective as if included in the provision of TRA to which such amendment relates.

The current version of section 1374 replaced a prior version of section 1374 that generally only taxed income or gain recognized within the three year period following the date the corporation converted from C to S status. Section 633 of TRA, as amended by TAMRA, provides the effective dates of the current version of section 1374. Specifically, section 633(b)(1) of TRA, as amended by TAMRA, provides that the amendments to section 1374 apply to taxable years beginning after December 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after December 31, 1986. Section 633(d)(8) of TRA, as amended by TAMRA, provides a transition rule granting a limited postponement of the above effective date for ''qualified corporations'', which are certain small corporations as defined in that section. Under the transition rule, if a C corporation that is a qualified corporation makes an election to be an S corporation under section 1362 before January 1, 1989, then it is subject to former section 1374 for dispositions of long-term capital gain assets and current section 1374 for dispositions of short-term capital gain assets and ordinary income assets, without regard to whether such corporation is completely liquidated.

2. Section 1374(d)(8)

As discussed above, the general effective date of current section 1374, which is contained in section 633(b)(1) of the TRA, as amended by TAMRA, provides that current section 1374 applies to tax years beginning after December 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after December 31, 1986. In TAMRA, Congress added subsection (d)(8) to section 1374, and provided that the provision was effective as if included in TRA.

Section 1.1374–8 provides regulations interpreting section 1374(d)(8). Example 1 of § 1.1374–8(d) applies section 1374(d)(8) to a merger of a C corporation into an S corporation that elected S status before the effective date of TRA amendments, as further amended by TAMRA, to section 1374. Section 1.1374–10(a) provides that § 1.1374–8 applies for taxable years ending on or after December 27, 1994, but only in cases where the corporation's tax return is filed pursuant to an S election *or* a section 1374(d)(8) transaction occurring after December 27, 1994 (emphasis added).

Despite the provisions of § 1.1374–8 and the effective date provisions of § 1.1374–10, the IRS understands that some taxpayers contend that section 1374(d)(8) does not apply to carryover basis transfers from S corporations to S corporations that filed S elections before January 1, 1987, because the provisions in TAMRA that added section 1374(d)(8) indicated that the amendment was effective only if the return for the taxable year was filed pursuant to an S election made after December 31, 1986.

Section 337(d)(1) authorizes the Secretary to prescribe regulations to prevent the circumvention of the purposes of the repeal of the *General Utilities* doctrine through the use of any provision of law or regulations. The Treasury Department and the IRS believe that these temporary regulations are necessary to implement *General Utilities* repeal to prevent the use of corporations with pre-1987 S elections as a method for C corporations to transfer appreciated assets out of C corporation solution without gain recognition. Accordingly, these regulations confirm that section 1374(d)(8) applies to any transaction described in that section that occurs on or after December 27, 1994, the effective date of § 1.1374–8, regardless of the date of the S corporation's election under section 1362.

3. Revocation and Re-Election of S Corporation Status

As discussed above, section 633(d)(8) of TRA, as amended by TAMRA, provides a transition rule granting a limited postponement of the general effective date of current section 1374 for qualified corporations that make an election to be an S corporation under section 1362 before January 1, 1989. In *Colorado Gas Compression, Inc.* v. *Commissioner,* 366 F.3d 863 (10th Cir. 2004), *reversing and remanding* 116 T.C. 1 (2001), a qualified corporation eligible for the special transition rule elected S corporation status on February 1, 1988 (before the extended effective date of January 1, 1989), revoked S status on December 1, 1989, and subsequently re-elected S status effective on January 1, 1994. During the years 1994 through 1996, the taxpayer sold assets. The Tax Court held that such sales were subject to current section 1374, and that the transition rule did not preclude the application of current section 1374 because the taxpayer's most recent S election was made after 1989. The Tax Court concluded that section 1374(d)(9) requires that the 1994 election, the taxpayer's most recent election, be the election considered for effective date purposes. The Tenth Circuit reversed the Tax Court, holding that, because the 1988 election was made before the extended effective date, the corporation was exempt from current section 1374 despite the intervening revocation of S status.

The Treasury Department and the IRS believe that the Tenth Circuit's holding is inconsistent with the legislative history and underlying policy of section 663 of TRA, as amended by TAMRA, and believe the Tax Court was correct in holding that a corporation's most recent S election must have been made before the deadline of the transition rule (*i.e.,* before January 1, 1989) in order for the corporation to be entitled to the benefit of the transition rule. As indicated above, section 337(d)(1) authorizes the Secretary to prescribe regulations to prevent the circumvention of the purposes of the repeal of the *General Utilities* doctrine through the use of any provision of law or regulations. The Treasury Department and the IRS believe that these temporary regulations are necessary to implement *General Utilities* repeal to prevent avoidance of corporate level tax on appreciation in the assets of a C corporation attributable to periods after the extended effective date of January 1, 1989. Accordingly, these regulations provide that the transition rule regarding qualified corporations in section 633(d)(8) of TRA, as amended by TAMRA, applies only if the corporation's most recent S election was made before January 1, 1989. Although these regulations apply to built-in gain recognized in taxable years beginning after December 22, 2004, the IRS will continue to assert this position for prior taxable years.

In summary, the temporary regulations provide that (1) section 1374(d)(8) applies to any transaction described in that section that occurs on or after December 27, 1994, regardless of the date of the S corporation's election under section 1362, and (2) for purposes of section 633(d)(8) of TRA, as amended by TAMRA, a corporation's most recent S election, not an earlier election that has been revoked or terminated, determines whether or not it is subject to current section 1374.

Special Analyses

It has been determined that this temporary regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It

also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to § 1.1374–8T(a)(2) of these regulations. With respect to § 1.1374–10T(c) of these regulations, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that it would be contrary to the public interest to issue the regulations with notice and public procedure and, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to dispense with a delayed effective date. The regulations are necessary to provide immediate guidance to taxpayers with respect to the application of the transition rule regarding qualified corporations in section 633(d)(8) of TRA, as amended by TAMRA, and, accordingly, with respect to the application of current section 1374 to asset dispositions which occur during taxable years beginning after December 22, 2004. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analysis section of the Notice of Proposed Rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Stephen R. Cleary of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1374–8T also issued under 26 U.S.C. 337(d) and 1374(e). * * *

Section 1.1374–10T also issued under 26 U.S.C. 337(d) and 1374(e). * * *

■ **Par. 2.** Section 1.1374–8 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§ 1.1374–8 Section 1374(d)(8) transactions

(a)(1) * * *

(2) (Reserved) For further guidance see § 1.1374–8T(a)(2).

* * * * *

■ **Par. 3.** Section 1.1374–8T is added to read as follows:

§ 1374–8T 1374(d)(8) transactions (temporary)

(a)(1) (Reserved) For further guidance see § 1374–8(a).

(2) Section 1374(d)(8) transaction, as defined in paragraph (a)(1) of this regulation, that occurs on or after December 27, 1994, without regard to the date of the corporation's election to be an S corporation under section 1362.

(b) through (d) (Reserved) For further guidance see § 1.1374–8(b) through (d).

■ **Par. 4.** Section 1.1374–10 is amended by adding paragraph (c) to read as follows:

§ 1.1374–10 Effective date and additional rules

* * * * *

(c) (Reserved) For further guidance see § 1.1374–10T(c).

■ **Par. 5.** Section 1.1374–10T is added to read as follows:

§ 1.1374–10T Effective date and additional rules (temporary)

(a) through (b)(4) (Reserved) For further guidance see § 1.1374–10(a) through (b)(4).

(c) *Revocation and re-election of S corporation status*—(1) *In general.* For purposes of section 633(d)(8) of the Tax Reform Act of 1986, as amended, any reference to an election to be an S corporation under section 1362 shall be treated as a reference to the corporation's most recent election to be an S corporation under section 1362. This paragraph (c) applies for taxable years beginning after December 22, 2004 without regard to the date of the corporation's most recent election to be an S corporation under section 1362.

(2) *Example.* The following example illustrates the rules of this paragraph(c):

Example. (i) On February 1, 1988, X, a C corporation that is a qualified corporation under section 633(d) of the Tax Reform Act of 1986, as amended, elects to be an S corporation under section 1362. On December 1, 1989, X revokes its S status and becomes a C corporation. On January 1, 2004, X again elects to be an S corporation under section 1362. X disposes of assets in 2006, 2007, and 2008, recognizing gain.

(ii) X is not eligible for treatment under the Transition rule of section 633(d)(8) of the Tax Reform Act of 1986, as amended, with respect to these assets. Accordingly, X is subject to section 1374, as amended by the Tax Reform Act of 1986 and TAMRA, and the 10-year recognition period begins January 1, 2004.

(iii) To the extent the gain that X recognizes on the assest sales in 2006, 2007, and 2008 reflects built-in gain inherent in such assets in X's hands on January 1, 2004, such gain is subject to tax under section 1374 as amended by the Tax Reform Act of 1986 and TAMRA.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 15, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–28013 Filed 12–21–04; 8:45 am]

BILLING CODE 4820–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9168]

RIN 1545–BC13

Optional 10-Year Writeoff of Certain Tax Preferences

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations relating to the optional 10-year writeoff of certain tax preference items under section 59(e) of the Internal Revenue Code (Code). The final regulations affect taxpayers who utilize section 59(e) for the optional 10-year writeoff of certain tax preferences. These final regulations provide guidance on the time and manner of making an election under section 59(e). The regulations also provide guidance on revoking an election under section 59(e). The regulations reflect changes to the law made by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Omnibus Budget Reconciliation Act of 1989.

DATES: *Effective Date:* This rule is effective December 22, 2004.

Applicability Date: These regulations apply to a section 59(e) election made for a taxable year ending, or a request to revoke a section 59(e) election submitted, on or after December 22, 2004.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1903. Responses to this collection of

information are required to obtain the benefit of the section 59(e) election.

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

The estimated annual burden per respondent is one hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 under section 59(e) of the Code. Section 59(e)(1) allows taxpayers to elect to deduct any qualified expenditure ratably over a 10-year period (3-year period in the case of circulation expenditures described in section 173) beginning with the taxable year in which the expenditure was made (or, in the case of a qualified expenditure under section 263(c), over the 60-month period beginning with the month in which such expenditure was paid or incurred). Section 59(e)(2) defines *qualified expenditure* as any amount that, but for an election under section 59(e), would have been allowed as a deduction (determined without regard to section 291) for the taxable year in which paid or incurred under section 173 (relating to circulation expenditures), section 174 (relating to research and experimental expenditures), section 263(c) (relating to intangible drilling and development expenditures), section 616(a) (relating to development expenditures), or section 617(a) (relating to mining exploration expenditures).

Section 59(e)(4)(A) states that an election under section 59(e) (section 59(e) election) may be made with respect to any portion of any qualified expenditure. The legislative history of section 59(e) suggests that this allows a section 59(e) election to be made ''dollar for dollar.'' *See* H. R. Rep. 99–426, 99th Cong., 1st Sess. 327 (1985), 1986–3 (Vol. 2) C.B. 1, 327; S. Rep. No. 99–313, 99th Cong., 2d Sess. 539 (1986), 1986–3 (Vol. 3) C.B. 1, 539.

Section 59(e)(4)(B) states that a section 59(e) election may only be revoked with the consent of the Secretary.

Provisions similar to those currently contained in section 59(e) were originally enacted as section 58(i) under the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97–248; 96 Stat. 324). Under section 58(i)(1), the optional 10-year writeoff was available only to individuals. Section 58(i)(5)(C) directed the Secretary to promulgate regulations governing the time and manner for making an election under section 58(i) (section 58(i) election).

Section 5f.0(a)(2)(i)(A) and (B) of the temporary Income Tax Regulations that were promulgated under section 58(i) required that a section 58(i) election be made by the later of the due date (including extensions) of the income tax return for the taxable year for which the election was to be effective, or April 15, 1983. TD 7870, 48 FR 1486. Section 5f.0(a)(3) provided that a section 58(i) election was made by attaching a statement to the income tax return (or amended return) for the taxable year in which the election was made. Section 5f.0 was redesignated as § 301.9100–5T by TD 8435, 57 FR 43893, on October 15, 1992.

Section 59(e) was enacted as part of the Tax Reform Act of 1986 (Public Law 99–514; 100 Stat. 2085) and, unlike section 58(i), is not limited to individuals. While both the Senate Finance Committee Report and the House Ways and Means Committee Report state that the time and manner of the election would be governed by regulations, Congress did not include a provision similar to former section 58(i)(5)(C) directing the Secretary to promulgate regulations governing the time and manner for making a section 59(e) election. *See* H. R. Rep. No. 99–426, 99th Cong., 1st Sess. 327 (1985), 1986–3 (Vol. 2) C.B. 1, 327; S. Rep. No. 99–313, 99th Cong., 2d Sess. 539 (1986), 1986–3 (Vol. 3) C.B. 1, 539.

A notice of proposed rulemaking (REG–124405–03 [69 FR 43367]) was published in the **Federal Register** on July 20, 2004. Two requests for a public hearing were received. A public hearing was held on December 7, 2004. The IRS received written and electronic comments responding to the notice of proposed rulemaking. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Summary of Comments and Explanation of Revisions

Several commentators recommended changes regarding the information taxpayers would be required to submit as part of their section 59(e) election. Specifically, commentators requested that the IRS reconsider § 1.59–1(b)(1)(ii) and (iii) of the proposed regulations, which would require taxpayers to identify (i) the type and amount, for each activity or project, of qualified expenditures identified in section 59(e)(2) the taxpayer elects to deduct ratably over the applicable period described in section 59(e)(1), and (ii) a description of each specific activity or project to which the qualified expenditures relate. The commentators suggest that the majority of taxpayers who incur research and experimentation expenditures under section 174(a) and make a section 59(e) election with respect to such expenditures do not currently maintain records on a project-by-project basis. As a result, the commentators stated that requiring taxpayers to account for their section 59(e) qualified expenditures on a project-by-project basis would be a financial and administrative burden. Some of the commentators also discussed section 1016(a)(20), which provides that proper adjustment in respect of the property shall in all cases be made for amounts allowed as deductions under section 59(e) (relating to optional 10-year writeoff of certain tax preferences). Compliance with section 1016(a)(20) requires that taxpayers be able to account for their section 59(e) expenditures through appropriate basis adjustments for each property, project, or activity.

Sections 1.59–1(b)(1)(ii) and (iii) of the proposed regulations were intended to improve compliance with section 1016(a)(20) by requiring that section 59(e) qualified expenditures be allocated among the properties, projects or activities to which they relate. Comments received regarding this provision indicate that, for taxpayers incurring section 174(a) expenditures, the basis rules of section 1016(a)(20) are only of importance when a project to which a section 59(e) election relates is disposed of, and that it is rare for a research project to be disposed of prior to the full amortization of the allocable section 59(e) qualified expenditures. As such, the commentators argue that the burden of requiring taxpayers to identify on a section 59(e) election the type and amount of qualified expenditures for each activity or project greatly exceeds the potential harm caused by non-compliance with section 1016(a)(20).

Having fully considered all comments received, the final regulations are modified to reflect the comments discussed above. Taxpayers making a section 59(e) election will not be required to identify on the election the type and amount of qualified expenditures for each activity or project nor will they be required to provide a description of each specific activity or project to which the qualified expenditures relate. Instead, taxpayers will be required only to identify the type and amount of qualified expenditures identified in section 59(e)(2) that the taxpayer elects to deduct ratably over the applicable period described in section 59(e)(1). However, taxpayers remain responsible for full compliance with the requirements of section 1016(a)(20). Specifically, taxpayers who allocate their section 59(e) expenditures to reduce the gain otherwise recognized on the disposition of a property, project, or activity must maintain books and records sufficient to support that allocation.

The preamble to the proposed regulations stated that, with respect to an otherwise valid section 59(e) election filed for a taxable year ending prior to the effective date of the final regulations, such election would not be challenged by the IRS merely because the election was made later than the date prescribed by law for filing the taxpayer's original income tax return (including any extensions of time) for the taxable year in which the amortization of the qualified expenditures subject to the section 59(e) election begins. One commentator requested guidance on what the IRS considers an otherwise valid section 59(e) election filed for a tax year ending prior to the effective date of the final regulations. Although the IRS will treat a section 59(e) election prepared in a manner described in the final regulations as sufficient for a tax year ending prior to the effective date of the final regulations, because the final regulations only apply prospectively the final regulations do not provide guidance on what constitutes an otherwise valid section 59(e) election filed for a tax year prior to the effective date of the final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the reporting burden, as discussed earlier in this preamble, is expected to be insignificant. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Eric B. Lee of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

■ **Paragraph 1.** The authority citation for part 1 reads, in part, as follows:

Authority: 26 U.S.C. 7805, * * *

■ **Par. 2.** Section 1.59–1 is added to read as follows:

§ 1.59–1 Optional 10-year writeoff of certain tax preferences.

(a) *In general.* Section 59(e) allows any qualified expenditure to which an election under section 59(e) applies to be deducted ratably over the 10-year period (3-year period in the case of circulation expenditures described in section 173) beginning with the taxable year in which the expenditure was made (or, in the case of intangible drilling and development costs deductible under section 263(c), over the 60-month period beginning with the month in which the expenditure was paid or incurred).

(b) *Election*—(1) *Time and manner of election.* An election under section 59(e) shall only be made by attaching a statement to the taxpayer's income tax return (or amended return) for the taxable year in which the amortization of the qualified expenditures subject to the section 59(e) election begins. The statement must be filed no later than the date prescribed by law for filing the taxpayer's original income tax return (including any extensions of time) for the taxable year in which the amortization of the qualified expenditures subject to the section 59(e) election begins. Additionally, the statement must include the following information—

(i) The taxpayer's name, address, and taxpayer identification number; and

(ii) The type and amount of qualified expenditures identified in section 59(e)(2) that the taxpayer elects to deduct ratably over the applicable period described in section 59(e)(1).

(2) *Elected amount.* A taxpayer may make an election under section 59(e) with respect to any portion of any qualified expenditure paid or incurred by the taxpayer in the taxable year to which the election applies. An election under section 59(e) must be for a specific dollar amount and the amount subject to an election under section 59(e) may not be made by reference to a formula. The amount elected under section 59(e) is properly chargeable to a capital account under section 1016(a)(20), relating to adjustments to basis of property.

(c) *Revocation*—(1) *In general.* An election under section 59(e) may be revoked only with the consent of the Commissioner. Such consent will only be granted in rare and unusual circumstances. The revocation, if granted, will be effective in the first taxable year in which the section 59(e) election was applicable. However, if the period of limitations for the first taxable year the section 59(e) election was applicable has expired, the revocation, if granted, will be effective in the earliest taxable year for which the period of limitations has not expired.

(2) *Time and manner for requesting consent.* A taxpayer requesting the Commissioner's consent to revoke a section 59(e) election must submit the request prior to the end of the taxable year the applicable amortization period described in section 59(e)(1) ends. The application for consent to revoke the election must be submitted to the Internal Revenue Service in the form of a letter ruling request.

(3) *Information to be provided.* A request to revoke a section 59(e) election must contain all of the information necessary to demonstrate the rare and unusual circumstances that would justify granting revocation.

(4) *Treatment of unamortized costs.* The unamortized balance of the

qualified expenditures subject to the revoked section 59(e) election as of the first day of the taxable year the revocation is effective is deductible in the year the revocation is effective (subject to the requirements of any other provision under the Code, regulations, or any other published guidance) and the taxpayer will be required to amend any federal income tax returns affected by the revocation.

(d) *Effective date.* These regulations apply to a section 59(e) election made for a taxable year ending, or a request to revoke a section 59(e) election submitted, on or after December 22, 2004.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 4.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.59–1	1545–1903
* * * * *	

Approved: December 15, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 04–27917 Filed 12–21–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–7852–2]

Availability of Federally-Enforceable State Implementation Plans for All States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Section 110(h) of the Clean Air Act, as amended in 1990 (the ''Act''), requires EPA by November 15, 1995, and every three years thereafter, to assemble the requirements of the Federally-enforceable State Implementation Plans (SIPs) in each State and to publish notice in the **Federal Register** of the availability of such documents. This notice of availability fulfills the three-year requirement of making these SIP compilations for each State available to the public.

EFFECTIVE DATE: December 22, 2004.

ADDRESSES: You may contact the appropriate EPA Regional Office regarding requirements of applicable implementation plans for each State in that region. The list below identifies the appropriate regional office for each state. The SIP compilations are available for public inspection during normal business hours at the appropriate EPA Regional Office. If you want to view these documents, you should make an appointment with the appropriate EPA office and arrange to review the SIP at a mutually agreeable time.

Region 1: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Regional Contact: Donald Cooke (617/918–1668), EPA, Office of Ecosystem Protection (CAQ), Suite 1100, One Congress Street, Boston, MA 02114–2023.

See also: http://www.epa.gov/region1/topics/air/sips.html.

Region 2: New Jersey, New York, Puerto Rico, and Virgin Islands.

Regional Contact: Paul Truchan (212/637–3711), EPA, Air Programs Branch, 290 Broadway, New York, NY 10007–1866.

See also: http://www.epa.gov/region02/air/sip/.

Region 3: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Regional Contact: Harold A. Frankford (215/814–2108), EPA, Office of Air Programs (3AP20), Air Protection Division, 1650 Arch Street, Philadelphia, PA 19103.

See also: http://yosemite.epa.gov/r3/r3sips.nsf/MidAtlanticSIPs?openform.

Region 4: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Regional Contact: Sean Lakeman (404/562–9043), EPA, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, GA 30303.

See also: http://www.epa.gov/region4/air/sips/.

Region 5: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Regional Contacts: Jeremiah Hall (312/353–3503), EPA, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, IL 60604–3507.

See also: http://www.epa.gov/ARD-R5/sips/sips.htm.

Region 6: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Regional Contact: Bill Deese (214/665–7253), EPA, Multimedia Planning and Permitting Division, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2733.

See also: http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm.

Region 7: Iowa, Kansas, Missouri, and Nebraska.

Regional Contact: Evelyn VanGoethem (913–551–7659), EPA, Air, RCRA and Toxics Division, Air Planning and Development Branch, 901 N. 5th Street, Kansas City, KS 66101.

See also: http://www.epa.gov/region07/programs/artd/air/rules/fedapprv.htm.

Region 8: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Regional Contact: Laurie Ostrand (303/312–6437), EPA, Air and Radiation Program, Office of Partnership and Regulatory Assistance, 999 18th Street, Suite 300, Denver, CO 80202–2466.

See also: http://www.epa.gov/region8/air/sip.html.

Region 9: Arizona, California, Hawaii, Nevada, American Samoa, and Guam.

Regional Contact: Julie Rose (415/947–4126), and Cynthia Allen (415/947–4120), EPA, Air Division, Rulemaking Office, AIR–4, 75 Hawthorne Street, San Francisco, CA 94105.

See also: http://www.epa.gov/region9/air/sips/.

Region 10: Alaska, Idaho, Oregon, and Washington.

Regional Contacts: Donna Deneen (206/553–6706) and Debra Suzuki (206) 553–0985), EPA, Office of Air Quality (OAQ 107), 1200 6th Avenue, Seattle, WA 98101.

See also: http://www.epa.gov/r10earth/sips.htm.

FOR FURTHER INFORMATION CONTACT: Donald Cooke, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1668, fax number (617) 918–0668, e-mail *cooke.donald@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Availability of SIP Compilations
What Is the Basis for This Document
What Is Being Made Available Under This Document

What Are the Documents and Materials Associated With the SIP
Background
Relationship of National Ambient Air Quality Standards (NAAQS) to SIPs
What Is a State Implementation Plan
What Is Federally-Enforceable

Availability of SIP Compilations

This notice identifies the appropriate EPA Regional Offices to which you may address questions of SIP availability and SIP requirements. In response to the 110(h) requirement following the 1990 Clean Air Act Amendments, the first notice of availability was published in the **Federal Register** on November 1, 1995 at 60 FR 55459. The second notice of availability was published in the **Federal Register** on November 18, 1998 at 63 FR 63986. The third notice of availability was published in the **Federal Register** on November 20, 2001 at 66 FR 58070. This is the fourth notice of availability of the compilations of Federally-enforceable state implementation plans for each state.

In addition, information on the content of EPA-approved SIPs is available on the Internet through the EPA Regional Web sites. Regional Web site addresses for Regional information are provided in the regional contacts list above.

What Is the Basis for This Document

Section 110(h)(1) of the Clean Air Act mandates that not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990, and every three years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the **Federal Register** of the availability of such documents.

Section 110(h) recognizes the fluidity of a given State SIP. The SIP is a living document which can be revised by the State with EPA approval as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations. On May 31, 1972 (37 FR 10842), EPA approved, with certain exceptions, the initial SIPs for 50 states, four territories and the District of Columbia. [Note: EPA approved an additional SIP— for the Northern Mariana Islands —on November 10, 1986 (51 FR 40799)]. Since 1972, each State and territory has submitted numerous SIP revisions, either on their own initiative, or because they were required to as a result of various amendments to the Clean Air Act. This notice of availability informs the public that the SIP compilation has been updated to include the most recent requirements approved into the SIP. These approved requirements are Federally-enforceable.

What Is Being Made Available Under This Document

The federally-enforceable SIP is indeed a complex document, containing both many regulatory requirements and non-regulatory items such as plans and inventories. Regulatory requirements include State-adopted rules and regulations, source-specific requirements reflected in consent orders, and in some cases, provisions in the enabling statutes. Following the 1990 Clean Air Act Amendments, the first section 110(h) SIP compilation availability notice was published on November 1, 1995 (61 FR 55459). At that time EPA announced that the SIP compilations, comprised of the regulatory portion of each State SIP, were available at the EPA Regional Office serving that particular State. In general, the compilations made available in 1995 did not include the source-specific requirements or other documents and materials associated with the SIP. With the second notice of availability in 1998, the source-specific requirements and the ''non-regulatory'' documents [*e.g.*, attainment plans, rate of progress plans, emission inventories, transportation control measures, statutes demonstrating legal authority, monitoring networks, etc.] were made available and will remain available for public inspection at the respective regional office listed in the **ADDRESSES** section above. If you want to view these documents, please make an appointment with the appropriate EPA Regional Office and arrange for a mutually agreeable time.

What Are the Documents and Materials Associated With the SIP

EPA-approved non-regulatory control measures, include control strategies (such as transportation control measures, local ordinances, state statutes, and emission inventories, or may include regulations provided on other sections of the State-specific subpart of part 52), which have been submitted for inclusion in the SIP by the state. These control measures must have gone through state rulemaking process and the public was given an opportunity to participate in the rulemaking. EPA also took rulemaking action on these control measures and those which have been EPA-approved or conditionally approved are listed along with any limitations on their approval, if any. Examples of EPA-approved documents and materials associated with the SIP include, but are not limited to, the following subject matter: SIP Narratives; PM_{10} Plans; CO Plans; Ozone Plans; Maintenance plans; Inspection and Maintenance (I/M) SIP's; Emissions Inventories; Monitoring Networks; State Statutes submitted for the purposes of demonstrating legal authority; Part D plans; Attainment demonstrations; Transportation control measures (TCM's); Committal measures; Contingency Measures; Non-regulatory & Non-TCM Control Measures; 15% Rate of Progress Plans; Emergency episode plans; Visibility plans. As stated above the ''non-regulatory'' documents are available for public inspection at the appropriate EPA Regional Office.

Background

Relationship of National Ambient Air Quality Standards (NAAQS) to SIPs

EPA has established National ambient air quality standards (NAAQS) for six criteria pollutants, which are widespread common pollutants known to be harmful to human health and welfare. The present criteria pollutants are: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur oxides. See 40 CFR part 50 for a technical description of how the levels of these standards are measured and attained. State Implementation Plans provide for implementation, maintenance, and enforcement of the NAAQS in each state. Areas within each state that are designated nonattainment are subject to additional planning and control requirements. Accordingly, different regulations or programs in the SIP will apply to different areas. EPA lists the designation of each area at 40 CFR part 81.

What Is a State Implementation Plan

The State Implementation Plan (SIP) is a plan for each State which identifies how that State will attain and/or maintain the primary and secondary National Ambient Air Quality Standards (NAAQS) set forth in section 109 of the Clean Air Act and 40 Code of Federal Regulations 50.4 through 50.12 and which includes federally-enforceable requirements. Each State is required to have a SIP which contains control measures and strategies which demonstrate how each area will attain and maintain the NAAQS. These plans are developed through a public process, formally adopted by the State, and submitted by the Governor's designee to EPA. The Clean Air Act requires EPA to review each plan and any plan revisions and to approve the plan or plan

revisions if consistent with the Clean Air Act.

SIP requirements applicable to all areas are provided in section 110. Part D of title I the Clean Air Act specifies additional requirements applicable to nonattainment areas. Section 110 and part D describe the elements of a SIP and include, among other things, emission inventories, a monitoring network, an air quality analysis, modeling, attainment demonstrations, enforcement mechanisms, and regulations which have been adopted by the State to attain or maintain NAAQS. EPA has adopted regulatory requirements which spell out the procedures for preparing, adopting and submitting SIP's and SIP revisions; that are codified in 40 CFR part 51.

EPA's action on each State's SIP is promulgated in 40 CFR part 52. The first section in the subpart in 40 CFR part 52 for each State is generally the ''Identification of plan'' section which provides chronological development of the State SIP. Or if the state has undergone the new Incorporation by Reference format process (*see* 62 FR 27968, May 22, 1997), the identification of plan section identifies the State-submitted rules and plan elements which have been Federally approved. The goal of the State-by-State SIP compilation is to identify those rules under the ''Identification of plan'' section which are currently Federally-enforceable. In addition, some of the SIP compilations may include control strategies, such as transportation control measures, local ordinances, State statutes, and emission inventories, or may include regulations provided in other sections of the State-specific subpart of part 52. Some of the SIP compilations may not identify these other Federally-enforceable elements.

The contents of a typical SIP fall into three categories: (1) State-adopted control measures which consists of either rules/regulations or source-specific requirements (e.g., orders and consent decrees); (2) State-submitted ''non-regulatory'' components (e.g., attainment plans, rate of progress plans, emission inventories, transportation control measures, statutes demonstrating legal authority, monitoring networks, etc.); (3) additional requirements promulgated by EPA (in the absence of a commensurate State provision) to satisfy a mandatory section 110 or part D (Clean Air Act) requirement.

What Is Federally-Enforceable

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the Clean Air Act.

You should note that, when States have submitted their most current State regulations for inclusion into Federally-enforceable SIPs, EPA will begin its review process of submittals as soon as possible. Until EPA approves a submittal by rulemaking action, State-submitted regulations will be State-enforceable only; therefore, State-enforceable SIPs may exist which differ from Federally-enforceable SIPs. As EPA approves these State-submitted regulations, the regional offices will continue to update the SIP compilations to include these applicable requirements.

Dated: December 16, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–27993 Filed 12–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0175; FRL–7682–6]

Bacillus pumilus GB34; 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 microbial pesticide *Bacillus pumilus* GB34 when used as a seed treatment in or on all food commodities. An exemption is also granted for such residues on treated but unplanted soybean seeds. Gustafson 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), to amend and expand an existing exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus pumilus* GB34.

DATES: This regulation is effective December 22, 2004. Objections and requests for hearings must be received on or before February 22, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0175. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Anne Ball, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8717; e-mail *address:ball.anne@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:

- Industry (NAICS 111), e.g. crop production, vegetable and fruit farming
- Industry (NAICS 112), e.g. animal production
- Industry (NAICS 311), e.g. food manufacturing
- Industry (NAICS 32532), e.g. pesticide and other agricultural chemical manufacturing

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 in the NAICS listings which are published by the U. S. Census Bureau. If you have

any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

II. Background and Statutory Findings

In the **Federal Register** of March 3, 2004 (69 FR 10037) (FRL –7343–8), 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 1F6344) by Gustafson LLC, 1400 Preston Road, Suite 400, Plano, TX 75093. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus pumilus* GB34 when used as a seed treatment in or on all food commodities, which term for purposes of the tolerance exemption that is sought, includes all soybean seeds treated prior to planting, but not planted, but excludes all other non-soybean seeds that are treated, but not planted. This request would amend and expand an existing exemption from the requirement of a tolerance that the Agency had granted for residues of *Bacillus pumilus* GB34 when used as a seed treatment in or on soybeans, including once again, all soybean seeds treated prior to planting, but not planted and thereafter used as a food commodity. This notice included a summary of the petition prepared by the petitioner Gustafson LLC.

One comment was received in response to the notice of filing. The comment states that ''the material safety data sheet is horrific on this *bacillus*. It is listed as an irritant on Gustafson's own MSDS, with eye irritation, skin and lung sensitization, producing carcinogen (sic) in rats and scarring of lungs, with inhalation dangerous''. In response, it should be clarified that the purpose of the **Federal Register** notice of filing upon which comment was received is intended to inform the public about receipt of a petition for a tolerance exemption. Pursuant to the FFDCA, as amended by the FQPA, that **Federal Register** notice of filing included the company's interpretation of the data they submitted in support of the requested tolerance exemption. Importantly, however, the FR notice of filing is not the final Agency determination on the tolerance exemption request. Second, EPA has now evaluated the potential hazards posed by this microbial pesticide product in connection with its proposed seed treatment use pattern, including the toxicity of the cited filler, in the proposed seed treatment use pattern during the risk assessment undertaken in order to make a determination on this petition. The results of end product testing indicate low toxicity or irritation potential (toxicity category III or IV), and the active ingredient itself displays no infectivity, pathogenicity or toxicity. Therefore, use of the product as a seed treatment presents negligible concern. In addition, a fate study presented by the company showed that *Bacillus pumilus* GB34 treated soybean seeds, when processed by typical procedures for soybeans, had no greater level of *Bacillus* species present than ordinary untreated soybeans. This final rule includes EPA's assessment of the submitted data and discusses why the seed treatment application of this microbial agent, and the use as a food commodity of *Bacillus pumilus* GB34 treated but unplanted soybean seeds that are then processed, have a reasonable certainty of causing no harm considering the expected aggregate residues, if any, and the negligible to no dietary exposure resulting from these applications or uses.

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.

The *Bacillus pumilus* species was first described by Meyer and Gottheil in 1901. This naturally occurring species is one of the most numerous of the *Bacillus* species found on plant surfaces. The strain *Bacillus pumilus* GB34 is a naturally occurring soil colonizer. The mode of action of the strain, an antifungal agent, is to colonize the developing root system of the plant it is to protect, in this case the developing root system of plants of food crops including that of the soybean plant. The organism *Bacillus pumilus* GB34 then suppresses by competition, through the formation of a physical barrier, the continued formation of spores of the fungal diseases such as *Rhizoctonia* and *Fusarium*. Subsequently, *Bacillus pumilus* GB34 colonizes the remaining fungal disease spores themselves, thereby destroying them. On the basis of acute injection toxicity/pathogenicity tests on rats, *Bacillus pumilus* GB34 does not appear to be toxic, infective, or pathogenic in those mammals.

Toxicity studies in support of this tolerance exemption petition are summarized below. More detailed analyses of these studies may be found in the specific Agency reviews of the studies. Waivers from certain data requirements were requested and granted, and these are noted below as well.

Summarized below are toxicity studies relating to the *Bacillus pumilus* GB34 Concentrate (end use product), which initially were submitted to support an application for an experimental use permit (EUP) for *Bacillus pumilus* GB34 Concentrate and later were bridged to support a section 3 registration for the microbial product, as well as studies pertaining to *Bacillus pumilus* GB34 Technical. All of these studies supported the initial, more limited tolerance exemption for residues of *Bacillus pumilus* GB34 when used as a seed treatment in or on soybeans, including all soybean seeds treated prior to planting, but not planted and thereafter used as a food commodity. Additionally, all of these studies support the broader tolerance exemption considered in this Final Rule for residues of *Bacillus pumilus* GB34 when used as a seed treatment in or on all food commodities, which term, for purposes of this tolerance exemption, includes all soybeans treated prior to planting, but not planted, but excludes all other, non-soybean seeds that are treated but not planted. In addition to these studies, the company presented to the Agency a fate study supporting the use of soybean seeds, which had been treated but not planted, as a food commodity. The study demonstrated that *Bacillus pumilus* GB34 treated soybean seeds, when processed by typical procedures for soybeans, have no greater level of *Bacillus* species present than ordinary untreated and processed soybeans.

1. *Acute oral toxicity*—i. *Bacillus pumilus GB34 Concentrate*. (Originally submitted to support an application for an EUP for *Bacillus pumilus* GB34 Concentrate and subsequently bridged to support a section 3 registration for the microbial product (and its exemption from a tolerance.) (OPPTS 870.1100; Master Record Identification Number (MRID) 452940–01). Five male and five female young adult Sprague-Dawley rats each received a single 5,000 milligrams/kilogram (mg/kg) gavage dose of *Bacillus pumilus* GB34 Concentrate, previously diluted to a 40% weight/weight (w/w) solution with distilled water at a dosing volume of 1 milliliter (mL)/100 grams (g). The rats were observed for morbidity/moribundity, and behavior changes 1 and 3 hours after dosing and at least daily thereafter for 14 days. They were weighed on days 0, 7, and 14. At the end of the study the rats were all euthanized and necropsied. No morbidity, moribundity, or effects on body weight were found following treatment of rats with 5,000 mg/kg test material. Therefore, the Sprague-Dawley rat oral lethal $(LD)_{50}$ of *Bacillus pumilus* GB34 Concentrate for male, female, and male and female combined is >5,000 mg/kg, placing the test material in Toxicity Category IV.

ii. *Acute oral toxicity—Bacillus pumilus GB34 Technical*. (OPPTS 870.1100; MRID 454335–01 corrected as MRID 457225–01). Five male and five female Sprague-Dawley rats each received a single 5,000 mg/kg gavage dose of the *Bacillus pumilus* GB34 Technical, previously diluted to a 40% w/w solution with distilled water, at a dosing volume of 1ml/100g. The rats were observed for morbidity, moribundity, and behavioral changes 1 hour and 3 hours after dosing and at least daily thereafter for 14 days. They were weighed on days 0, 7, and 14. At the end of the study, the rats were euthanized and necropsied. No morbidity, moribundity, or effects on body weight were found following treatment of rats with 5,000 mg/kg test material. Therefore, the Sprague Dawley rat oral LD_{50} of *Bacillus pumilus* GB34 Technical for male, female and male and female combined is >5,000 mg/kg, placing the test material in Toxicity Category IV.

2. *Acute dermal toxicity—Bacillus pumilus GB34 Concentrate and Bacillus pumilus GB34 Technical*. (OPPTS 870.1200 and OPPTS 885.3100 (Acute dermal Toxicity/Pathogenicity); waiver request, no MRID). A waiver from this data requirement was requested and granted for a seed treatment use. The rationale for the waiver is that the rate of application of the product is 0.1 ounce per 100 pounds of seed. The seed treatment is to take place in a commercial seed treatment facility in which there is no exposure to the general population. After germination of the treated seed, the habit of the bacterium is to inhabit the root system of the plant. Thus there is expected to be minimal, if any, dermal exposure for the general population in a seed treatment use of the microbial pesticide. As stated above , with respect to its use as a food commodity, of any soybeans treated but not planted, a fate study presented by the company demonstrated that *bacillus pumilus* GB3 4 treated soybeans seeds, when processed by typical procedures for soybeans, had no greater level of *Bacillus* species present than ordinary untreated and processed soybeans.

3. *Acute inhalation toxicity—Bacillus pumilus GB34 Concentrate and Bacillus pumilus GB34 Technical*. (OPPTS 870.1300 and OPPTS 885.3150 (Acute Pulmonary Toxicity/Pathogenicity); waiver request, no MRID). A waiver from this data requirement was requested and granted for a seed treatment use. The use of *Bacillus pumilus* GB34 as a seed treatment will take place in a commercial seed treatment facility in which there is no potential for inhalation exposure by the general population. The rate of application of the pesticide is 0.1 oz per 100 lbs of seed. The habit of the bacterium is to gravitate to the root system of the developing plant. Thus, for a seed treatment use of *Bacillus pumilus* GB34 there is expected to be a negligible, if any, inhalation exposure. In addition, the fate study referred to above supports the use of any treated but not planted, soybean seeds as a food commodity, and the data waiver is applicable for that use as well.

4. *Acute oral toxicity/pathogenicity—Bacillus pumilus GB34 Technical and Bacillus pumilus GB34 Concentrate*. (OPPTS 885.3050). A waiver from this data requirement was requested and granted for a seed treatment use. The rationales include the following:

i. There is expected to be a low rate of application (0.1 oz per 100 lbs of seed).

ii. There is expected to be a minimal exposure to the general population since the seed treatment will take place in a commercial seed treating facility with mechanical treating equipment.

iii. The results of the toxicity tests submitted to date do not indicate that this strain is toxic or infective. Moreover, the results would suggest that the *Bacillus pumilus* GB34 strain does not express the 6,500 molecular weight toxin discussed in two papers in the literature. In addition, the habit of the bacterium to gravitate to the root system of the developing plant makes it unlikely that any would be present in the above ground parts of the mature plant, thus minimizing the the potential for oral exposure for humans. Finally, the fate study referred to above supports the use as a food commodity of any treated, but not planted, soybean seed that have been processed by typical procedures for soybeans.

5. *Primary eye irritation*—i. *Bacillus pumilus GB34 Concentrate*. (Originally submitted to support an application for an EUP for Bacillus pumilus GB34 Concentrate and subsequently bridged to support a section 3 registration for the microbial product and its exemption from a tolerance.) (OPPTS 870.2400; MRID 452940–02). Three male and three female young adult new Zealand whit rabbits were used in the experiment. Prior to test material instillation, both eyes were treated with 2% fluorscein and examined under ultraviolet (UV) light for ocular abnormalities. The test material, 0.1ml (equivalent to 0.05 to

0.07 g) was instilled into the everted lower lid of the right eye and the upper and lower lids held closed for one second. The contralateral eye acted as control. The eyes were examined and scored according to the Draize method 1, 24, 48 and 72 hours after test material instillation. The 24 hour examination also included a fluorescein staining examination.for corneal effects. All rabbits survived the study. All rabbits developed slight conjunctival irritation that cleared within 24 hours after treatment. No corneal opacity or iritis was noted. *Bacillus pumilus* GB34 Concentrate was minimally irritating to the eye and is placed in Toxicity Category IV.

ii. *Bacillus pumilus GB34 Technical.* (OPPTS 870.2400; MRID 454335–02, corrected as 457225–02). Prior to the test, three male and three female young adult New Zealand white rabbits were, treated in both eyes with 2% fluorscein and then examined under UV light for ocular abnormalities. The test material, in the amount of 0.1 mL was instilled into the everted lower lid of the right eye and the upper and lower lids were held closed for 1 second. The contralateral eye served as control. The eyes were examined and scored according to the Draize metnod 1, 24, 48 and 72 hours after test material instillation. The 24 hour examination also included a fluorescein staining examination for corneal efffects. All rabbits developed moderate conjunctival irritation that cleared up within 72 hours of treatment. No corneal opacity or irritis or non-ocular effects were noted. The *Bacillus pumilus* GB34 test substance was mildly irritating to the eye and is placed in Toxicity Category III.

6. *Primary Dermal Irritation*—i. *Bacillus pumilus GB34 Concentrate.* (Originally submitted to support an application for an EUP for *Bacillus pumilus* GB34 Concentrate and subsequently bridged to support a section 3 registration for the microbial product and its exemption from a tolerance) (OPPTS 870.2500; MRID 452940–03). Three male and three female young adult New Zealand white rabbits were received for the study. The fur on the dorsal-lumbar area of each rabbit was clipped. The rabbits were given a single 0.5 g dose of test material applied under a 1″x1″ 4-ply gauze pad on a 6 cm square clipped site. The gauze pad is then secured and Elizabethan collars were placed on the animals. Four hours later these were removed and the sites wiped with a moistened towel. The application sites were observed for dermal irritation 1, 24, 48 and 72 hours after patch removal. In addition, the rabbits were observed at least daily for clinical signs of toxicity during the 72–hour study period. All rabbits survived the study. No dermal irritation was observed on any rabbit at any site. Based on the study, *Bacillus pumilus* GB34 Concentrate is non-irritating to the New Zealand white rabbit and is placed in Toxicity Category IV.

ii. *Bacillus pumilus GB34 Technical.* (OPPTS 870.2500; MRID 454335–03 corrected as MRID 457225–03). Three male and three female New Zealand white albino rabbits were prepared by clipping the doesal area and the trunk. Only healthy animals without preexisting skin irritation had been selected for the test. The test substance in the amount of 0.5 g was placed on a 1 inch x 1 inch, 4-ply gauze pad which was applied and secured on each rabbit. After 4 hours exposure to the test substance, the pads were removed and the test site wiped with water and towel to remove any residual test substance. Individual test sites were scored according to the Draize scoring at approximately 1, 24, 48, and 72 hours after patch removal. The animals were observed for signs of gross toxicity and behavioral changes at least once daily during the test period. All animals appeared active and healthy. There were no signs of gross toxicity, adverse pharmacological effects or abnormal behavior. No dermal irritation was noted at any test site during the study. Under the conditions of the study, the *Bacillus pumilus* GB34 Technical is classified as non-irritating to the skin and placed in Toxicity Category IV.

7. *Acute injection toxicity/ pathogenicity, Bacillus pumilus GB34 Technical.* (originally submitted to support an application for an EUP for *Bacillus pumilus* GB34 Technical and subsequently bridged to support a section 3 registration for the microbial product and its exemption from a tolerance) (OPPTS 885.3200; MRID 453416–01). A total of 39 male and 39 female rats were used in the tests. The results showed:

i. *Mortality.* No deaths were observed in any of the dosed or control groups prior to scheduled sacrifice.

ii. *Body and organ weights.* Overall, both male and female rats gained weight for the duration of the study, demonstrating the continued health of the animals.

iii. *Clinical observation.* Overall, both male and female rats showed no abnormal clinical signs.

iv. *Gross necropsy.* No significant signs of abnormalities were seen except for a laceration on the left shoulder of a test-substance- treated male rat. An enlarged spleen was seen in one test-substance-treated male rat.

Based on the results of the acute injection toxicity/pathogenicity study, the Agency determined that *Bacillus pumilus* GB34 does not appear to be toxic, infective or pathogenic in rats when dosed at 1x 10^{7} cfu/animal. This test supports the requirements for both the technical grade active ingredient (the technical) and the end use product (the concentrate).

A hypersensitivity study, or dermal sensitization study is not required for registration of this product since, in the case of the use of the product as a seed treatment, there is not expected to be repeated human contact by inhalation or dermal routes (routes specified in footnote iii of the table in 40 CFR 158.740 (c)). In the case of the use as a food commodity of the treated but not planted soybean seeds, a fate study presented by the company, as mentioned elsewhere in this document, showed that *Bacillus pumilus* GB34 treated soybean seeds, when processed by typical procedures for soybeans, had no greater level of *Bacillus* species present than ordinary untreated soybeans. Furthermore, there have been no reports of incidents of hypersensitivity, allergies or other adverse effects in connection with the production or use of *Bacillus pumilus* GB34. Nonetheless, to comply with EPA's requirements under FIFRA section 6(a)(2) , any incident of hypersensitivity associated with the use of this pesticide must be reported. (See also 40 CFR 158.690(c)(iv)).

An immune response study is not required for registration of or exemption from the requirement of a tolerance for this product because the Acute I.V., I.C., or I.P. injection toxicity/pathogenicity study (OPPTS Guidelines 885.3200) previously submitted in support of an EUP for *Bacillus pumilus* GB34 and subsequently bridged to support a section 3 registration and an earlier, more limited in scope tolerance exemption for this microbial product, serves to address the endpoint of immune response. This injection study examines the normal functioning of the immune system when faced with the potentially most challenging exposure to this microbial pesticide active ingredient: direct injection into the bloodstream. If the test animal is able to withstand and survive the introduction of such a large number of microbes, bypassing the normal protective barriers of the skin, the pulmonary macrophages and the gastrointestinal lymphoid tissues, then the immune system is functioning normally. The normal functioning of the immune system

implies that it can recognize the introduced microbes as foreign and can clear them from the blood and other exposed organs. After the active ingredient, *Bacillus pumilus* GB34 , was intravenously injected into the test animals (rats), no deaths, adverse clinical signs or significant findings upon necropsy were seen 35 days after the injection.

The requirement for Tier II and Tier III data was not triggered based on the results of Tier I data which had been submitted or waived.

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).

A. Dietary Exposure

Bacillus pumilus GB34 is a naturally occurring and ubiquitous microorganism. It inhabits the root system of plants where it acts as an antifungal agent. Review of the available toxicology data submitted in support of the registration of this active ingredient indicate that it is non-toxic and non-pathogenic to animals. In its proposed use as a seed treatment, which will take place in a commercial seed treating facility with mechanical treating equipment, it is foreseen that it will not contribute to any additional dietary exposures over and above those exposures that already exist due to the fact that the organism is naturally occurring and ubiquitous. In connection with the proposed use of the treated but not planted soybean seeds as a food commodity, it has been shown that the pesticide *Bacillus pumilus* GB34 does not survive, except for negligible amounts, the processing customary for soybeans. A fate study presented to EPA by the company, as stated above, showed that *Bacillus pumilus* GB34 treated soybeans, after processing by typical procedures for soybeans, had no greater level of *Bacillus* species present than ordinary untreated soybeans. These uses, thus, are not expected to add in a significant measure to the density with which this naturally occurring, ubiquitous bacterium, which is non-toxic and non-pathogenic to animals, is found in soil, water, air and plant tissue.

1. *Food.* When used as a seed treatment in or on all food commodities, *Bacillus pumilus* GB34 migrates to and inhabits the roots of the plants. Accordingly, it is anticipated that negligible to no dietary exposure from food will result for humans from such uses. Similarly, with respect to the use of *Bacillus pumilus* GB34 as a seed treatment on soybean seeds that are not planted and thereafter used as a food commodity, based on the fate study discussed above, it is anticipated that negligible to no dietary exposure will result for humans from such use. To date, there have been no reports of any hypersensitivity incidents or reports of any known adverse reactions in humans resulting from exposure to *Bacillus pumilus* GB34.

2. *Drinking water exposure.* There is expected to be only insignificant or minimal human exposure to the organism in drinking water resulting from its use in the treatment of seeds or from the use as a food commodity of any treated, but not planted, soybean seeds that are processed using typical procedures for soybeans. The treatment of seeds is expected to take place in a commercial seed treatment facility before the farmer plants the seeds in the soil. As stated elsewhere in this document, the organism is ubiquitous, naturally occurring, already found in water, among other places, and is non-toxic and non-pathogenic to humans. Thus, even if insignificant additional amounts were to seep or otherwise find their way into the ground water as a result of its uses, there is expected to be no adverse effect on humans as a result of the uses of *Bacillus pumilus* GB34 contemplated in this tolerance exemption action.

B. Other Non-Occupational Exposure

The possibility for non-dietary exposure to residues of this *Bacillus pumilus* GB34 pesticide for the general population, including infants and children, is unlikely as a result of its use as a seed treatment or as a result of the use of any treated soybean seed that are not planted and thereafter used as a food commodity. Since the seed treatment is to take place in a commercial seed treating facility where mechanical treating equipment is used, it is not expected that dermal or inhalation exposure will occur in the general population, including infants and children. As stated elsewhere in this document, a fate study showed that the treated but not planted soybean seeds, when processed by typical procedures for soybeans, had no greater level of *Bacillus* species present than ordinary untreated soybeans. *Bacillus pumilus* GB34 is a ubiquitous, naturally-occurring bacterium that functions as an antifungal agent and already is found in soil, water, air and decomposing plant tissue. It is not known to be pathogenic, infective or toxic to any animal or plant species. The bacteria typically occur at 106 to 107 colony forming units (CFUs) per gram of soil. The added soil density from the proposed seed treatment use rates represents a very small proportion of the naturally occurring bacilli in the soil or water and therefore is not expected to add substantially to non-occupational dermal or inhalation exposure for the general population, including infants and children.

V. Cumulative Effects

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.'' These considerations include the possible cumulative effects of such residues on infants and children. The Agency has considered the potential for cumulative effects of *Bacillus pumilus* GB34 and other substances in relation to a common mechanism of toxicity. Based on tests in mammalian systems, *Bacillus pumilus* GB34 does not appear to be toxic or pathogenic to humans. The product strain belongs to the bacterial genus of *Bacillus*. *Bacillus pumilus* Gb34 may have a similar mode of action in mammals as *Bacillus subtilis* that has been shown to be non-toxic and non-pathogenic to mammalian species. A similar mode of action of *Bacillus pumilus* GB34 and *Bacillus subtilis* would not be expected to result in any cumulative adverse effect since, in each case, intravenous toxicity and pathogenicity studies have demonstrated the organism to be non-toxic and non-pathogenic. Thus, the Agency does not expect any cumulative or incremental effects from exposure to residues of *Bacillus pumilus* GB34 when used as directed on the label and in accordance with good agricultural practices.

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

The Agency has determined that there is a reasonable certainty that no harm will result to the U. S. population, including infants and children, from aggregate exposures to residues of *Bacillus pumilus* GB34 as a result of or in connection with the uses described in this action. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed previously,

there is little to no potential for harm from this bacterium in its uses via dietary exposure since the organism is non-toxic and non-pathogenic to animals and humans. The Agency has arrived at this conclusion based on the very low levels of mammalian toxicity (no toxicity at the maximum doses tested, Toxicity Categories III and IV. Moreover, as mentioned above, no non-occupational inhalation or dermal exposure is expected.

FFDCA section 408 (b)(2)(C) provides that EPA shall apply an additional 10-fold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety), which are often referred to as uncertainty (safety) factors, are incorporated into EPA risk assessment either directly, or through the use of a margin of exposure analysis or by using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk. In this instance, and based on all the available information reviewed and discussed more fully above, the Agency concludes that the additional margin of exposure (safety) is not necessary to protect infants and children and that not adding any additional margin of exposure (safety) will be safe for infants and children.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under FFDCA section 408(p), as amended by FQPA, to develop a screening process to determine whether pesticide chemicals (and any other substance that may have an effect that is cumulative to an effect of a pesticide chemical) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such effects as the Administrator may designate.'' Following the recommendations of its Endocrine Disruptor Screening and Advisory Committee (EDSTAC), EPA determined that there was a scientific basis for including, as part of the program, the androgen and thyroid hormone systems, in addition to the estrogen hormone systems. EPA also adopted EDSTAC's recommendation that the Program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's Endocrine Disruptor Screening Program have been determined, *Bacillus pumilus* GB34 may be subjected to additional screening and/or testing to better characterize any effects related to endocrine disruption. At this time, however, and based on the weight of available data, there is no basis for including this organism, since no endocrine system-related effects have been identified for *Bacillus pumilus* GB34.

B. Analytical Method(s)

The organism, *Bacillus pumilus* GB34, as mentioned above, is a naturally occurring soil microorganism which inhabits the root system of plants and acts as an antifungal agent in that area of the plant. The acute oral studies discussed above demonstrate that this active ingredient is non-toxic and non-pathogenic to animals and humans and thus, does not pose a dietary risk to humans in its uses. The Agency has concluded, therefore, that analytical methods are not needed for enforcement purposes.

C. Codex Maximum Residue Level

There are no Codex Maximum Levels nor any tolerances or exemptions issued for *Bacillus pumilus* GB34 outside the United States.

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–2004–0175 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 February 22, 2005.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit 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 **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2004–0175, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-

mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

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 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: December 10, 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 180.1224 is revised to read as follows:

§ 180.1224 Bacillus pumilus GB34; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Bacillus pumilus* GB34 when used as a seed treatment in or on all food commodities. An exemption is also granted for such residues on treated but unplanted soybean seeds.

[FR Doc. 04–27982 Filed 12–21–04; 8:45 am]

BILLING CODE 6560–50–S

Proposed Rules

Federal Register

Vol. 69, No. 245

Wednesday, December 22, 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.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 104

[Notice 2004–19]

Filing Documents by Priority Mail, Express Mail, and Overnight Delivery Service

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed changes to its rules regarding the timely filing of designations, reports, and statements. The Consolidated Appropriations Act, 2004 added Priority Mail, Express Mail, and delivery by an overnight delivery service to the section of the Federal Election Campaign Act of 1971, as amended, setting forth when and by what means certain paper documents are considered timely filed prior to actual receipt by the Commission or the Secretary of the Senate. No final decision has been made by the Commission on the issues presented in this rulemaking. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

DATES: Comments must be received on or before January 21, 2005.

ADDRESSES: All comments should be addressed to Mr. Brad C. Deutsch, Assistant General Counsel, and must be submitted in either electronic or written form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be sent to *timely05@fec.gov* and may also be submitted through the Federal eRegulations Portal at *www.regulations.gov.* All electronic comments must include the full name, electronic mail address, and postal service address of the commenter. Electronic comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. If the electronic comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The Commission will post public comments on its Web site.

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

SUPPLEMENTARY INFORMATION: The Consolidated Appropriations Act, 2004, Pub. L. 108–199, div. F, tit. VI, § 641, 188 Stat. 3, (the ''2004 Appropriations Act'') amended the Federal Election Campaign Act of 1971, as amended, (''FECA'') to permit filers to use additional delivery options to satisfy the Commission's ''timely filing'' requirements for certain designations, reports, and statements filed on paper with the Commission or the Secretary of the Senate. Section 434(a) of FECA previously permitted reliance on a U.S. Postal Service (''USPS'') postmark date as the date the Commission considers certain documents timely filed, but only if the document was sent by either registered or certified mail. The 2004 Appropriations Act amended 2 U.S.C. 434(a)(2)(A)(i), (4)(A)(ii), and (5) to allow filers sending these documents via USPS Priority Mail and Express Mail also to rely on the date of the USPS postmark as the date of filing, so long as the mailing has a delivery confirmation. The amendments to 2 U.S.C. 434(a) also allow filers sending these documents with an overnight delivery service to rely on the date of deposit with the overnight delivery service as the date of filing, so long as the overnight delivery service has an on-line tracking system.

To implement these statutory amendments, the Commission proposes to amend 11 CFR 100.19, which sets forth when a document is ''timely filed,'' and 11 CFR 104.5, which specifies due dates for reports.[1]

I. 11 CFR 100.19(b). Timely Filed

Under paragraph (b) of current 11 CFR 100.19, certain documents that are not required to be filed electronically are ''timely filed'' if they are deposited as registered or certified mail in a U.S. Post Office and are postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the date the document is due to be filed. One exception in paragraph (b), however, is that pre-election reports filed by political committees must be postmarked at least 15 days before the election to be ''timely filed,'' which is three days earlier than such report's due date.

The Commission proposes to divide current paragraph (b) into three subparagraphs: (1) One subparagraph containing the definition of ''timely filed'' for documents that are sent by registered or certified mail, Priority Mail, Express Mail, or with an overnight delivery service; (2) one subparagraph retaining the current requirement that documents sent by first class mail are ''timely filed'' only upon receipt by the Commission or Secretary of the Senate, as appropriate; and (3) one subparagraph containing new definitions of ''overnight delivery service'' and ''postmark.''

A. Proposed 11 CFR 100.19(b)(1)

Proposed paragraph (b)(1) specifies that any paper document required to be filed under Commission regulations, other than those specified in 11 CFR 100.19(c)–(g),[2] will be considered ''timely filed'' so long as the document is postmarked[3] by the due date and was deposited: (1) As registered or certified mail in an established U.S. Post Office;

[1] The Commission notes that the proposed rules would not apply to any entity that is required to file electronically under 104.18(a) because electronic filings are considered filed only when they are received and validated by the Commission's electronic filing system. *See* 11 CFR 100.19(c).

[2] Certain types of paper reports are specifically excluded from the definition of ''timely filed'' at 11 CFR 100.19(b) and have their own particular filing dates specified in section 104. Because 48-hour contribution reports, independent expenditure reports, and 24-hour electioneering communications reports are considered filed only upon receipt by the Commission, the proposed rules would not apply to these types of reports. Additionally, a candidate's notification of expenditure from personal funds is considered filed only upon receipt of the notification by certain parties, and therefore the proposed rules would not apply to these notifications.

[3] As discussed below, the Commission proposes to define ''postmark'' to include a USPS postmark and the verifiable date of deposit with an overnight delivery service.

(2) as Priority Mail or Express Mail with a delivery confirmation in an established U.S. Post Office; or (3) with an overnight delivery service, so long as the document was scheduled to be delivered within three business days of deposit and is recorded in the service's on-line tracking system.

The Commission interprets Congress's reference to ''priority mail'' and ''express mail'' as denoting USPS Priority Mail and Express Mail because both terms are registered trademarks of USPS.[4] The Commission invites comment on whether this interpretation is appropriate.

Additionally, the proposed rule would permit a filer using an overnight delivery service (the proposed definition of which is discussed below) to use any delivery option offered by such a delivery service, so long as the document is scheduled to be delivered to the Commission or the Secretary of the Senate, as appropriate, within three business days from the date of deposit, similar to the two-to-three day delivery time for USPS Priority Mail service.[5] In the alternative, the Commission invites comment on whether filers who use an overnight delivery service should be limited to using only a next day delivery option.

For any filer who uses an overnight delivery service and wishes to rely on the date of deposit, the 2004 Appropriations Act amendment to FECA requires that the filer use a delivery service that has an on-line tracking system. Because an on-line tracking system will provide a means to settle a dispute that may arise concerning the timely filing of a document (*i.e.*, the date of deposit), the Commission interprets the statutory requirement to mean that a filer must in fact choose a delivery option that includes tracking of the document, thereby providing the filer, or any other person, with the ability to confirm deposit and delivery dates.[6] Accordingly, the proposed rule would require that a document deposited with an overnight delivery service be recorded in that delivery service's on-line tracking system. The Commission believes that a definition of ''on-line tracking system'' is not necessary. The Commission invites comment on whether the amended rule should require the use of an on-line tracking system when a document is sent via an overnight delivery service and on whether a definition for ''on-line tracking system'' is necessary.

Proposed paragraph (b)(1) retains the current requirement that a document must be postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the due date, with the exception that pre-election reports must be postmarked three days earlier than the report's due date.

B. Proposed 11 CFR 100.19(b)(2)

Proposed paragraph (b)(2) retains the current requirement that documents sent by first class mail must be received by the close of business on the prescribed filing date to be ''timely filed.'' However, the Commission proposes to add language to clarify that paper documents, other than those addressed in 11 CFR 100.19(c)–(g), sent by *any means* other than those specified in 11 CFR 100.19(b)(1) (*i.e.*, by registered or certified mail, Priority Mail, Express Mail, or with an overnight delivery service) must be received by the close of business on the prescribed filing date in order to be ''timely filed.'' The Commission invites comments on this proposed clarification.

C. Proposed 11 CFR 100.19(b)(3)

Proposed paragraph (b)(3) contains definitions of ''overnight delivery service'' and ''postmark.'' Proposed paragraph (b)(3)(i) would define ''overnight delivery service'' as a private delivery service of established reliability that offers an overnight delivery option. As discussed above, the Commission proposes to allow filers who use an overnight delivery service to select a two-to-three day delivery option; however, because the 2004 Appropriations Act specifies ''deliver[y] to an overnight delivery service,'' the Commission interprets this to mean that a delivery service used must *offer* an overnight (*i.e.*, next day) delivery option, even if the sender does not choose that option. 2 U.S.C. 434(a), as amended by 2004 Appropriations Act. The Commission invites comment on this proposed definition.

Proposed paragraph (b)(3)(ii) would define ''postmark'' to include both a USPS postmark, as well as the verifiable date that a document is deposited with an overnight delivery service because filers may now also rely on the date of deposit with an overnight delivery service as the date of filing.[7] This proposed definition recognizes that overnight delivery services may record the date of deposit in different manners and provides flexibility for verification of deposit date. The Commission invites comment on this proposed definition of ''postmark.''

II. 11 CFR 104.5. Filing Dates

As discussed above, the Commission's current rules specify that a filer may rely on the postmark as the date of filing for certain paper documents only if the document is sent by registered or certified mail. Consistent with the amendment to FECA resulting from the 2004 Appropriations Act, however, the proposed revision of section 100.19(b) would expand the Commission's definition of ''timely filed'' to allow reliance also on a postmark as the date of filing for these documents sent by Priority Mail, Express Mail, or with an overnight delivery service.

The Commission's rules at 11 CFR 104.5(a)(2)(i)(A) and (c)(1)(ii), which specify the filing due date for pre-election reports, and at 11 CFR 104.5(e), which specifies the date the Commission considers to be the filing date for certain reports required under section 104.5, also contain several references to reliance on a postmark as the date of filing for documents that are sent by registered or certified mail. Accordingly, the Commission proposes to modify these references within section 104.5 to include Priority Mail, Express Mail, and use of an overnight delivery service, consistent with the proposed changes to section 100.19(b), discussed above. Additionally, the Commission proposes to further amend 11 CFR 104.5(e) to clarify to which reports the proposed rules would apply. The Commission invites comment on these proposed changes.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis of this certification is that, to whatever limited extent these proposed rules would affect small entities, expanding options for delivering Commission-required reports provides more flexibility to filers in choosing the method of fulfilling their filing requirements and the new methods are permissive, not required. Therefore, the

[4] *See http://www.usps.com/all/welcome.htm.*

[5] Priority Mail is a two-to-three day delivery option offered by USPS. *See http://www.usps.com/shipping/prioritymail.htm.*

[6] The Commission notes that filers should continue to retain proof of mailing or other means of transmittal of reports. *See* 11 CFR 104.5(i).

[7] Internal Revenue Service regulations and Department of Homeland Security regulations also define ''postmark'' to include private carrier postmarks. See *e.g.*, 26 CFR 301.7502–1(c)(1)(iii)(B) and 8 CFR 245a.12(a)(3) and (4); see also 50 CFR 600.10 (Wildlife and Fisheries regulations defining ''postmark'' as ''independently verifiable evidence of the date of mailing, such as a U.S. Postal Service postmark, or other private carrier postmark, certified mail receipt, overnight mail receipt, or a receipt issued upon hand delivery * * *.'').

proposed rules would not increase costs of compliance and may decrease such costs.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Election Commission proposes to amend Subchapter A of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

3. Section 100.19 would be amended by revising paragraph (b) to read as follows:

§ 100.19 File, filed or filing (2 U.S.C. 434(a)).

* * * * *

(b) *Timely filed.* (1) A document, other than those addressed in paragraphs (c) through (g) of this section, is timely filed if:

(i) Deposited:

(A) As registered or certified mail in an established U.S. Post Office;

(B) As Priority Mail or Express Mail, with a delivery confirmation, in an established U.S. Post Office; or

(C) With an overnight delivery service and scheduled to be delivered no more than three business days after the date of deposit and recorded in the overnight delivery service's on-line tracking system; and

(ii) The postmark on the document must be dated no later than 11:59 p.m. Eastern Standard/Daylight Time on the filing date, except that pre-election reports must have a postmark dated no later than 11:59 p.m. Eastern Standard/Daylight Time on the fifteenth day before the date of the election.

(2) Documents, other than those addressed in paragraphs (c) through (g) of this section, sent by first class mail or by any means other than those listed in paragraph (b)(1)(i) of this section must be received by the close of business on the prescribed filing date to be timely filed.

(3) As used in this paragraph (b) and in § 104.5,

(i) *Overnight delivery* service means a private delivery service business of established reliability that offers an overnight delivery service option.

(ii) *Postmark* means a U.S. Postal Service postmark or the verifiable date of deposit with an overnight delivery service.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (2 U.S.C. 434)

3. The authority citation for Part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, 441a, and 36 U.S.C. 510.

4. Section 104.5 would be amended by revising paragraphs (a)(2)(i)(A), (c)(1)(ii)(A), and (e) to read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

(a) * * *

(2) *Additional reports in the election year.* (i) *Pre-election reports.* (A) Pre-election reports for the primary and general election must be filed no later than 12 days before any primary or general election in which the candidate seeks election. If sent by registered or certified mail, Priority Mail or Express Mail with a delivery confirmation, or by an overnight delivery service and scheduled to be delivered no more than three business days from deposit and recorded in the overnight delivery service's on-line tracking system, the postmark on the report must be dated no later than the 15th day before any election.

* * * * *

(c) * * *

(1) * * *

(ii) *Pre-election reports.* (A) Pre-election reports for the primary and general election shall be filed by a political committee which makes contributions or expenditures in connection with any such election if such disbursements have not been previously disclosed. Pre-election reports shall be filed no later than 12 days before any primary or general election. If sent by registered or certified mail, Priority Mail or Express Mail with a delivery confirmation, or by an overnight delivery service and scheduled to be delivered no more than three business days from deposit and recorded in an on-line tracking system, the postmark on the report shall be dated no later than the 15th day before any election.

* * * * *

(e) *Date of filing.* A designation, report or statement, other than those addressed in paragraphs (f), (g), and (j) of this section, sent by registered or certified mail, Priority Mail or Express Mail with a delivery confirmation, or by an overnight delivery service and scheduled to be delivered no more than three business days from deposit and recorded in an on-line tracking system, shall be considered filed on the date of the postmark except that a twelve day pre-election report sent by such mail or overnight delivery service must have a postmark dated no later than the 15th day before any election. Designations, reports or statements, other than those addressed in paragraphs (f), (g), and (j) of this section, sent by first class mail, or by any means other than those lists in this paragraph (e), must be received by the close of business of the prescribed filing date to be timely filed. Designations, reports or statements electronically filed must be received and validated at or before 11:59 p.m., Eastern Standard/Daylight Time on the prescribed filing date to be timely filed.

* * * * *

Dated: December 17, 2004.

Bradley A. Smith,

Chairman, Federal Election Commission.

[FR Doc. 04–27972 Filed 12–21–04; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 2004–18]

Payroll Deductions by Member Corporations for Contributions to a Trade Association's Separate Segregated Fund

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed amendments to its rules regarding contributions to the separate segregated fund (''SSF'') of a trade association by employee-stockholders and executive and administrative personnel (collectively, ''restricted class employees'') of corporations that are members of the trade association. Currently, the Commission's regulations prohibit any corporate member of a trade association from using a payroll deduction or check-off system for employee contributions to the trade association's SSF. The Commission proposes to amend its regulations to permit a corporate member of a trade association to provide incidental services to collect and forward contributions from its restricted class employees to the SSF of the trade association, including a payroll

deduction or check-off system, upon written request of the trade association. In addition, the proposed regulations would require any corporate member of a trade association that provides incidental services for contributions to the trade association's SSF also to provide the same services for contributions to the SSF of any labor organization that represents employees of the corporation, upon written request of the labor organization and at a cost not to exceed actual expenses incurred. The Commission has not made any final decisions on the amendments proposed in this Notice and requests comments on them. Further information appears below.

DATES: Comments must be received on or before January 21, 2005. If the Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

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

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

SUPPLEMENTARY INFORMATION: With this notice, the Commission is publishing and seeking comments on a proposed amendment to its regulations regarding corporate use of payroll deduction or check-off systems[1] to collect and forward voluntary employee contributions to the SSF of a trade association of which the corporation is a member. The Commission's regulations currently prohibit member corporations from making payroll deduction or check-off systems available for employee contributions to a trade association's SSF. *See* 11 CFR 114.8(e)(3).

The Commission is publishing this proposed rule in response to a petition for rulemaking. *See* Notice of Availability, 68 FR 60887 (October 24, 2003). The Commission emphasizes, however, that it has not made any final decision on whether to amend the existing rules on this subject, and invites comments on the proposed rulemaking.

The Commission proposes to amend 11 CFR 114.8(e)(3) to remove the current prohibition on corporate use of a payroll deduction or check-off system for employee contributions to the SSF of a trade association of which the corporation is a member. The proposed rule would add a new paragraph 114.8(e)(4), which would specifically authorize a member corporation to provide incidental services to collect and forward contributions from its restricted class employees to a trade association's SSF, including a payroll deduction or check-off system, upon written request of the trade association. Further, the proposed rule would require any corporation that provides these incidental services also to make the same services available to a labor organization representing members who work for the corporation, upon written request by the labor organization and at a cost not to exceed any actual expenses incurred. Finally, the proposed rule would make a conforming change to 11 CFR 114.2(f), to clarify that the provision of incidental services pursuant to proposed 11 CFR 114.8(e)(4) is not a prohibited corporate facilitation.

Legal Context

The Federal Election Campaign Act of 1971, as amended (the ''Act''), and the Commission's regulations permit any trade association to solicit contributions to the trade association's SSF from the stockholders and executive and administrative personnel, and their families, of the trade association's member corporations, if the member corporation involved has separately and specifically approved the solicitation and has not approved a solicitation by any other trade association for the same calendar year. *See* 2 U.S.C. 441b(b)(4)(D); 11 CFR 114.8(c). Once these conditions are met, ''[t]here is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use.'' 11 CFR 114.8(e)(3).

Although the regulations do not limit the methods that a trade association may use to solicit and facilitate the making of voluntary contributions to its SSF from the restricted class employees of consenting member corporations, the regulations do limit the methods that a consenting member corporation may use to collect and distribute those contributions. Specifically, a ''member corporation may not use a payroll deduction or check-off system for executive or administrative personnel contributing to the separate segregated fund of the trade association.'' *Id.* The Commission has interpreted this prohibition to extend to all employees of the corporation that may be solicited by the trade association (*i.e.*, restricted class employees), including the member corporation's employee-stockholders. *See* Advisory Opinion 1989–3.

In recent years, the Commission has given corporations some latitude in collecting and transmitting contributions to a trade association's SSF, so long as the collection did not involve employee payroll deductions. For instance, in Advisory Opinion 2003–22, the Commission interpreted the regulations to permit a corporate member of a trade association to collect voluntary contributions in the form of paper checks from its executive and administrative personnel, and to transmit the contributions to the trade association's SSF. In that opinion, the Commission also interpreted the regulations to permit corporate executives who were collecting employee contribution checks to use the member corporation's inter-office mail system to help collect the checks, and to provide envelopes and postage in which contributors could send their contributions to the trade association's SSF.

Moreover, the Commission has permitted member corporations to deduct contributions electronically to a trade association's SSF, so long as the member corporations did not deduct the

[1] The term ''check-off system'' as used here means a method by which an employee affirmatively designates a portion of his or her salary to be collected through payroll deductions and contributed to a trade association's SSF, by checking that designation on a pre-printed form or card.

contributions from employee payrolls. *See* Advisory Opinions 2000–4 and 1998–19. In addition, the Commission has permitted a trade association to pay for electronically deducting monthly contributions to its SSF from the personal checking accounts of restricted class employees of consenting member corporations. *See* Advisory Opinion 1999–35. The Commission also has permitted State leagues of a federation of trade associations and the leagues' local corporate members to serve as collecting agents for contributions to the federation's SSF, and to pay expenses incurred in connection with that activity. *See* Advisory Opinion 1998–19; *compare to* Advisory Opinion 2000–4.

The Petition for Rulemaking

On September 3, 2003, the Commission received a Petition for Rulemaking (the ''Petition'') from America's Community Bankers and its SSF, the America's Community Bankers Community Campaign Committee (collectively, ''Petitioners''). Petitioners asked the Commission to amend the regulations to permit, rather than to prohibit, a member corporation to use a payroll deduction or check-off system for contributions by its restricted class employees to a trade association's SSF.

Petitioners advanced four arguments in support of their request. First, Petitioners asserted that the Act does not require the exclusion of payroll deduction and check-off systems from permissible methods of collecting and forwarding contributions to a trade association's SSF. Second, Petitioners asserted that the prohibition on payroll deduction and check-off systems is inconsistent with Commission advisory opinions and other Commission regulations. Third, Petitioners asserted that the concerns that prompted the prohibition in the first place, as discussed at a June 29, 1976 Commission meeting, (1) resulted from a misunderstanding on the part of some of the commissioners at the meeting, (2) are inconsistent with later Commission actions, and (3) could have been addressed by means other than the prohibition.[2] Finally, Petitioners asserted that factual and legal changes that have occurred since the prohibition was promulgated in 1976 warrant a change in the regulations.

In accordance with its usual procedures, the Commission published a notice stating that the Petition was available for public review and comment. *See* Notice of Availability, 68 FR 60887 (October 24, 2003). The comment period closed on November 24, 2003. The Commission received 30 comments in response to the Notice of Availability: 22 from trade associations, six from corporate members of one of the trade associations that submitted comments, one from a professional association, and one from a Member of Congress. The comments submitted by the six corporations were substantially identical both to each other and to comments submitted by the trade association to which the corporations belonged.

Summary of Comments on the Petition for Rulemaking

All of the comments received by the Commission supported the Petition for Rulemaking. The commenters' arguments in favor of the Petition fell into three categories: legal, policy and practical.

1. Legal Arguments

Almost all of the commenters addressed the question of whether the Act prohibits member corporations from using payroll deduction and check-off systems to collect voluntary contributions to a trade association's SSF from restricted class employees. All of the commenters that addressed the question concluded that the Act does not prohibit the use of payroll deduction and check-off systems.

Moreover, several commenters asserted that eliminating the prohibition would be consistent with the Act's broad grant of authority to trade associations to solicit contributions to their SSFs from the restricted class of consenting member corporations, as set out in 2 U.S.C. 441b(b)(4)(D). Several commenters also asserted that eliminating the regulatory prohibition would be consistent with the Act's exclusion of corporate, trade association and labor union payments for establishing, administering and soliciting contributions to an SSF from the definition of ''contribution or expenditure,'' as set out in 2 U.S.C. 441b(b)(2)(C).

With respect to the regulation itself, a few commenters perceived an inconsistency between the first sentence of 11 CFR 114.8(e)(3), which permits a trade association to use any method to solicit and facilitate the making of voluntary contributions from restricted class employees of consenting member corporations, and the second sentence of 11 CFR 114.8(e)(3), which contains the prohibition on member corporations' use of payroll deduction and check-off systems at issue here. The commenters opined that only the first sentence is consistent with the Act.

Several commenters indicated that the Commission's own advisory opinions support eliminating the prohibition. Specifically, the commenters argued that the prohibition is inconsistent with (1) Advisory Opinion 2003–22, which permits a member company to collect and forward employee contributions in the form of checks to a trade association's SSF; (2) Advisory Opinions 1995–28, 1995–17, 1989–18 and 1980–89, which allow a member corporation to contribute to a trade association to help defray the costs of establishing, administering and soliciting for the trade association's SSF; and (3) Advisory Opinions 1999–35, 1998–19, 1997–9 and 1986–7, which permit contributions to a trade association's SSF or a membership association's SSF to be automatically debited from contributors' accounts.

2. Policy Arguments

Several commenters perceived a lack of a policy rationale for the prohibition on corporate use of payroll deductions to collect voluntary employee contributions to a trade association's SSF. They argued that the lack of an underlying policy purpose was demonstrated by the Commission's issuance of advisory opinions permitting other methods of collecting contributions to a trade association's SSF.

In addition, a number of commenters asserted that any underlying policy rationale for the prohibition has been rendered obsolete by the growth in the use of electronic methods for making and receiving payments since 1976, including by federal government agencies such as the Internal Revenue Service and the Social Security Administration. The commenters noted the decreasing role of paper checks in American society. They cited to the growing prevalence of electronic payroll deductions in the workplace, the large number of employees who currently use payroll deductions and the variety of goods and services paid through payroll deductions, such as health and life insurance premiums, flexible spending accounts, retirement savings plans, charitable contributions, loan and mortgage payments, gym memberships and club dues.

One commenter stated that questions regarding the permissibility of various forms of electronic deductions are likely to increase, both in number and in

[2] Petitioners identified several concerns as having prompted the prohibition, including a concern that labor unions be given equal access to fundraising methods used by corporations, and a concern that corporate facilitation of contributions to a trade association's SSF would be prohibited by the Act. These issues are addressed further in the text of this Notice.

complexity, as technology advances and as corporations provide more innovative financial services to their employees. This commenter suggested that amending the regulations to permit payroll deductions would eliminate the need for the Commission to answer these questions on a case-by-case basis through the advisory opinion process.

Several commenters also indicated that removing the regulatory prohibition could help to promote fairness. According to one commenter, the current regulation disadvantages SSFs sponsored by smaller trade associations that try to compete in the political arena against SSFs sponsored by larger trade associations, presumably because larger trade associations and their SSFs have greater resources to devote to SSF fundraising efforts. This commenter suggested that removing the regulatory prohibition on payroll deductions could help smaller trade associations' SSFs to raise funds and thus to compete with larger trade associations' SSFs in representing their members' political interests.

In addition, several commenters complained that SSFs sponsored by trade associations are at a disadvantage compared to SSFs sponsored by corporations and labor organizations, not only because the regulations permit payroll deductions of contributions to corporate and labor organization SSFs, but also because they require trade association SSFs to obtain prior approval before soliciting restricted class employees, without imposing any analogous prior approval requirement on corporate and labor organization SSFs. These commenters suggested that removing the prohibition on member corporations' use of payroll deductions to collect employee contributions to a trade association's SSF could help to rectify a perceived inequality in the fundraising abilities of trade association SSFs on the one hand, and corporate and labor organization SSFs on the other hand.

Finally, some commenters pointed out that not all corporate members of trade associations have their own SSFs, and that these companies may rely on their trade association's SSF to serve as their political voice. According to these commenters, a trade association's SSF is one of the most accessible mechanisms for political participation by restricted class employees of companies that do not have their own SSFs, and allowing payroll deduction and check-off systems would allow restricted class employees to spread out their contributions easily over time.

3. Practical Arguments

A number of commenters addressed the practical advantages of permitting member corporations to make payroll deductions available to their restricted class employees for contributions to a trade association's SSF. The commenters described payroll deductions as, among other things, widely available, reliable, simple to administer, convenient and imposing minimal or no cost on the corporations that offer them.

According to these commenters, the benefits of permitting a member corporation to collect voluntary employee contributions to a trade association's SSF through a payroll deduction or check-off system would extend to every party to the transaction. Contributing employees would find it more convenient and affordable to have smaller, regular contributions automatically deducted from their paychecks than to write a single check for a larger sum. Member corporations would find it more efficient and less costly to collect employee contributions through automatic payroll deductions, and those that did not would be free to use other methods of collecting contributions. Trade associations would be able to reduce their SSF fundraising expenses, and their SSFs would find it easier to track and document both contributing individuals and individual contributions. The end result, according to these commenters, would be increased participation by individuals in the political process and enhanced reporting of their contributions.

Analysis

The Petition and comments raise a reasonable question as to whether the regulatory prohibition against payroll deduction and check-off systems continues to make sense. Accordingly, the Commission concludes that the goals of the Act and the interests of the regulated community would be best served by further examination of this issue and invites public comments on it.

1. Proposed Changes to 11 CFR 114.8(e)

The Commission proposes amending 11 CFR 114.8(e) to remove the prohibition on a corporation's use of a payroll deduction or check-off system for contributions by restricted class employees to the SSF of a trade association of which the corporation is a member. The Commission proposes to effect this change by deleting the second sentence of 11 CFR 114.8(e)(3) in its entirety and by adding a new paragraph 114.8(e)(4). Existing paragraph 114.8(e)(4) would be redesignated as 114.8(e)(5).

As proposed, new paragraph 114.8(e)(4) would permit, but not require, a corporation to provide incidental services to collect and forward contributions from its restricted class employees to the SSF of a trade association of which the corporation is a member, upon written request of the trade association. Based on information in the Petition and in the comments regarding the wide availability and minimal cost of payroll deductions, the proposed regulation would expressly authorize the use of a payroll deduction or check-off system as an incidental service. The Commission invites public comments on this issue.

In addition to permitting a member corporation to provide incidental services to collect and forward employee contributions to a trade association's SSF, proposed paragraph 114.8(e)(4) would require any corporation that provides these services to make the same services available to a labor organization representing employees of the corporation, upon written request of the labor organization and at a cost that does not exceed any actual expenses incurred. The Commission considers this requirement to be necessary to prevent circumvention of provisions in the Act and Commission regulations that seek to prevent corporate SSFs from gaining an unfair fundraising advantage over labor organization SSFs. *See* 2 U.S.C. 441b(b)(6) and 11 CFR 114.5(k)(1).

The Petitioners and some of the commenters noted that a corporation without its own SSF might rely exclusively on its trade association's SSF to represent its corporate interests in the political arena. Absent the requirement in proposed paragraph 114.8(e)(4) that a member corporation make incidental services available to a labor organization representing employees of the corporation if the corporation makes those services available to a trade association, a corporation could allow restricted class employees to contribute through payroll deductions to the corporation's proxy SSF administered by a trade association, without permitting employees who are members of a labor organization to contribute to their labor organization's SSF through payroll deductions. This outcome would create an inequality that could subvert the careful balance struck in the Act and Commission regulations between corporate SSFs and labor organization SSFs. The Commission invites public comments on this issue.

The only distinction in the proposed rule between providing incidental

services to collect and forward employee contributions to a trade association's SSF on the one hand, and providing incidental services to collect and forward employee contributions to a labor organization's SSF on the other hand, is in the area of reimbursement. The proposed rule would not require a trade association or its SSF to reimburse the corporation for any actual expenses that the corporation incurs in providing the incidental services. As the Commission has stated previously, ''incidental services by corporate members would not require reimbursement by the trade association since, in any event, reimbursement if required would come from membership dues paid to the trade association by its corporate members.'' Advisory Opinion 1979–8 at 2, *citing to* Federal Election Regulations, Explanation and Justification, House Document No. 95–44, page 114. *See also* Advisory Opinion 1978–13.

A labor organization or its SSF that receives incidental services from a corporate employer of members of the labor organization, by contrast, would be required to reimburse the corporation for the cost of providing those services. The Commission has previously found that a prohibited corporate contribution would result from a failure by a labor organization to reimburse a corporation for actual expenses incurred by the corporation in providing a payroll deduction or check-off system for contributions to the labor organization's SSF. *See* Advisory Opinions 1981–39 and 1979–21. The Commission invites public comments on this issue.

2. Proposed Changes to 11 CFR 114.2(f)

The Commission proposes making a conforming change to the regulation that currently prohibits a corporation from facilitating the making of contributions to political committees, other than to the corporation's own SSF. *See* 11 CFR 114.2(f)(1). The term ''facilitation'' means using corporate resources or facilities to engage in fundraising activities in connection with any federal election. *Id.* Facilitation does not include, however, enrollment by a corporation or labor organization of members of the corporation's or labor organization's restricted class in a payroll deduction plan or check-off system to make contributions to the corporation's or labor organization's SSF. *See* 11 CFR 114.2(f)(4)(i).

The Commission proposes adding a new paragraph (5) to 11 CFR 114.2(f), to specify that facilitation also would not include the provision of incidental services by a corporation to collect and forward voluntary contributions from its restricted class employees to the SSF of a trade association of which the corporation is a member, pursuant to 11 CFR 114.8(e)(4), as revised. The new paragraph would state that a corporation could collect the contributions through a payroll deduction or check-off system. The Commission invites public comments on this proposal.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the proposed rules permit, but do not require, a corporation to provide incidental services to collect and forward contributions from its restricted class employees to the separate segregated fund of a trade association of which the corporation is a member, including the use of a payroll deduction or check-off system. Under current law, a corporation is permitted to collect and transmit contributions manually to the SSF of a trade association to which the corporation belongs. If promulgated, the proposed rule should enable those corporations that wish to transmit employee contributions to trade association SSFs to do so more efficiently and using fewer resources.

List of Subjects in 11 CFR Part 114

Business and industry, elections, labor.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapter A of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

1. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 441b.

2. Amend § 114.2 by adding new paragraph (f)(5), to read as follows:

§ 114.2 Prohibitions on contributions and expenditures.

* * * * *

(f) * * *

(5) Facilitating the making of contributions also does not include the provision of incidental services by a corporation to collect and forward contributions from its employee stockholders and executive and administrative personnel to the separate segregated fund of a trade association of which the corporation is a member, including collection through a payroll deduction or check-off system, pursuant to 11 CFR 114.8(e)(4).

3. Amend § 114.8 by revising paragraph (e)(3), by redesignating paragraph (e)(4) as new paragraph (e)(5), and by adding a new paragraph (e)(4) to read as follows:

§ 114.8 Trade associations.

* * * * *

(e) * * *

(3) There is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use.

(4) A corporation may provide incidental services to collect and forward contributions from its employee stockholders and executive and administrative personnel to the separate segregated fund of a trade association of which the corporation is a member, including a payroll deduction or check-off system, upon written request of the trade association. Any corporation that provides such services shall make those services available to a labor organization representing any members working for the corporation, upon written request of the labor organization and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby.

* * * * *

Dated: December 17, 2004.

Bradley A. Smith,

Chairman, Federal Election Commission.

[FR Doc. 04–27971 Filed 12–21–04; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–07–AD]

RIN 2120–AA64

Airworthiness Directives; Teledyne Continental Motors (Formerly Bendix) S–20, S–1200, D–2000, and D–3000 Series Magnetos

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Teledyne Continental

Motors (TCM) (formerly Bendix) S–20, S–1200, D–2000, and D–3000 series magnetos equipped with impulse couplings. That AD currently requires replacing riveted-impulse coupling assemblies, which are worn beyond limits, with serviceable riveted-impulse couplings or snap-ring impulse couplings. This proposed AD would require a reduced inspection interval for magnetos with riveted-impulse couplings installed on certain Lycoming engine models. The proposed AD would not lower the inspection interval for magnetos with snap-ring impulse couplings. This proposed AD would also limit the Applicability to certain Lycoming engine models. This proposed AD results from data provided by the manufacturer that shows a need to reduce the inspection intervals for riveted-impulse couplings used on certain Lycoming engine models. We are proposing this AD to prevent failure of the magneto impulse coupling and possible engine failure.

DATES: We must receive any comments on this proposed AD by February 22, 2005.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 93–ANE–07–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9–ane–adcomment@faa.gov*

You can get the service information identified in this proposed AD from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438–3411.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Senior Aerospace Engineer, Propulsion, Atlanta Certification Office, FAA, Small Airplane Directorate, 1 Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA, 30349; telephone (770) 703–6096, fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to provide any written relevant data, views, or arguments on this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 93–ANE–07–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. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, 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 the proposed AD in light of those comments.

Examining the AD Docket

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

Discussion

On May 29, 1996, the FAA issued AD 96–12–07, Amendment 39–9649 (61 FR 29934, June 13, 1996). That AD requires:

- An initial inspection of riveted and snap-ring impulse couplings before accumulating 500 hours time-since-new or overhauled (TSN) or time-since-last inspection (TSLI) on impulse couplings that have fewer than 450 hours TSN or TSLI on the effective date of that AD.
- An initial inspection of riveted and snap-ring impulse couplings before accumulating 50 hours time-in-service (TIS) after the effective date of that AD on impulse couplings that have 450 or more hours TSN or TSLI on the effective date of that AD.
- Repetitive inspections within 500 hours TSLI.
- Replacing impulse couplings that fail the inspection.

That AD was the result of redesigning the impulse coupling assembly to include snap-ring fastening technology, which strengthens the cam axle and reduces wear and reports of impulse couplings with the snap-ring design that were worn beyond limits. That condition, if not corrected, could result in failure of the magneto impulse coupling and possible engine failure.

Actions Since AD 96–12–07 Was Issued

Since we issued that AD, the manufacturer has added procedures and requirements for inspecting impulse couplings that have snap rings to the applicable Service Support Documents.

Relevant Service Information

We have reviewed and approved the technical contents of TCM Mandatory Service Bulletin (MSB) MSB645, dated April 4, 1994, that describes procedures for:

- Inspecting the impulse coupling assemblies for wear and, if necessary, replacing the riveted assembly with a snap-ring impulse coupling, and
- Marking the magneto data plate with a letter ''A'' after installing a snap-ring impulse coupling.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require:

- An initial visual inspection of riveted-impulse couplings that have 100 or more hours TSN or TSLI on the effective date of the proposed AD, within 10 hours TIS after the effective date of this AD, or
- An initial visual inspection of riveted-impulse couplings that have fewer than 100 hours TSN or TSLI on the effective date of the proposed AD, before accumulating 100 hours TSN or TSLI, and
- Repetitive inspections of riveted-impulse couplings within intervals of 100 hours TSLI.
- An initial visual inspection of snap-ring impulse couplings that have 450 or more hours TSN or TSLI on the effective date of the proposed AD, within 50 hours TIS after the effective date of the AD, or
- An initial visual inspection of snap-ring impulse couplings that have fewer than 450 hours TSN or TSLI before accumulating 500 hours TSN or TSLI, and
- Repetitive inspections of snap-ring impulse couplings within intervals of 500 hours TSLI.
- Replacing impulse couplings that fail the inspection.

The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect about 4,200 magnetos installed on airplanes of U.S. registry. We also estimate that it would take about 1 work hour per magneto to perform the proposed actions, and that the average labor rate is $65 per work hour. The reduced inspection interval would require doing the inspections

about four times more often. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,092,000.

Authority for this Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 93–ANE–07–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 removing Amendment 39–9649 (61 FR 29934, June 13, 1996) and by adding a new airworthiness directive to read as follows:

Teledyne Continental Motors: Docket No. 93–ANE–07–AD. Supersedes AD 96–12–07, Amendment 39–9649.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by February 22, 2005.

Affected ADs

(b) This AD supersedes AD 96–12–07, Amendment 39–9649.

Applicability

(c) This AD applies to Teledyne Continental Motors (TCM) (formerly Bendix) magnetos that have a magneto part number (P/N) listed in Table 1 of TCM Mandatory Service Bulletin (MSB) No. MSB645, dated April 4, 1994, installed on Lycoming AEIO–540, HIO–540, IO–540, 0–540, and TIO–540 series engines. These engines are installed on, but not limited to, airplanes manufactured by the Cessna Aircraft Company, Maule Aerospace Technology Corporation, Mooney Aircraft Corporation, The New Piper Aircraft Inc., and Raytheon Aircraft Company (Formerly Beech Aircraft Company).

Unsafe Condition

(d) This AD results from data provided by the manufacturer that indicates a need to reduce the inspection intervals for riveted-impulse couplings used on certain Lycoming engine models. We are issuing this AD to prevent failure of the magneto impulse coupling and possible engine failure.

Compliance

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

Initial Inspections of Impulse Couplings

(f) For all magnetos that have a P/N listed in Table 1 of TCM MSB No. MSB645, dated April 4, 1994, that have never been inspected, perform an initial inspection of the impulse coupling for wear using paragraphs 1.2 through 1.4.5 of the Detailed Instructions of TCM MSB No. MSB645, dated April 4, 1994. Use the following Table 1 for the compliance times. Snap-ring impulse couplings will have an ''A'' stamped in the lower-right quarter of the magneto data plate.

TABLE 1.—INITIAL INSPECTION COMPLIANCE TIMES

Engine model	Type of impulse coupling assembly	Time on coupling on the effective date of this AD	Inspect
Lycoming AEIO–540, HIO–540, IO–540, 0–540, and TIO–540 series engines..	(1) Riveted	(i) 100 or more hours time-since-new or overhaul (TSN) or if the TSN is unknown.	Within 10 hours time-in-service (TIS) after the effective date of this AD.
		(ii) Fewer than 100 hours TSN	Before accumulating 100 hours TSN.
	(2) Snap ring	(i) 450 or more hours TSN	Within 50 hours TIS after the effective date of this AD.
		(ii) Fewer than 450 hours TSN	Before accumulating 500 hours.

(g) Replace any impulse coupling that fails the inspection with a serviceable riveted or snap-ring impulse coupling. Paragraphs 2 through 2.6 of the Detailed Instructions of TCM MSB No. MSB645, dated April 4, 1994 contain information on replacing the impulse coupling.

(h) If you replace a snap-ring impulse coupling with a riveted-impulse coupling, strike out the ''A'' on the magneto data plate.

Repetitive Inspections of Impulse Couplings

(i) For all magnetos that have a P/N listed in Table 1 of TCM MSB No. MSB645, dated April 4, 1994, that have had an initial inspection as specified in paragraph (f) of this AD, perform a repetitive inspection of the impulse coupling for wear using paragraphs 1.2 through 1.4.5 of the Detailed Instructions of TCM MSB No. MSB645, dated April 4, 1994. Use the following Table 2 for the compliance times. Snap-ring impulse couplings will have an ''A'' stamped in the lower-right quarter of the magneto data plate.

TABLE 2.—REPETITIVE INSPECTION COMPLIANCE TIMES

Engine model	Type of impulse coupling assembly	Inspect
Lycoming AEIO–540, HIO–540, 1o–540, 0–540, and TIO–540 series engines.	(1) Riveted	Within 100 hours time-since-last inspection (TSLI).
	(2) Snap ring	Within 500 hours TSLI.

(j) Replace any impulse coupling that fails the inspection with a serviceable riveted or snap-ring impulse coupling. Paragraphs 2 through 2.6 of the Detailed Instructions of TCM MSB No. MSB645, dated April 4, 1994 contain information on replacing the impulse coupling.

(k) If you replace a snap-ring impulse coupling with a riveted-impulse coupling, strike out the ''A'' on the magneto data plate.

Optional Terminating Action

(1) Installing a ''Shower-of-Sparks'' ignition system in place of a magneto system that has a riveted-impulse coupling or a snap-ring impulse coupling ends the repetitive inspection requirements specified in paragraph (i) of this AD. You can find more information on installing a ''Shower-of-Sparks'' ignition system in TCM Service Information Letter No. SIL648, dated October 18, 1994.

Alternative Methods of Compliance

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

Related Information

(n) TCM SB No. 639, dated March 1993, contains additional information for replacing impulse couplings on a TCM magneto. TCM Service Information Letter No. SIL648, dated October 18, 1994, contains information for converting an engine to a ''Shower-of-Sparks'' ignition system.

Issued in Burlington, Massachusetts, on December 15, 2004.

Francis A. Favara,

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

[FR Doc. 04–27955 Filed 12–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–139683–04]

RIN 1545–BD95

Section 1374 Effective Dates

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance concerning the applicability of section 1374 to S corporations that acquire assets in carryover basis transactions from C corporations on or after December 27, 1994, and to certain corporations that terminate S corporation status and later elect again to become S corporations. The text of these regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments, and a request for a public hearing, must be received by March 22, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:sPR (REG–139683–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–139683–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–139683–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephen R. Cleary; (202) 622–7750, concerning submissions of comments, Sonya Cruse, (202) 622–4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION

Background and Explanation of Provisions

Temporary Regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to section 1374. The temporary regulations provide that (a) section 1374(d)(8) applies to any transaction described in that section that occurs on or after December 27, 1994, regardless of the date of the S corporation's election under section 1362, and (b) for purposes of section 633(d)(8) of the Tax Reform Act of 1986, as amended by the Technical and Miscellaneous Revenue Act of 1988, a corporation's most recent S election, not an earlier election that has been revoked or terminated, determines whether or not it is subject to current section 1374. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analysis

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to § 1.1374–8(a)(2) of these regulations. Because § 1.1374–8(a)(2) does not impose a collection of information on small entities, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6). It is hereby certified that § 1.1374–10(c) of this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that § 1.1374–10(c) of this regulation addresses an uncommon fact situation not likely to affect a significant number of small entities. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date,

time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Stephen R. Cleary of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1374–8 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§ 1.1374–8 Section 1374(d)(8) transactions.

(a) (1) * * *

(2) [The text of the proposed amendment to § 1.1374–8(a)(2) is the same as the text of § 1.1374–8T(a)(2) published elsewhere in this issue of the **Federal Register**.].

* * * * *

Par. 3. In § 1.1374–10, paragraph (c) is added to read as follows:

§ 1.1374–10 Effective date and additional rules

* * * * *

(c) The text of proposed § 1.1374–10(c) is the same as the text of § 1.1374–10T(c) published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–28012 Filed 12–21–04; 8:45 am]

BILLING CODE 4820–01–P

DEPARTMENT OF EDUCATION

34 CFR Parts 606, 607, 611, 637, 648, 656, 657, 658, 660, 661, 662, 663, 664, and 669

Higher Education Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulations will remove all references to points in the selection criteria the Department of Education (Department) uses to evaluate applications submitted under the higher education discretionary grant programs. We are proposing this action because the current point assignments are outdated and do not permit sufficient flexibility to establish important program objectives. Taking this action will allow us that flexibility and ensure grant awards are made to high quality applicants.

The proposed regulations also would remove the requirement that in competitions for grants under the Partnership and Teacher-Recruitment components of the Teacher Quality Enhancement Grants Program, the Secretary hold a two-stage competition in which applicants must submit a pre-application and a full application. The current structure has not proven effective in producing high quality applications for this program. Removing the requirement for a pre-application will reduce burden on applicants and the Department and allow both to target their resources on the full application stage.

There are some amendments in the proposed regulations that are purely technical corrections to the regulations.

DATES: We must receive your comments on or before January 21, 2005.

ADDRESSES: Address all comments about these proposed regulations to Lorraine Kennedy, U.S. Department of Education, PO Box 33553, Washington, DC 20033 or by e-mail at the following address: *DiscretionaryGrantcomments@ed.gov.* You may also send your comments to us through the Internet at the U.S. Government Web site: *http://www.regulations.gov.*

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, U.S. Department of Education, 1990 K Street, NW., room 8018, Washington, DC 20006–8544. Telephone: (202) 502–7762. Pamela Maimer, U.S. Department of Education, 1990 K Street, NW., room 8014, Washington, DC 20006–8544. Telephone: (202) 502–7704.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Invitation To Comment

We invite you to submit comments regarding these proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 8054, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact one of the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The Secretary proposes to amend 34 CFR parts 606, 607, 637, 648, 656, 657, 658, 660, 661, 662, 663, 664, and 669 by removing the mandatory point values from the selection criteria in the regulations associated with the application process for discretionary grant programs. The current regulations that mandate specific point values to the selection criteria in these discretionary grant programs are out-of-date. The proposed regulations would give the Secretary the flexibility to select specific point values from year to year to address current priorities for the programs. The removal of the mandatory point values from the selection criteria for these grant programs is also consistent with the manner in which the Department assigns points to selection criteria for many other discretionary grant programs.

The Secretary also proposes to amend the regulations in 34 CFR part 611, which govern the Teacher Quality Enhancement Grants (TQE) program. The effect of these amendments would be to make discretionary the existing requirement that in competitions for grants under the program's Partnership and Teacher-Recruitment components, the Secretary conduct a two-stage process for selecting applicants involving the submission and review of pre-applications and full applications. We adopted the two-stage process in 2000 in the belief that by inviting full applications only from those applicants that, on the basis of the pre-applications, showed promise of being able to submit high-quality full applications, we would decrease total burden on all applicants and, at the same time, enable those who review and score applications to focus on those with the most promise of being funded. See the notice of proposed rulemaking published in the **Federal Register** on February 11, 2000 at 65 FR 6939. However, under this process, not only has the Department historically received many fewer applications than anticipated, but it also has little evidence that the use of a pre-application stage has helped to promote the Department's receipt of high-quality full applications for either component of the TQE program. As a result, burden has not been reduced but rather has been inadvertently increased without any commensurate return in quality applications. While wishing to reserve the ability to use a two-stage review process should circumstances change, and given its experience, the Department now wishes to have the option of utilizing a single-stage application process as is the typical procedure in other discretionary grant programs.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of Regulations

Executive Order 12866 and the Presidential memorandum of June 11, 1988 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other working that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 606.20 How does the Secretary choose applications for funding?)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. The changes will not have a significant economic impact on the institutions affected.

Paperwork Reduction Act of 1995

Sections 606.20, 606.21, 606.22, 606.23, 607.20, 607.21, 607.22, 607.23, 611.2, 611.3, 637.31, 637.32, 648.30, 648.31, 656.20, 656.21, 656.22, 657.20, 657.21, 658.30, 658.31, 658.32, 658.33, 660.30, 660.31, 660.32, 660.33, 661.30, 661.31, 662.21, 663.21, 664.30, 664.31, 669.20, and 669.21 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3057(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

The information collection would apply to applications for awards submitted under certain higher education discretionary grant programs and the Teacher Quality Program. The likely respondents would be State agencies and two and four-year degree granting institutions. This collection of information is necessary for applicants to apply for new grants under the regulations for these discretionary grant programs. Grants will be awarded on the basis of competitively reviewed applications submitted to the U.S. Department of Education, Office of Postsecondary Education.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring 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).

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

The discretionary grant programs and the Teacher Quality Enhancement Grants Program are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Version of Documents

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

List of Subjects

34 CFR Parts 606 and 607

Colleges and universities, Grant programs-education, Reporting and recordkeeping requirements.

34 CFR Part 611

Colleges and universities, Elementary and secondary education, Grant programs—education.

34 CFR Part 637

Colleges and universities, Educational study programs, Equal educational opportunity, Grant programs-education, Reporting and recordkeeping requirements, Science and technology, Women.

34 CFR Part 648

Colleges and universities, Grant programs-education, Reporting and recordkeeping requirements, Scholarships and fellowships.

34 CFR Part 656

Colleges and universities, Cultural exchange programs, Educational study programs, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 657

Colleges and universities, Cultural exchange programs, Educational study programs, Grant programs—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

34 CFR Part 658

Colleges and universities, Cultural exchange programs, Educational study programs, Grant programs—education.

34 CFR Part 660

Colleges and universities, Cultural exchange programs, Educational Research, Educational study programs, Grant programs—education.

34 CFR Part 661

Business and industry, Colleges and universities, Educational study programs, Grant programs—education, Student aid.

34 CFR Part 662

Colleges and universities, Educational Research, Educational study programs, Grant programs—education, Scholarships and fellowships.

34 CFR Parts 663

Colleges and universities, Educational Research, Educational study programs, Grant programs—education, Scholarships and fellowships, Teachers.

34 CFR Parts 664

Colleges and universities, Educational Research, Educational study programs, Grant programs—education, Teachers.

34 CFR Parts 669

Colleges and universities, Educational Research, Educational study programs, Grant programs—education, Reporting and recordkeeping requirements, Teachers.

Dated: December 17, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 606, 607, 611, 637, 648, 656, 657, 658, 660, 661, 662, 663, 664, and 669 of title 34 of the Code of Federal Regulations as follows:

PART 606—DEVELOPING HISPANIC-SERVING INSTITUTIONS PROGRAM

1. The authority citation for part 606 continues to read as follows:

Authority: 20 U.S.C. 1101 *et seq.*, unless otherwise noted.

2. Section 606.20 is amended by—

A. Revising paragraph (b);

B. In paragraph (c)(1), removing the words ''scores at least 50 points'' and adding, in their place, the words ''meets the requirements''; and

C. Removing paragraph (c)(2)(i) and redesignating paragraphs (c)(2)(ii) and (c)(2)(iii) as paragraphs (c)(2)(i) and (c)(2)(ii), respectively.

The revision reads as follows:

§ 606.20 How does the Secretary choose applications for funding?

* * * * *

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

* * * * *

3. Section 606.21 is amended by—

A. Removing all of the parentheticals that end in ''points)''; and

B. Revising the introductory text to read as follows:

§ 606.21 What are the selection criteria for planning grants?

The Secretary evaluates an application for a planning grant on the basis of the criteria in this section.

* * * * *

4. Section 606.22 is amended by—

A. Revising the introductory text;

B. Removing all of the parentheticals that end in ''points)'';

C. In paragraphs (a)(1) and (a)(2), removing the punctuation ''.''; and

D. In paragraph (a)(3), adding the word ''and'' after the punctuation '';''.

The revision reads as follows:

§ 606.22 What are the selection criteria for development grants?

The Secretary evaluates an application for a development grant on the basis of the criteria in this section.

* * * * *

5. Section 606.23 is amended by—

A. Removing all of the parentheticals that end in ''point)''; and

B. Revising the introductory text of paragraphs (a) and (b) to read as follows:

§ 606.23 What special funding consideration does the Secretary provide?

(a) If funds are available to fund only one additional planning grant and each of the next fundable applications has received the same number of points under § 606.20 or 606.21, the Secretary awards additional points, as provided in the application package or in a notice published in the **Federal Register**, to any of those applicants that—

* * * * *

(b) If funds are available to fund only one additional development grant and each of the next fundable applications has received the same number of points

under § 606.20 or 606.22, the Secretary awards additional points, as provided in the application package or in a notice published in the **Federal Register**, to any of those applicants that—

* * * * *

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

6. The authority citation for part 607 continues to read as follows:

Authority: 20 U.S.C. 1507–1509c, 1066–1069f, unless otherwise noted.

7. Section 607.20 is amended by—

A. Removing paragraph (c) and redesignating paragraphs (b)(1) and (2) as paragraphs (c)(1) and (2), respectively;

B. In redesignated paragraph (c)(2), removing the reference to ''(b)(1)'' and adding, in its place, the reference ''(c)(1)'';

C. Adding a new paragraph (b); and

D. Revising paragraph (d).

The addition and revision read as follows:

§ 607.20 How does the Secretary choose applications for funding?

* * * * *

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

* * * * *

(d) The Secretary considers funding an application for a development grant that—

(1) Is submitted with a comprehensive development plan that satisfies all the elements required of such a plan under § 607.8; and

(2) In the case of an application for a cooperative arrangement grant, demonstrates that the grant will enable each eligible participant to meet the goals and objectives of its comprehensive development plan better and at a lower cost than if each eligible participant were funded individually.

* * * * *

8. Section 607.21 is amended by—

A. Removing all of the parentheticals that end in ''points)''; and

B. Revising the introductory text to read as follows:

§ 607.21 What are the selection criteria for planning grants?

The Secretary evaluates an application for a planning grant on the basis of the criteria in this section.

* * * * *

9. Section 607.22 is amended by—

A. Revising the introductory text;

B. Removing all of the parentheticals that end in points)'';

C. In paragraphs (a)(1) and (a)(2), removing the punctuation ''.''; and

D. In paragraph (a)(3), adding the word ''and'' after the punctuation '';''.

The revision reads as follows:

§ 607.22 What are the selection criteria for development grants?

The Secretary evaluates an application for a development grant on the basis of the criteria in this section.

* * * * *

10. Section 607.23 is amended by—

A. Removing all of the parentheticals that end in ''point)''; and

B. Revising the introductory text of paragraphs (a) and (b) to read as follows:

§ 607.23 What special funding consideration does the Secretary provide?

(a) If funds are available to fund only one additional planning grant and each of the next fundable applications has received the same number of points under § 607.20 or 607.21, the Secretary awards additional points, as provided in the application package or in a notice published in the **Federal Register**, to any of those applicants that—

* * * * *

(b) If funds are available to fund only one additional development grant and each of the next fundable applications has received the same number of points under § 607.20 or 607.22, the Secretary awards additional points, as provided in the application package or in a notice published in the **Federal Register**, to any of those applicants that—

* * * * *

PART 611—TEACHER QUALITY ENHANCEMENT GRANTS PROGRAM

11. The authority citation for part 611 continues to read as follows:

Authority: 20 U.S.C. 1021 *et seq.* and 1024(e), unless otherwise noted.

§ 611.2 [Amended]

12. Section 611.2 is amended by, in paragraph (a), removing the words ''paragraphs (a)(1), (a)(2)(iii), or (a)(3)(iii) of § 611.3'' and adding, in their place, the words ''paragraphs (a)(1), (a)(2)(i)(B), or (a)(2)(ii) of § 611.3''.

13. Section 611.3 is amended by—

A. Revising paragraphs (a)(2) and (a)(3); and

B. In paragraph (b), removing the words ''paragraphs (b)(2)(ii) and (b)(3)(ii)'' and adding, in their place, the words ''paragraphs (a)(2)(i)(A) and (a)(3)(i)(A)''.

The revisions read as follows:

§ 611.3 What procedures does the Secretary use to award a grant?

* * * * *

(a) * * *

(2) For the Partnership Grants Program, the Secretary may use a two-stage application process to determine which applications to fund.

(i) If the Secretary uses a two-stage application process, the Secretary uses—

(A) The selection criteria in §§ 611.21 through 611.22 to evaluate pre-applications submitted for new grants, and to determine those applicants to invite to submit full program applications; and

(B) For those applicants invited to submit full applications, the selection criteria and competitive preference in §§ 611.23 through 611.25 to evaluate the full program applications.

(ii) If the Secretary does not use a two-stage application process, the Secretary uses the selection criteria and competitive preference in §§ 611.23 through 611.25 to evaluate applications.

(3) For the Teacher Recruitment Grants Program, the Secretary may use a two-stage application process to determine which applications to fund.

(i) If the Secretary uses a two-stage application process, the Secretary uses—

(A) The selection criteria in § 611.31 to evaluate pre-applications submitted for new grants, and to determine those applicants to invite to submit full program applications; and

(B) For those applicants invited to submit full applications, the selection criteria in § 611.32 to evaluate the full program applications.

(ii) If the Secretary does not use a two-stage application process, the Secretary uses the selection criteria in § 611.32 to evaluate applications.

* * * * *

PART 637—MINORITY SCIENCE AND ENGINEERING IMPROVEMENT PROGRAM

14. The authority citation for part 637 continues to read as follows:

Authority: 20 U.S.C. 1067–1067c, 1067g-1067k, 1068, 1068b, unless otherwise noted.

15. Section 637.31 is amended by—

A. Revising paragraph (b); and

B. Removing paragraph (c) and redesignating paragraphs (d)(1), (2), and (3) as paragraphs (c)(1), (2), and (3), respectively.

The revision reads as follows:

§ 637.31 How does the Secretary evaluate an application?

* * * * *

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or

in a notice published in the **Federal Register**.

* * * * *

16. Section 637.32 is amended by—

A. Revising the introductory text;

B. Removing all of the parentheticals that end in ''points)'';

C. In paragraph (a)(2)(v), removing the parenthetical ''(*See* EDGAR 34 CFR 75.581)'' and adding, in its place, the parenthetical ''(*See* 34 CFR 75.580)''.

D. In paragraph (b)(2)(iv), removing the word ''groups'' the second time it appears and adding, in its place, the word ''group'';

E. In paragraph (d), removing the parenthetical ''(*See* EDGAR 34 CFR 75.590—Evaluation by the grantee; where applicable)'' and adding, in its place, the parenthetical ''(*See* 34 CFR 75.590)';

F. Removing the authority citation that appears immediately before paragraph (f); and

G. Revising paragraph (f)(2)(iii).

The revisions read as follows:

§ 637.32 What selection criteria does the Secretary use?

The Secretary evaluates applications on the basis of the criteria in this section.

* * * * *

(f) * * *

(2) * * *

(iii) Involvement of appropriate individuals, especially science faculty, in identifying the institutional needs.

* * * * *

PART 648—GRADUATE ASSISTANCE IN AREAS OF NATIONAL NEED

17. The authority citation for part 648 continues to read as follows:

Authority: 20 U.S.C. 1135–1135ee, unless otherwise noted.

18. Section 648.30 is amended by—

A. Revising paragraph (b); and

B. Removing paragraph (c).

The revision reads as follows:

§ 648.30 How does the Secretary evaluate an application?

* * * * *

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

19. Section 648.31 is amended by—

A. Removing all of the parentheticals that end in points)''; and

B. Revising the introductory text to read as follows:

§ 648.31 What selection criteria does the Secretary use?

The Secretary evaluates an application on the basis of the criteria in this section.

* * * * *

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR FOREIGN LANGUAGE AND AREA STUDIES OR FOREIGN LANGUAGE AND INTERNATIONAL STUDIES

20. The authority citation for part 656 continues to read as follows:

Authority: 20 U.S.C. 1122, unless otherwise noted.

21. Section 656.20 is amended by revising paragraph

(b) to read as follows:

§ 656.20 How does the Secretary evaluate an application?

* * * * *

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

* * * * *

22. Section 656.21 is amended by—

A. Removing all of the parentheticals that end in ''points)''; and

B. Revising the introductory text to read as follows:

§ 656.21 What selection criteria does the Secretary use to evaluate an application for a comprehensive Center?

The Secretary evaluates an application for a comprehensive Center on the basis of the criteria in this section.

* * * * *

23. Section 656.22 is amended by—

A. Removing all of the parentheticals that end in ''points)''; and

B. Revising the introductory text to read as follows:

§ 656.22 What selection criteria does the Secretary use to evaluate an application for an undergraduate Center?

The Secretary evaluates an application for an undergraduate Center on the basis of the criteria in this section.

* * * * *

PART 657—FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

24. The authority citation for part 657 continues to read as follows:

Authority: 20 U.S.C. 1122, unless otherwise noted.

25. Section 657.20 is amended by—

A. In paragraph (a), adding the word ''institutional'' before the word ''application''; and

B. Revising paragraph (b) to read as follows:

§ 657.20 How does the Secretary evaluate an institutional application for an allocation of fellowships?

* * * * *

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

* * * * *

26. Section 657.21 is amended by—

A. Removing all of the parentheticals that end in ''points)''; and

B. Adding introductory text to read as follows:

§ 657.21 What criteria does the Secretary use in selecting institutions for an allocation of fellowships?

The Secretary evaluates an institutional application for an allocation of fellowships on the basis of the criteria in this section.

* * * * *

PART 658—UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAM

27. The authority citation for part 658 continues to read as follows:

Authority: 20 U.S.C. 1124, unless otherwise noted.

28. Section 658.30 is revised to read as follows:

§ 658.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application from an institution of higher education or a combination of such institutions on the basis of the criteria in §§ 658.31 and 658.32. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

(b) The Secretary evaluates an application from an agency or organization or professional or scholarly association on the basis of the criteria in §§ 658.31 and 658.33. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1124)

29. Section 658.31 is amended by—

A. Removing the parentheticals ''(10)'' and ''(5)'' each time they appear; and

B. Revising the introductory text to read as follows:

§ 658.31 What selection criteria does the Secretary use?

The Secretary evaluates an application for a project under this program on the basis of the criteria in this section.

* * * * *

30. Section 658.32 is amended by—

A. Removing the parentheticals ''(15)'' and ''(10)'' each time they appear; and

B. Revising the introductory text to read as follows:

§ 658.32 What additional criteria does the Secretary apply to institutional applications?

In addition to the criteria referred to in § 658.31, the Secretary evaluates an application submitted by an institution of higher education or a combination of such institutions on the basis of the criteria in this section.

* * * * *

31. Section 658.33 is amended by—

A. In paragraph (a), removing the parenthetical ''(30)''; and

B. Revising the introductory text to read as follows:

§ 658.33 What additional criterion does the Secretary apply to applications from organizations and associations?

In addition to the criteria referred to in § 658.31, the Secretary evaluates an application submitted by an institution of higher education or a combination of such institutions on the basis of the criterion in this section.

* * * * *

PART 660—THE INTERNATIONAL RESEARCH AND STUDIES PROGRAM

32. The authority citation for part 660 continues to read as follows:

Authority: 20 U.S.C. 1125, unless otherwise noted.

33. Section 660.30 is revised to read as follows:

§ 660.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a research project, a study, or a survey on the basis of the criteria in §§ 660.31 and 660.32. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

(b) The Secretary evaluates an application for the development of specialized instructional materials on the basis of the criteria in §§ 660.31 and 660.33. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1125.)

34. Section 660.31 is amended by—

A. Removing all of the parentheticals that end in ''points)''; and

B. Revising the introductory text to read as follows:

§ 660.31 What selection criteria does the Secretary use for all applications for a grant?

The Secretary evaluates an application for a project under this program on the basis of the criteria in this section. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

* * * * *

35. Section 660.32 is amended by—

A. Removing all of the parentheticals that end in ''points)''; and

B. Revising the introductory text to read as follows:

§ 660.32 What additional selection criteria does the Secretary use for an application for a research project, a survey, or a study?

In addition to the criteria referred to in § 660.31, the Secretary evaluates an application for a research project, study, or survey on the basis of the criteria in this section.

* * * * *

36. Section 660.33 is amended by—

A. Removing all of the parentheticals that end in ''points)''; and

B. Revising the introductory text to read as follows:

§ 660.33 What additional selection criteria does the Secretary use for an application to develop specialized instructional materials?

In addition to the criteria referred to in § 660.31, the Secretary evaluates an application to develop specialized instructional materials on the basis of the criteria in this section.

* * * * *

PART 661—BUSINESS AND INTERNATIONAL EDUCATION PROGRAM

37. The authority citation for part 661 continues to read as follows:

Authority: 20 U.S.C. 1130–1130b, unless otherwise noted.

38. Section 661.30 is revised to read as follows:

§ 661.30 How does the Secretary evaluate an application?

The Secretary evaluates an application for a grant under this program on the basis of the criteria in § 661.31. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1130a.)

39. Section 661.31 is amended by—

A. Removing all of the parentheticals that end in ''points)'';

B. In paragraph (e), adding the punctuation ''.'' after the word ''resources''; and

C. Revising the introductory text to read as follows:

§ 661.31 What selection criteria does the Secretary use?

The Secretary evaluates an application for a grant under this program on the basis of the criteria in this section.

* * * * *

PART 662—FULBRIGHT-HAYS DOCTORAL DISSERTATION RESEARCH ABROAD FELLOWSHIP PROGRAM

40. The authority citation for part 662 continues to read as follows:

Authority: Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

41. Section 662.21 is amended by—

A. Removing all of the parentheticals that end in ''points)'' and removing the parentheticals ''(10)'', ''(15)'', and ''(5)'' wherever they appear;

B. In paragraph (c)(2), removing the word ''a''; and

C. Revising paragraph (a) to read as follows:

§ 662.21 What criteria does the Secretary use to evaluate an application for a fellowship?

(a) *General.* The Secretary evaluates an application for a fellowship on the basis of the criteria in this section. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

* * * * *

PART 663—FULBRIGHT-HAYS FACULTY RESEARCH ABROAD FELLOWSHIP PROGRAM

42. The authority citation for part 663 continues to read as follows:

Authority: Sec. 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

43. Section 663.21 is amended by—

A. Removing all of the parentheticals that end in ''points)'' and removing the parentheticals ''(10)'', ''(15)'', and ''(5)'' wherever they appear; and

B. Revising paragraph (a) to read as follows:

§ 663.21 What criteria does the Secretary use to evaluate an application for a fellowship?

(a) *General.* The Secretary evaluates an application for a fellowship on the basis of the criteria in this section. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

* * * * *

PART 664—FULBRIGHT-HAYS GROUP PROJECTS ABROAD FELLOWSHIP PROGRAM

44. The authority citation for part 664 continues to read as follows:

Authority: 22 U.S.C. 2452(b)(6), unless otherwise noted.

45. Section 664.30 is amended by—

A. Revising paragraph (a);

B. Removing paragraph (b); and

C. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

The revision reads as follows:

§ 664.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a Group Project Abroad on the basis of the criteria in § 664.31. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

* * * * *

46. Section 664.31 is amended by—

A. Removing all of the parentheticals that end in ''points).'' and removing the parenthetical that ends in ''points)''; and

B. Revising the introductory text to read as follows:

§ 664.31 What selection criteria does the Secretary use?

The Secretary uses the criteria in this section to evaluate applications for the purpose of recommending to the J. William Fulbright Foreign Scholarship Board Group Projects Abroad for funding under this part.

* * * * *

PART 669—LANGUAGE RESOURCE CENTERS PROGRAM

47. The authority citation for part 669 continues to read as follows:

Authority: 20 U.S.C. 1123, unless otherwise noted.

48. Section 669.20 is revised to read as follows:

§ 669.20 How does the Secretary evaluate an application?

The Secretary evaluates an application for an award on the basis of the criteria contained in §§ 669.21 and 669.22. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1123.)

49. Section 669.21 is amended by—

A. Removing all of the parentheticals that end in ''points)'';

B. In paragraph (c), removing the symbol ''§ ''; and

C. Revising the introductory text to read as follows:

§ 669.21 What selection criteria does the Secretary use?

The Secretary evaluates an application on the basis of the criteria in this section.

* * * * *

[FR Doc. 04–28021 Filed 12–21–04; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2004–0080, FRL–7851–9]

RIN 2060–AF00

National Emission Standards for Hazardous Air Pollutants: Appendix A—Test Methods; Method 301 for the Field Validation of Pollutant Measurement Methods From Various Waste Media

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to amend procedures for validating alternative emissions test methods, to rewrite the EPA's Method 301 in plain language, reorganize the method for clarity, correct technical errors, and revise the technical procedures. The revisions to the technical procedures include replacing quantitation limits with detection limits, revising the bias acceptance criteria and eliminating the correction factors, revising the precision acceptance criteria, and allowing analyte spiking as an option even when there is an existing test method.

DATES: *Comments.* Comments must be received on or before February 22, 2005.

Public Hearing. If anyone contacts the EPA requesting a public hearing by January 11, 2005, a public hearing will be held on January 21, 2005.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2004–0080, by one of the following methods.

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- Mail: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket Number OAR–2004–0080, Room B108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**). Send submissions containing such proprietary or confidential business information (CBI) directly to the following address, and not to the public docket, to ensure that proprietary or CBI is not inadvertently placed in the public docket: Attention: Mr. Roberto Morales, U.S. Environmental Protection Agency, OAQPS Document Control Officer, 109 TW Alexander Drive, Room C404–02, RTP, NC, 27711.
- Hand Delivery: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket Number OAR–2004–0080, Room B102, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The EPA requests a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Instructions. Direct your comments to Docket ID No. OAR–2004–0080. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov Web sites, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means the EPA will not know your identity or contact information unless you provide it in the body of your

comment. If you send an e-mail comment directly to the EPA without going through EDOCKET OR regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hardcopy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20004. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Public Hearing. People interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Corlis McCormick, Source Measurement Technology Group, Emission Measurement Center (D243–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–5545, at least 2 days in advance of the public hearing. People interested in attending the public hearing must also call Ms. McCormick to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed changes to Method 301. If a public hearing is held, it will be held at 10 a.m. in the EPA's Auditorium in Research Triangle Park, North Carolina, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standards, contact Mr. Gary McAlister, Source Measurement Technology Group, Emission Measurement Center (D243–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–1062, electronic mail address: *mcalister.gary@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble Outline

The information in this preamble is organized as follows.

I. General Information
A. Does This Action Apply to Me?
B. What Should I Consider as I Prepare My Comments for the EPA?
C. Availability of the Proposed Rule
II. Introduction
III. What Changes Are We Proposing?
A. Use Plain Language
B. Reorganize Method 301
C. Correct Technical Errors
D. Make Technical Revisions
IV. What Are the Administrative Requirements?
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act of 1995

I. General Information

A. Does This Action Apply to Me?

Method 301 affects/applies to you if you want to propose a test method to meet an EPA requirement in absence of a validated method.

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

1. *Submitting CBI.* Do not submit this information to the EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

i. Identify the rulemaking by docket number and other identifying information (*e.g.*, subject heading, **Federal Register** proposal publication date and reference page number(s)).

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

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

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

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

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

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

viii. Make sure to submit your comments by the specified comment period deadline.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Roberto Morales, U.S. Environmental Protection Agency, OAQPS Document Control Officer, 109 TW Alexander Drive, Room C404–02, RTP, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

C. Availability of the Proposed Rule

In addition to being available in the docket, an electronic copy of the proposed changes to Method 301 is also

available on the Internet through the Technology Transfer Network (TTN). Following signature, a copy of Method 301 will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

II. Introduction

Today's action proposes to amend EPA's Method 301; Field Validation of Pollutant Measurement Methods from Various Waste Media. Method 301 can be found in Appendix A of 40 CFR part 63 (Test Methods). Method 301 was promulgated with 40 CFR part 63 subpart D (Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants) (58 FR 27338, June 13, 1991) pursuant to section 112 of the Clean Air Act (as amended in 1990). You would use Method 301 whenever you propose to use a test method to meet an EPA requirement in absence of a validated method. The method specifies procedures for determining and documenting the precision and bias of measured concentrations from various media (*e.g.*, sludge, exhaust gas, wastewater) at the level of an applicable standard for a source. Bias (or systemic error) is established by comparing your proposed method against a reference value. A correction factor is employed to eliminate/minimize bias. This correction factor is established from data obtained during your validation test. Methods that have bias correction factors outside a specified range are considered unacceptable. Method precision (or random error) at the level of the standard must be demonstrated to be as precise as the validated method for acceptance.

Today's action proposes to amend those provisions by correcting technical errors, and simplifying and clarifying procedures. Section II of this preamble discusses the proposed Method 301 rule, and section III presents the administrative requirements for this action.

III. What Changes Are We Proposing?

A. Use Plain Language

In compliance with President Clinton's June 1, 1998, Executive Memorandum on Plain Language in government writing, Method 301 has been rewritten in plain language. The use of plain language clarifies the requirements of Method 301, thus, reducing the burden (time) associated with understanding the Method. When Method 301 refers to ''you,'' it means the owner or operator of the affected source.

B. Reorganize Method 301

We have reorganized the information in Method 301 to make it easier to follow the requirements and to understand the relationships among the various requirements. The reorganization did not create new requirements, but it does incorporate various corrections to technical errors and technical revisions. These corrections and revisions, as well as the rationale for the changes, are discussed in sections III C and D of this preamble.

Section 17.0 of today's rule (What detection limits must I use?) shall apply instead of section 9.0 (Practical Quantitation Limits) of the promulgated Method 301 rule. We have retained all other sections from the promulgated Method 301, but you will find them in new places. Where necessary for clarity, we have put the information from one section of Promulgated Method 301 into several new sections. Some information has been put into tables at the end of the Method. Section 2.0 presents new information. It has been added to explain when you must use Method 301 and to identify the requirement for receiving written approval from the Administrator before using the alternative test method. Table 1 of this preamble specifies where the sections in the promulgated Method 301 are found in the proposed Method 301 rule.

The equations of the promulgated Method 301 have also been amended. Some of the promulgated equations have been modified; some have been replaced by other equations, and some have simply been renumbered or reordered. The technical reasons for the changes to the equations are discussed in section III. D of this preamble. Table 2 indicates whether each equation in the proposed amended rule has changed from the promulgated rule. Equations 301–5 and 301–10 (correction factors when using isotopic spiking and paired sampling systems with a validated test method comparison) of promulgated Method 301 rule have been removed for the reasons discussed in section III D of this preamble.

TABLE 1.—COMPARISON OF SECTIONS IN PROPOSED METHOD 301 TO THOSE IN PROMULGATED METHOD 301

Proposed new section	Promulgated method section
Using Method 301	
1.0 What is the purpose of Method 301?	1.1 Applicability.
2.0 When must I use Method 301?	None.
3.0 What does Method 301 include?	1.1.2.
4.0 How do I perform Method 301?	1.2 Principle.
Reference Materials and Performance Audits	
5.0 What reference materials must I use?	3.0 Reference Materials.
6.0 How do I conduct the performance audit?	4.0 EPA Performance Audit Materials.
Sampling Procedures	
7.0 What sampling procedures must I use?	5.0 Procedure for Determination of Bias and Precision in the Field.
8.0 How do I ensure sample stability?	8 Procedure for Sample Stability in Bias and Precision Evaluations.
Bias and Precision	
9.0 What are the requirements for bias?	1.2.1 Bias.
10.0 What are the requirements for precision?	1.2.2 Precision.
11.0 What calculations must I perform for isotopic sampling?	6.1 Isotopic Sampling.

TABLE 1.—COMPARISON OF SECTIONS IN PROPOSED METHOD 301 TO THOSE IN PROMULGATED METHOD 301—Continued

Proposed new section	Promulgated method section
12.0 What calculations must I perform for comparison with a validated method if I am using paired sampling systems?	6.2.1 Comparison with a validated method: Paired Sampling Systems.
13.0 What calculations must I perform for comparison with a validated method if I am using quadruplet replicate sampling systems?	6.2.2 Comparison with a validated method: Quadruplet Replicate Sampling Systems.
14.0 What calculations must I perform for analyte spiking?	6.3 Analyte Spiking.
15.0 How do I conduct followup tests?	11 Followup Testing.
Optional Requirements	
16.0 How do I use and conduct ruggedness testing?	7 Ruggedness Testing.
17.0 What detection limits must I use?	9 Practical Limit of Quantitation.
Other Requirements and Information	
18.0 How do I apply for approval to use an alternative method?	10 Field Validation Report Requirements.
19.0 How do I request a waiver?	1.1.1 and 12 Procedure for Obtaining a Waiver.
20.0 What definitions apply to this method?	12 Definitions.
21.0 Where can I find additional information?	13 Bibliography.

TABLE 2.—EQUATIONS IN PROPOSED METHOD 301

The following equation in proposed method 301 . . .	is . . .	The following equation in promulgated method 301 . . .
301–1 Difference in Sample Results	New.	
301–7 Relative Magnitude of Bias	New.	
301–9 Relative Magnitude of Bias for Comparing Against Validated Methods Using Paired Sampling Systems.	New.	
Equations When Using Isotopic Spiking		
301–4 Numerical Value of Bias	A revision of	301–1.
301–5 Standard Deviation	The same as	301–2.
301–6 t Test	A replacement for	301–3 and 301–4.
301–8 Relative Standard Deviation	A revision of	301–6.
Equations When Comparing Against Validated Method Using Paired Sampling Systems		
301–2 Standard Deviation	For paired sampling systems, a replacement for.	301–2.
301–3 t Test	The same as	301–9.
301–10 Variance	A replacement for	301–7.
301–11 Pooled Variance	New.	
301–12 Alternative Test Method Variance	A replacement for	301–9a.
301–13 F test	The same as	301–8.
Equations When Comparing Against Validated Method Using Quadruplet Replicate Sampling Systems		
301–14 Bias	The same as	301–12.
301–15 Alternative Test Method Variance	The same as	301–11.
Equations When Using Analyte Spiking		
301–16 Bias	The same as	301–14.
301–17 t Test	A replacement for	301–4.
301–18 Standard Deviation for Spiked Samples	A revision of	301–13
301–19 Standard Deviation for Unspiked Samples	A replacement for	301–13 and 301–6.
301–20 F test	New.	
301–21 Pooled Standard Deviation	A replacement for	301–15.

C. Correct Technical Errors

Some of the equations in promulgated Method 301 are incorrect. We are proposing to correct these equations with today's action. For a discussion of new equations due to technical revisions, see section III D of this preamble. We revised several equations to clarify their intent. Under the new numbering system, the revised equations are 301–4 (numerical value of bias), 301–6 (t Test), 301–8 (relative standard deviation), 301–18 (standard deviation for spiked samples), and 301–19 (standard deviation for unspiked samples). These changes were editorial/defining changes and not technical changes. For example, we added or changed subscripts or redefined a variable.

We added Equations 301–1, 301–7, and 301–9. Equation 301–1 is used to calculate the difference in minimum and maximum storage times under the new sample stability procedures. Equation 301–7 is used to calculate relative magnitude of bias for isotopic spiking. This new equation was needed when we dropped the use of correction factors. Likewise, Equation 301–9 was needed for calculating relative magnitude of bias when comparing against a validated method using paired sampling systems.

We also added Equation 301–11 and changed Equations 301–12, 301–17, 301–18, and 301–19 to correct technical errors in promulgated Method 301. Equations 301–11 (Pooled Variance) and 301–12 (Alternative Test Method Variance) are being proposed to correct a technical error in the promulgated method. Addition and subtraction can only be performed on the variance. It cannot be performed on the standard deviation. The proposed Equation 301–11 is a new equation that calculates the pooled variance of both methods when comparing against validated methods using paired sampling systems. The proposed Equation 301–12 replaces the standard deviation with the variance.

Equations 301–17 (calculation of the test ''t-statistic'') and 301–21 (calculation of the pooled standard deviation) were changed because the divisor was wrong. Equation 301–20 (F test) was added so that the tester could determine if the spiked and unspiked samples had the same precision, thereby allowing them to be pooled to calculate the overall precision.

The proposed Equation 301–2 (Standard Deviation) replaces the promulgated Equation 301–2 when comparing against validated methods using paired sampling systems. The text in promulgated 6.2.1.4 directs the analyst to determine the mean of the paired sample differences by substituting d_m (mean of the paired sample differences) and d_i (standard deviation of the differences) for S_i and S_m in the proposed Equation 301–2. We created the proposed Equation 301–2 to incorporate these changes.

D. Make Technical Revisions

We are proposing five major technical changes to Method 301. These technical changes include the following:

(1) Replacing the Practical Limit of Quantitation (PLQ) with a procedure to determine the Limit of Detection,

(2) Revising the bias acceptance criteria and eliminating correction factors,

(3) Revising precision acceptance criteria when using analyte spiking,

(4) Allowing analyte spiking even when there is an existing test method, and

(5) Establishing new procedures for ensuring sample stability.

1. *Practical Limit of Quantitation.* We are proposing to replace the determination of the PLQ with a procedure to determine the Limit of detection (LOD). The purpose of establishing a measurement limit is to ensure that a test method is appropriate for its intended use. The LOD is a better parameter for this purpose.

The PLQ is defined as the level or concentration at which the precision of a test method reaches an acceptable value. There are several problems with this concept. The first is the idea that there is an absolute value for acceptable precision. To a certain extent, a tester can compensate for imprecision by collecting additional data so there is no absolute level at which the imprecision of a test method becomes so great that the method is no longer useful. This concept works best when the precision of the test method is independent of the concentration of the analyte being measured. As the concentration of the analyte increases, the imprecision of the method as a percentage of the measured quantity decreases. In this case, the relative imprecision will actually decrease as the quantity measured increases.

However, for most environmental measurements, it appears that the precision is a function of the concentration of the analyte being measured. Thus, the relative imprecision will not decrease as the quantity measured increases. In this case, the PLQ has no meaning.

The LOD is the minimum level or concentration of an analyte that produces a signal or response that is distinguishable from the signal or response produced when no analyte is present. This is a measurable quantity that can be determined regardless of the method's precision or whether that precision varies with the level of the analyte. For all of these reasons, we believe that the LOD is a more useful parameter to characterize a test method's performance.

2. *Bias Acceptance Criteria.* We are also proposing to change the acceptance criteria for the bias in a proposed alternative method from ± 30% to ± 10% and concurrently to eliminate the requirement for correcting all data collected with the method. We believe that twelve pairs of results from a single source are not sufficient to allow us to establish a correction factor that can or should be applied to all future uses of the method. In addition, keeping track of correction factors to ensure that they are applied to future uses of the method is a huge administrative burden both for the users of the method and the regulatory agencies who oversee its use. If we do not use correction factors, method biases of up to 30 percent are undesirably large. Therefore, we are proposing to reduce the acceptable bias to + 10% and eliminate the requirement to correct the data. With this change, the bias of alternative methods will be acceptable; the criteria for using the alternative test method at similar sources will be clear, and the administrative burden will be reduced.

3. *Precision Acceptance Criteria.* We are proposing to change the acceptance criteria for method precision when using analyte spiking from ± 50% to ± 20%. In addition, we are proposing to eliminate the requirement for different numbers of replicate samples depending on the method's relative precision. All future testing using an alternative test method at similar sources will require only three replicate samples. The requirement in the existing procedure was an attempt to compensate for the poorer precision of some candidate alternative test methods by increasing the amount of data that the user was required to collect. While more data does compensate for the imprecision of any future data collected with the method, allowing candidate alternative test methods with poor precision creates other problems. One problem is that poor precision makes it more difficult to detect potential bias in a test method. For this reason, we are proposing to tighten the acceptance criteria for the precision of candidate alternative test methods.

4. *Analyte Spiking.* We are also proposing to allow the tester to use analyte spiking to evaluate an alternative test method even when there is an existing compliance test method. If the NESHAP specifies a test method, promulgated Method 301 requires the tester to evaluate an alternative method by direct comparison. We believe that this is too restrictive in some cases. For example, a change in process technology may cause a previously unbiased test method to develop an interference that biases its results. If the tester is required to compare the alternative test method to the existing test method, the alternative method could never demonstrate acceptable performance if it were unbiased. We believe that it is sufficient for an alternative method to demonstrate acceptable performance by using the analyte spiking procedure and that this is a reasonable alternative to direct comparison.

5. *Sample Stability.* Finally, we are proposing procedures for sample stability. Method 301 previously lacked specific procedures for ensuring that samples collected under proposed alternative methods were analyzed within an appropriate time. New Section 8.4 includes a requirement to calculate the difference in the sampling results at the minimum and maximum storage times, determine the standard deviation of the differences, and test the difference in the results for statistical significance by calculating the t-statistic and determining if the mean of the differences between the initial results and the results after storage is significant at the 95 percent confidence level. We have also added Table 1 to compare the calculated t-statistic with the critical value of the t-statistic. These procedures are necessary to ensure sample stability and should have been included in promulgated Method 301.

IV. What Are the Administrative Requirements?

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed regulatory action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose or change the information collection burden under the provisions of the Paperwork Reduction Act 44 U.S.C. 3501, *et seq.* 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 collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that meets the definitions for small business based on the Small Business Association (SBA) size standards which, for this proposed action, are operations that have fewer than 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities,'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This proposed rule will not impose any requirements on small entities. This rule establishes procedures for using alternative methods. As such, small entities and other sources are not required to comply with this proposed rule, but may elect to use Method 301. The proposed rule offers additional flexibility to all sources, including small entities that may be subject to requirements under the CAA. Additionally, this proposed amended rule clarifies and simplifies the procedures for using alternative methods. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 1044, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling

official of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that today's proposed amended rule does not contain Federal mandates for State, local, or tribal governments or the private sector. Therefore, this proposed amended rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Today's proposed amended rule will not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposed amended rule clarifies and simplifies the procedures for using alternative methods. Thus, the requirements of section 6 of the Executive Order do not apply.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed amended rule does not have tribal implications, as specified in Executive Order 13175. The proposed action serves to clarify and simplify procedures for using alternative methods. Therefore, Executive Order 13175 does not apply to the proposed amended rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines is: (1) ''Economically significant'' as defined under E.O. 12866; and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonable alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed amended rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because this proposed amended rule is not based on health or safety risks. Thus, Executive Order 13045 does not apply to this proposed amended rule.

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

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

I. National Technology Transfer and Advancement Act of 1995

Section 112(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) 915 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations, generally regarded as voluntary consensus standards bodies, include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress through OMB with explanations when an agency decides not to use available and applicable voluntary consensus standards. This proposed amended rule clarifies and simplifies, already promulgated, procedures for use of alternative standards. The intent of the Method 301 is to allow owners and operators of sources regulated by Part 63 standards the flexibility and option to use alternative standards. Today's proposed amended rule is intended to simplify and clarify the procedures for using alternative standards. Therefore, the EPA is not considering the use of any voluntary consensus standards with today's proposed action.

List of Subjects in 40 CFR Part 63

Environmental protection, Alternative test method, Air pollution control, Field validation, Hazardous air pollutants.

Dated: December 16, 2004.

Michael O. Leavitt,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Appendix A is amended by revising Method 301 to read as follows:

Appendix A to Part 63—Test Methods

Method 301—Field Validation of Pollutant Measurement Methods From Various Waste Media

Sec.

Using Method 301

1.0 What Is the Purpose of Method 301?
2.0 When Must I Use Method 301?
3.0 What Does Method 301 Include?
4.0 How Do I Perform Method 301?

Reference Materials and Performance Audits

5.0 What Reference Materials Must I Use?
6.0 How do I conduct the performance audit?

Sampling Procedures

7.0 What Sampling Procedures Must I Use?
8.0 How Do I Ensure Sample Stability?

Bias and Precision

9.0 What Are the Requirements for Bias?
10.0 What Are the Requirements for Precision?
11.0 What Calculations Must I Perform for Isotopic Spiking?
12.0 What Calculations Must I Perform for Comparison With a Validated Method If I Am Using Paired Sampling Systems?
13.0 What Calculations Must I Perform for Comparison With a Validated Method If I Am Using Quadruplet Replicate Sampling Systems?
14.0 What Calculations Must I Perform for Analyte Spiking?
15.0 How Do I Conduct Tests at Similar Sources?

Optional Requirements

16.0 How Do I Use and Conduct Ruggedness Testing?
17.0 What Detection Limits Must I Use?

Other Requirements and Information

18.0 How Do I Apply for Approval To Use an Alternative Test Method?
19.0 How Do I Request a Waiver?
20.0 What Definitions Apply to This Method?
21.0 Where Can I Find Additional Information?

Using Method 301

1.0 What Is the Purpose of Method 301?

This method describes the minimum procedures that you, the owner or operator of an affected source subject to requirements under 40 CFR part 63, must use to validate an alternative test method to a test method required in 40 CFR part 63.

2.0 When Must I Use Method 301?

If you want to request to use an alternative test method to meet requirements in a subpart of 40 CFR part 63, you must use Method 301 to validate the alternative test method. You must request approval to use the alternative test method according to the procedures in section 18 and § 63.7(f). You must receive the Administrator's written approval to use the alternative test method before you use the alternative test method to meet requirements under 40 CFR part 63. In some cases, the Administrator may decide to waive the requirement to use Method 301. Section 19 describes the requirements for obtaining a waiver.

3.0 What Does Method 301 Include?

This method includes minimum procedures to determine and document systematic error (bias) and random error (precision) of measured concentrations from exhaust gases, wastewater, sludge, and other media. It contains procedures for ensuring sample stability if such procedures are not included in the test method. This method also includes optional procedures for ruggedness and detection limits.

4.0 How Do I Perform Method 301?

First, you introduce a known concentration of an analyte or compare the alternative test method against a validated test method to determine the alternative test method's bias. Then, you collect multiple, collocated simultaneous samples to determine the alternative test method's precision. Sections 5.0 through 17.0 describe these procedures in detail.

Reference Materials and Performance Audits

5.0 What Reference Materials Must I Use?

You must use reference materials (that is, analytes) at the level of the applicable emission limitation or standard that the subpart in 40 CFR part 63 requires. If you want to expand the applicable range of the method, you must conduct additional runs with higher and lower analyte concentrations. The additional runs must be conducted according to the ruggedness procedures in 16.0. You must use the analytes according to the procedures in 5.1 through 5.4.

5.1 Exhaust Gas Tests. You must get a known concentration of each analyte from an independent source such as a speciality gas manufacturer, specialty chemical company, or chemical laboratory. You must also get the manufacturer's stability data for the analyte concentration and recommendations for recertification.

5.2 Tests for Other Waste Media. You must get the pure liquid components of each analyte from an independent manufacturer. The manufacturer must certify the purity and shelf life of the pure liquid components. You must dilute the pure liquid components in the same type medium as the waste from the affected source. You must verify the accuracy of the concentration of each diluted analyte by comparing its response to the pure liquid components.

5.3 Surrogate Analytes. If you demonstrate to the Administrator's satisfaction that a surrogate compound behaves as the analyte does, then you may use surrogate compounds for highly toxic or reactive compounds. A surrogate may be an isotope or one that contains a unique element (for example, chlorine) that is not present in the source or a derivation of the toxic or reactive compound, if the derivative formation is part of the method's procedure. You may use laboratory experiments or literature data to show behavioral acceptability.

5.4 Isotopically Labeled Materials. Isotope mixtures may contain the isotope and the natural analyte. The isotope labeled analyte concentration must be more than five times the natural concentration of the analyte.

6.0 How Do I Conduct the Performance Audit?

6.1 Getting Performance Audit Material. If EPA has performance audit material for the analytes that you are testing, you must use it to assess method bias. You can get a list of performance audit materials at *http://www.epa.gov/ttn/emc/email.html#audit* or by contacting EMC at (919) 541–5545. You must request the performance audit material at least 30 days before the validation test.

6.2 Sampling and Analyzing Performance Audit Material. You must sample and analyze the performance audit material three times according to the instructions provided with the audit sample. You must submit the three results with the field validation report. Although there are no acceptance criteria for these performance audit results, you and the Administrator may use them to assess the relative error of sample recovery, sample preparation, and analytical procedures and then consider the relative error in evaluating the measured emissions.

Sampling Procedures

7.0 What Sampling Procedures Must I Use?

You may determine bias and precision by comparing against a validated test method, using isotopic sampling, or using analyte spiking. Isotopic sampling can only be used for procedures requiring mass spectrometry. You must collect samples according to the requirements in Table 1. You must perform the sampling according to the procedures in sections 7.1 through 7.5.

7.1 Comparison Against a Validated Test Method. If you are comparing the results from the validated test method, it is recommended that you conduct a performance audit according to the procedures in section 6.

7.2 Isotopic Spiking. Spike all 12 samples with the analyte at the concentration in the applicable emission limitation or standard in the subpart of 40 CFR part 63. If there is no applicable emission limitation or standard, spike at the expected level of the samples. Follow the appropriate spiking procedures in 7.4.1 through 7.4.2 for the applicable waste medium.

7.3 Analyte Spiking. In each quadruplet set, spike half of the samples (two out of the four) with the analyte according to the applicable procedure in Section 7.4.

7.4 Spiking Procedure.

7.4.1 Gaseous Analyte with Sorbent or Impinger Sampling Trains. Sample the analyte (in the laboratory or in the field) at a concentration that is close to the concentration in the applicable emission limitation or standard in the subpart of 40 CFR part 63 (or the expected sample concentration where there is no standard) for the time required by the method, and then sample the gas stream for an equal amount of time. The time for sampling both the analyte and gas stream should be equal; however, the time should be adjusted to avoid sorbent breakthrough. The stack gas and the gaseous analyte may be sampled at the same time. The analyte must be

introduced as close to the tip of the sampling train as possible.

7.4.2 Gaseous Analyte with Sample Container (Bag or Canister). Spike the sample containers after completion of each test run with an amount equal to the concentration in the applicable emission limitation or standard in the subpart of 40 CFR part 63 (or the expected sample concentration where there is no standard). The final concentration of the analyte shall approximate the level of the emission concentration in the stack. The volume amount of analyte shall be less than 10 percent of the sample volume.

7.4.3 Liquid and Solid Analyte with Sorbent or Impinger Trains. Spike the trains with an amount equal to the concentration in the applicable emission limitation or standard in the subpart of 40 CFR part 63 (or the expected sample concentration where there is no standard) before sampling the stack gas. If possible, do the spiking in the field. If it is not possible to do the spiking in the field, you can do it in the laboratory.

7.4.4 Liquid and Solid Analyte with Sample Container (Bag or Canister). Spike the containers at the completion of each test run with an amount equal to the concentration in the applicable emission limitation or standard in the subpart of 40 CFR part 63 (or the expected sample concentration where there is no standard).

7.5 Probe Placement and Arrangement for Stationary Source Stack or Duct Sampling. To sample a stationary source as defined in 40 CFR 63.2, you must place the probe according to the procedures in 7.5. You must place the probes in the same horizontal plane.

7.5.1 For Paired Sample Probes, the sample probe tip should be 2.5 cm from the outside edge of the other sample probe, with a pitot tube on the outside of each probe. The Administrator may approve a validation request where other paired arrangements for the pitot tube are used.

7.5.2 For Quadruplet Sampling Probes, the tips should be in a 6.0 cm × 6.0 cm square area measured from the center line of the opening of the probe tip with a single pitot tube in the center or two pitot tubes with their location on either side of the probe tip configuration. You must propose an alternative arrangement whenever the cross-sectional area of the probe tip configuration is approximately 5 percent or more of the stack or duct cross-sectional area.

8.0 How Do I Ensure Sample Stability?

8.1 Developing Storage and Analysis Procedures. If the alternative test method includes well-established procedures supported by experimental data for sample storage and the time within which the collected samples must be analyzed, you must store the samples according to the procedures in the alternative test method. You are not required to conduct the procedures in section 8.2 or 8.3. If the alternative test method does not include such procedures, you must propose procedures for storing and analyzing samples to ensure sample stability. At a minimum, your proposed procedures must meet the requirements in section 8.2 or 8.3. The minimum storage time should be as soon as possible, but no longer than 24 hours after collection of the sample. The maximum storage time should be four weeks or less.

8.2 Storage and Sampling Procedures for Stack Test Emissions. You must store and analyze samples of stack test emissions according to Table 3. If you are using analyte spiking procedures, you must include equal numbers of spiked and unspiked samples.

8.3 Storage and Sampling Procedures for Testing Other Waste Media. You must analyze half of the replicate samples at the proposed minimum storage time and the other half at the proposed maximum storage time to identify the effect of storage times on analyte samples. The minimum storage time should be as soon as possible, but no longer than 24 hours after collection of the sample. The maximum storage time should be two weeks or less.

8.4 Sample Stability. After you have conducted sampling and analysis according to 8.2 or 8.3, compare the results at the minimum and maximum storage times. Calculate the difference in the results using Equation 301–1.

$$d_i = R_{mini} - R_{maxi} \qquad \text{Eq. 301-1}$$

Where:

d*i* = difference between the results of the *i*th sample.

R_{mini} = results from the *i*th sample at the minimum storage time.

R_{maxi} = results from the *i*th sample at the maximum storage time.

8.4.1 Standard Deviation. Determine the standard deviation, SD_d, of the differences, d_i's, of the paired samples using Equation 301–2.

$$SD_d = \sqrt{\frac{\sum_{i}^{N}\left(d_i - d_m\right)^2}{n-1}} \qquad \text{Eq. 301-2}$$

Where:

V_m = validated method.

P_m = proposed alternative test method.

d_i = The difference between the *i*–th pair of samples, $V_m - P_m$.

d_m = The mean of the paired sample differences.

n = total number of paired samples.

8.4.2 t Test. Test the difference in the results for statistical significance by calculating the t-statistic and determining if the mean of the differences between the initial results and the results after storage is significant at the 95 percent confidence level. Calculate the value of the t-statistic using Equation 301–3.

$$t = \frac{|d_m|}{\frac{SD_d}{\sqrt{n}}} \qquad \text{Eq. 301-3}$$

Where:

n is the total number of paired samples.

Compare the calculated t-statistic with the critical value of the t-statistic from Table 2. If the calculated t-value is less than the critical value, the difference is not statistically significant, thus, the sampling and analysis procedure ensures stability, and you may submit a request for validation of the proposed alternative test method. If the calculated t-value is greater than the critical value, the difference is statistically significant and you must repeat the procedures in 8.2 or 8.3 with new samples using shorter proposed maximum storage times.

Bias and Precision

9.0 What Are the Requirements for Bias?

You must establish bias by comparing the results of the sampling using the alternative test method against a reference value. The bias must be no more than +/ − 10% for the alternative test method to be acceptable.

10.0 What Are the Requirements for Precision?

At a minimum, you must use paired sampling systems to establish precision. If you are using analyte spiking, including isotopic samples, the precision expressed as the relative standard deviation (RSD), of the alternative test method at the level of the applicable emission limitation or standard in the subpart of 40 CFR part 63 must be less than or equal to 20 percent. If you are comparing to a validated test method, the alternative test method must be at least as precise as the validated method at the level of the applicable emission limitation or standard in the subpart of 40 CFR part 63 as determined by an F test.

11.0 What Calculations Must I Perform for Isotopic Spiking?

You must analyze the bias, precision, relative standard deviation, and data acceptance for isotopic spiking tests according to the provisions in sections 11.1 through 11.3.

11.1 Numerical Bias. Calculate the numerical value of the bias using the results from the analysis of the isotopically spiked field samples and the calculated value of the isotopically labeled spike according to Equation 301–4.

$$B = S_m - CS \qquad \text{Eq. 301-4}$$

Where:

B = Bias at the spike level.

S_m = Mean of the measured values of the isotopically spiked samples.

CS = Calculated value of the isotopically labeled spike.

11.2 Standard Deviation. Calculate the standard deviation of the S_i values according to Equation 301–5.

$$SD = \sqrt{\frac{\sum\left(S_i - S_m\right)^2}{(n-1)}} \qquad \text{Eq. 301-5}$$

Where:

S_i = Measured value of the isotopically labeled analyte in the i-th field sample,

n = Number of isotopically spiked samples, 12.

11.3 t Test. Test the bias for statistical significance by calculating the t-statistic using Equation 301–6. Use the standard deviation determined in section 11.2 and the numerical bias determined in section 11.1.

$$t = \frac{|B|}{\frac{SD}{\sqrt{n}}} \qquad \text{Eq. 301-6}$$

Compare the calculated t-value with the critical value of the two-sided t-distribution at the 95 percent confidence level and n − 1 degrees of freedom. When spiking is conducted according to the procedures specified in Sections 7.2 and 7.4 as required, this critical value is 2.201 for the eleven degrees of freedom. If the calculated t-value is less than the critical value, the bias is not statistically significant and the data are acceptable. If the calculated t-value is greater than the critical value, the bias is statistically significant and you must evaluate the relative magnitude of the bias using Equation 301–7.

$$B_R = \left|\frac{B}{CS}\right| \times 100\% \qquad \text{Eq. 301-7}$$

Where:

B_R = Relative bias.

If the relative bias is less than or equal to 10 percent, then the data are acceptable. You may proceed to evaluate the precision. If not the candidate method will not meet the requirements of Method 301.

11.4 Relative Standard Deviation. Calculate the RSD according to Equation 301–8

$$RSD = \left(\frac{SD}{S_m}\right) \times 100 \qquad \text{Eq. 301-8}$$

where S_m is the measured mean of the isotopically labeled spiked samples. The data and alternative test method are unacceptable if the RSD is greater than 20 percent.

12.0 What Calculations Must I Perform for Comparison With a Validated Method If I Am Using Paired Sampling Systems?

You must analyze the data for comparison with a validated method according to Section 12. Conduct these procedures to determine if an alternative test method produces results equivalent to a validated method. If the data from the alternative test method fail either the bias or precision test, the data and the alternative test method are unacceptable.

12.1 Bias Analysis.

12.1.1 Standard Deviation. Determine the standard deviation, SD_d, of the differences, d_i's, of the paired samples using Equation 301–2.

12.1.2 t Test. Test the bias for statistical significance by calculating the t-statistic and determine if the mean of the differences between the alternative test method and the validated method is significant at the 95 percent confidence level. Calculate the value of the t-statistic using Equation 301–3. For the spiking procedure for paired sampling systems, according to section 7.1 and Table 1, n equals nine.

Compare the calculated t-statistic with the critical value of the t-statistic. When nine runs are conducted, as specified in Section 7.1 and Table 1, the critical value of the t-statistic is 1.397 for eight degrees of freedom. If the calculated t-value is less than the critical value, the bias is not statistically significant and the data are acceptable. If the calculated t-value is greater than the critical value, the bias is statistically significant and you must evaluate the relative magnitude of the bias using Equation 301–9. If the relative bias is less than or equal to 10 percent, then the data are acceptable. Proceed to evaluate precision.

$$B_R = \left|\frac{B}{VS}\right| \times 100\% \qquad \text{Eq. 301-9}$$

Where:

B = Bias = mean of the d_i's.

VS = mean measured by the validated method.

12.2. Precision. Compare the variance of the alternative test method to that of the validated method. If a significant difference is determined using the F test, the alternative test method and the results are rejected. If the F test does not show a significant difference, then the alternative test method has acceptable precision. This procedure requires that you know the standard deviation of the validated method, SD_v. Use the value furnished with the method. If the standard deviation of the validated method is not available, the paired replicate sampling procedure may not be used.

12.2.1 Variance. Calculate the variance of the validated method, S_v^2, using Equation 301–10.

$$S_v^2 = SD_v^2 \qquad \text{Eq. 301-10}$$

Where:

SD_v = Standard deviation provided with the validated method.

12.2.2 Pooled Variance. Calculate the pooled variance of both methods, S^2_{pooled}, according to Equation 301–11.

$$S^2_{pooled} = \frac{\sum_i^N d_i^2}{2\,(n-1)} \qquad \text{Eq. 301-11}$$

Where:

d_i = The difference between the i-th pair of validated and alternative method samples.

n = The number of pairs of samples.

12.2.3 Alternative Test Method Variance. Calculate the variance of the alternative test method, S^2_p, from the S^2_{pooled} using Equation 301–12.

$$S_p^2 = S^2_{pooled} - S_v^2 \qquad \text{Eq. 301-12}$$

(If $S^2_v > S^2_{pooled}$, let $S^2_p = S^2_{pooled}/2$).

12.2.4 The F Test. Determine if the variance of the alternative test method is significantly different from that of the validated method by performing the F test. Calculate the experimental F-value using Equation 301–13.

$$F = \frac{S_p^2}{S_v^2} \qquad \text{Eq. 301-13}$$

Compare the experimental F value with the critical range of F at a 95 percent confidence level. When the procedure specified in Section 7.1 and Table 1 for paired trains is followed as required, the critical range is 0.291 to 3.44. If the calculated F is outside the critical range, the difference in precision is significant and the data and alternative test method are unacceptable.

13.0 What Calculations Must I Perform for Comparison With a Validated Method If I Am Using Quadruplet Replicate Sampling Systems?

If you are using quadruplet replicate sampling systems to compare an alternative test method to a validated method, then you must analyze the data according to the provisions in 13.0. If the data from the alternative test method fail either the bias or precision test, the data and the alternative test method are unacceptable. If the Administrator determines that the affected source has highly variable emission rates, the Administrator may require additional precision checks.

13.1 Bias Analysis. Test the bias for statistical significance at the 95 percent confidence level by calculating the t-statistic.

13.1.1 Bias. Determine the bias, which is defined as the mean of the differences between the alternative test method and the validated method (d_m). Calculate d_i according to Equation 301–14.

$$d_i = \frac{\left(V_{1_i} + V_{2_i}\right)}{2} - \frac{\left(P_{1_i} + P_{2_i}\right)}{2} \qquad \text{Eq. 301-14}$$

Where:

V_{1i} = First measured value with the validated method in the i-th sample.

V_{2i} = Second measured value with the validated method in the i-th sample.

P_{1i} = First measured value with the alternative test method in the i-th sample.

P_{2i} = Second measured value with the alternative test method in the i-th sample.

13.1.2 Standard Deviation of the Differences. Calculate the standard deviation of the differences, SD_d, using Equation 301–2.

13.1.3 T Test. Calculate the t-statistic using Equation 301–3, where n is the total number of test sample differences (d_i). For the quadruplet sampling system procedure in section 7.1 and Table 1, n equals four. Compare the calculated t-statistic with the critical value of the t-statistic and determine if the bias is significant at the 95 percent confidence level. When four runs are conducted, as specified in section 7.2 and Table 1, the critical value of the t-statistic is 1.638 for three degrees of freedom. If the calculated t-value is less than the critical value, the bias is not statistically significant and the data are acceptable. If the calculated t-value is greater than the critical value, the bias is statistically significant and you must evaluate the relative magnitude of the bias using Equation 301–9. If the relative bias is less than or equal to 10 percent, then the data are acceptable. Proceed to evaluate precision of the alternative test method.

13.2 Precision. Compare the variance of the alternative test method to that of the validated method. If a significant difference is determined using the F test, the alternative test method and the results are rejected. If the

F test does not show a significant difference, then the alternative test method has acceptable precision. This procedure requires the standard deviation of the validated method, SD_v, to be known. Use the value furnished with the method. If there are no published values, calculate the variance of the validated method using Equation 301–15.

13.2.1 Alternative Test Method Variance. Calculate the variance of the alternative test method, S_p^2, according to Equation 301–15.

$$S_p^2 = \frac{\sum d_1^2}{2n} \qquad \text{Eq. 301-15}$$

Where:

d_i = The difference between the i-th pair of samples collected with the alternative test method.

13.2.2 The F Test. Determine if the variance of the alternative test method is greater than that of the validated method by calculating the F-value using Equation 301–13. Compare the experimental F value with the critical range of F. The critical range is 0.264 to 3.79 for the 95 percent confidence level when the procedure specified in section 7.1 and Table 1 for quadruplet trains is followed. If the calculated F is outside the critical range, the difference in precision is significant, and the data and the alternative test method are unacceptable.

14.0 What calculations must I perform for analyte spiking?

You must analyze the data for analyte spike testing according to section 14.

14.1 Bias Analysis.

14.1.1 Bias. Calculate the numerical value of the bias using the results from the analysis of the spiked field samples, the unspiked field samples, and the calculated value of the spike using Equation 301–16.

$$B = S_m - M_m - CS \qquad \text{Eq. 301-16}$$

Where:

B = Bias at the spike level.
S_m = Mean of the spiked samples.
M_m = Mean of the unspiked samples.
CS = Calculated value of the spiked level.

14.1.2 T Test. Test the bias for statistical significance by calculating the t-statistic using Equation 301–17 and comparing it with the critical value of the two-sided t-distribution at the 95 percent confidence level and n-2 degrees of freedom. This critical value is 2.228 for the ten degrees of freedom.

$$t = \frac{|B|}{\sqrt{\frac{S_u^2 + S_s^2}{12}}} \qquad \text{Eq. 301-17}$$

Where:

$S_u^2 = (SD_u)^2$, SD_u is calculated in Equation 301–19.
$S_s^2 = (SD_s)^2$, SDs is calculated in Equation 301–18.

If the calculated t-value is less than the critical value, the bias is not statistically significant and the data are acceptable. If the calculated t-value is greater than the critical value, the bias is statistically significant and you must evaluate the relative magnitude of the bias using Equation 301–7. If the relative bias is less than or equal to 10 percent, then the data are acceptable. You may proceed to evaluate precision.

14.2 Precision. Calculate the standard deviation and the RSD of the alternative test method.

14.2.1 Spiked Samples. Calculate the difference, d_i, between the pairs of the spiked alternative test method measurements for each replicate sample set. Determine the standard deviation (SD_s) of the spiked values using Equation 301–18.

$$SD_s = \sqrt{\frac{\sum d_{is}^2}{2n}} \qquad \text{Eq. 301-18}$$

Where:

d_{is} = Difference between the i-th pair of spiked samples.
n = Number of paired samples.

14.2.2 Unspiked Samples. Calculate the standard deviation of the unspiked values using Equation 301–19.

$$SD_u = \sqrt{\frac{\sum d_{iu}^2}{2n}} \qquad \text{Eq. 301-19}$$

Where:

d_{iu} = Difference between the i-th pair of unspiked samples.
n = Number of paired samples.

14.2.3 Pooled Standard Deviation. Calculate the pooled standard deviation of the spiked and unspiked samples if the standard deviations are not significantly different. Test for this difference using Equation 301–20.

$$F = \frac{S_u^2}{S_s^2} \qquad \text{Eq. 301-20}$$

Where S_u^2 and S_s^2 are defined in Equation 301–17.

For the case where n = 6 and a 95 percent confidence level, the standard deviations may be pooled if the calculated F lies between 0.139 and 7.146. Calculate the pooled standard deviation (SD_{pooled}) using Equation 301–21.

$$SD_{pooled} = \sqrt{\frac{S_s^2 + S_u^2}{2}} \qquad \text{Eq. 301-21}$$

If the variances are significantly different and cannot be pooled, use the standard deviation of the spiked samples for the bias analysis in section 14.1.2.

14.2.4 Relative Standard Deviation. Calculate the RSD of the alternative test method using Equation 301–8 and the pooled standard deviation determined from Section 14.2.3. If the pooled standard deviation or the standard deviation from the unspiked samples is used, S_m is the mean of the unspiked samples. If the standard deviation of the spiked samples is used, S_m is the mean of the spiked samples. The data and alternative test method are unacceptable if the RSD is greater than 20 percent.

15.0 How do I conduct tests at similar sources?

If the Administrator has approved the use of an alternative test method to a test method required in 40 CFR part 63 for an affected source, and the Administrator has approved the use of the alternative test method at your similar source according to the procedures in 19.1.1, you must meet the requirements in this section. You must have at least three replicate samples for each test that you conduct at the similar source. You must average the results of the samples to determine the pollutant concentration.

Optional Requirements

16.0 How do I use and conduct ruggedness testing?

If you want to use a validated test method at a concentration that is different from the concentration in the applicable emission limitation in the subpart of 40 CFR part 63 or for a source category that is different from the source category that the test method specifies, then you must conduct ruggedness testing according to the procedures in Citation 10 of Section 18.0 and submit a request for a waiver according to 19.1.1.

Ruggedness testing is a laboratory study to determine the sensitivity of a method to parameters such as sample collection rate, interferant concentration, collecting medium temperature, and sample recovery temperature. You conduct ruggedness testing by changing several variables simultaneously instead of changing one variable at a time. For example, you can determine the effect of seven variables in eight experiments instead of one. (W.J. Youden, Statistical Manual of the Association of Official Analytical Chemists, Association of Official Analytical Chemists, Washington, DC, 1975, pp. 33–36).

17.0 How do I determine the Limit of Detection for the alternative method?

17.1 Limit of Detection. The Limit of Detection (LOD) is the lowest level above which you may obtain quantitative results with an acceptable degree of confidence. For this protocol, the LOD is defined as 3 times the standard deviation, S_o, at the blank level. This LOD corresponds to an uncertainty of ±30% at the 99 percent confidence level.

17.2 Purpose. The LOD will be used to establish the lower limit of the test method. If the estimated LOD is no more than twice the calculated LOD, use Procedure I in Table 4 to determine S_o. If the LOD is greater than twice the calculated LOD, use Procedure II in Table 4 to determine S_o.

Other Requirements and Information

18.0 How do I apply for approval of an alternative test method?

18.1 Submitting Requests. You must request to use an alternative test method according to the procedures in § 63.7(f). You may not use an alternative test method to meet any requirement under 40 CFR part 63 until the Administrator has approved your request. The request must include a field validation reporting containing the information in 18.2. The request must be submitted to the Director, Emissions Monitoring and Analysis Division, U.S.

Environmental Protection Agency, C304–02, Research Triangle Park, NC 27711.

18.2 Field Validation Report. The field validation report must contain the information in 18.2.1 through 18.2.9.

18.2.1 Regulatory objectives for the testing, including a description of the reasons for the test, applicable emission limits, and a description of the source.

18.2.2 Summary of the results and calculations shown in Sections 7.0 through 17, as applicable.

18.2.3 Analyte certification and value(s).

18.2.4 Laboratory demonstration of the quality of the spiking system.

18.2.5 Discussion of laboratory evaluations.

18.2.6 Discussion of field sampling.

18.2.7 Discussion of sample preparations and analysis.

18.2.8 Storage times of samples (and extracts, if applicable).

18.2.9 Reasons for eliminating any results.

19.0 How do I request a waiver?

19.1 Conditions for Waivers. If you meet one of the criteria in 19.1.1 through 19.1.3, the Administrator may waive the requirement to use the procedures in this method to validate an alternative test method. In addition, if the EPA currently recognizes an appropriate test method or considers the analyst's test method to be satisfactory for a particular source, the Administrator may waive the use of this protocol or may specify a less rigorous validation procedure.

19.1.1 Similar Sources. If the alternative test method that you want to use has been validated at another source and you can demonstrate to the Administrator's satisfaction that your affected source is similar to that source, then the Administrator may waive the requirement for you to validate the alternative test method. One procedure you may use to demonstrate the applicability of the method to your affected source is by conducting a ruggedness test as described in 16.0.

19.1.2 Documented Methods. If the bias and precision of the alternative test method that you are proposing have been demonstrated through laboratory tests or protocols different from this method, and you can demonstrate to the Administrator's satisfaction that the bias and precision apply to your application, then the Administrator may waive the requirement to use this method or to use part of this method.

19.1.3 Conditional Test Methods. If the alternative test method has been demonstrated to be valid at several sources, you may ask the Administrator to designate the alternative test method as a conditional test method. If the Administrator has designated a test method as a conditional test method and you are using the conditional method within its stated applicability, you do not have to validate it according to the procedures in this method. You can find a list of conditional test methods at *http://www.epa.gov/ttn/emc/ctm.html.*

19.2 Submitting Applications for Waivers. You must sign and submit each request for a waiver from the requirements in this method in writing. The request must be submitted to the Director, Emissions Monitoring and Analysis Division, U.S. Environmental Protection Agency, C304–02, Research Triangle Park, NC 27711.

19.3 Information Application for Waiver. The request for a waiver must contain a thorough description of the test method, the intended application, and results of any validation or other supporting documents. The request for a waiver must contain, at a minimum, the information in 19.3.1 through 19.3.4. The Administrator may request additional information if necessary to determine whether this method can be waived for a particular application.

19.3.1 A Clearly Written Test Method. The method should be written preferably in the format of 40 CFR 60, Appendix A Test Methods. It must include an applicability statement, concentration range, precision, bias (accuracy), and minimum and maximum storage time in which samples must be analyzed.

19.3.2 Summaries (see Section 18.3) of previous validation tests or other supporting documents. If a different procedure from that described in this method was used, you must submit documents substantiating the bias and precision values to the Administrator's satisfaction.

19.3.3 Ruggedness Testing Results. You must submit results of ruggedness testing conducted according to Section 16, sample stability conducted according to section 8, and detection limits conducted according to section 17, as applicable. For example, you would not need to submit ruggedness testing results if you will be using the method at the same concentration level as the concentration level at which it was validated.

19.3.4 Applicability Statement and Arguments for Waiver Approval. Discussion of the applicability statement and arguments for approval of the waiver. This discussion should address as applicable the following: applicable regulation, emission standards, effluent characteristics, and process operations.

20.0 What definitions apply to this method?

Affected source means affected source as defined in 40 CFR 63.2 and in the relevant subpart under 40 CFR part 63.

Alternative test method means the sampling and analytical methodology selected for field validation using the method described in this appendix.

Paired sampling system means a sampling system capable of obtaining two replicate samples that were collected as closely as possible in sampling time and sampling location.

Quadruplet sampling system means a sampling system capable of obtaining four replicate samples that were collected as closely as possible in sampling time and sampling location.

Surrogate compound means a compound that serves as a model for the types of compounds being analyzed (*i.e.*, similar chemical structure, properties, behavior). The model can be distinguished by the method from the compounds being analyzed.

21.0 Where can I find additional information?

You can find additional information in the references in paragraphs 21.1 through 21.12.

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21.2 DeWees, W.G., P.M. Grohse, K.K. Luk, and F.E. Butler. 1989. Laboratory and Field Evaluation of a Methodology for Speciating Nickel Emissions from Stationary Sources. EPA Contract 68–02–4442. Prepared for Atmospheric Research and Environmental Assessment Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. January.

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21.10 U.S. Environmental Protection Agency. 1981. A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards Standard Reference Materials. Publication No. EPA–600/7–81–010. Available from the U.S. EPA, Quality Assurance Division (MD–77), Research Triangle Park, NC 27711.

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21.12 Youden, W.J. Statistical techniques for collaborative tests. In: Statistical Manual of the Association of Official Analytical Chemists, Association of Official Analytical Chemists, Washington, DC, 1975, pp. 33–36.

TABLE 1 OF APPENDIX A.—SAMPLING PROCEDURES

If you are . . .	You must collect . . .
Comparing against a validated method.	Nine sets of replicate samples using a paired sampling system (a total of 18 samples) or four sets of replicate samples using a quadruplet sampling system (a total of 16 samples). In each sample set, you must use the validated test method to collect and analyze half of the samples.

TABLE 1 OF APPENDIX A.—SAMPLING PROCEDURES—Continued

If you are . . .	You must collect . . .
Using isotopic spiking (can only be used for procedures requiring mass spectrometry).	A total of 12 replicate samples. You may collect the either samples by obtaining six sets of paired samples or three sets of quadruplet samples.
Using analyte spiking.	A total of 24 samples using the quadruplet sampling system (a total of 6 sets of replicate samples).

TABLE 2 OF APPENDIX A.—CRITICAL VALUES OF t FOR THE TWO TAILED 95 PERCENT CONFIDENCE LIMIT

Degrees of freedom	t_{95}
1	3=078
2	1=886
3	1=638
4	1=533
5	1=476
6	1=44
7	1=415
8	1=397
9	1=383
10	1=372

TABLE 3 OF APPENDIX A.—STORAGE AND SAMPLING PROCEDURES FOR STACK TEST EMISSIONS

If you are . . .	With . . .	Then you must . . .
Using isotopic or analyze spiking procedures ...	Sample container (bag or canister) and impinger sampling systems.	Analyze six of the samples at the proposed minimum storage time and then analyze the same six samples at the proposed maximum storage time.
	Sorbent and impinger sampling systems that require extraction or digestion.	Extract or digest six of the samples at the proposed minimum storage time and extract or digest six other samples at the proposed maximum storage time. Analyze an aliquot of the first six extracts (digestates) at both the proposed minimum and proposed maximum storage times. This will allow analysis of extract storage impacts.
	Sorbent sampling systems that require thermal desorption.	Analyze six samples at the proposed minimum storage time. Analyze another set of six samples at the proposed maximum storage time.
Comparing an alternative test method against a validated test method.	Sampling method that does not include sorbent and impinger sampling systems that require extraction or digestion.	Analyze half of the samples (8 or 9) at the proposed minimum storage time and half of the samples (8 or 9) at the proposed maximum storage time.
	Sorbent and impinger sampling systems that require extraction or digestion.	Extract or digest six of the samples at the proposed minimum storage time and extract or digest six other samples at the proposed maximum storage time. Analyze an aliquot of the first six extracts (digestates) at both the proposed minimum and proposed maximum storage times. This will allow analysis of extract storage impacts.

TABLE 4 TO APPENDIX A.—PROCEDURES FOR ESTIMATING S_o

If the estimated LOD is no more than twice the calculated LOD, use Procedure I as follows	If the LOD is greater than twice the calculated LOD, use Procedure II as follows.
Estimate the LOD and prepare a test standard at this level. The test standard could consist of a dilution of the analyze described in Section 5.0..	Prepare two additional standards at concentration levels lower than the standard used in Procedure I.
Using the normal sampling and analytical procedures for the method, sample and analyze this standard at least seven times in the laboratory.	Sample and analyze each of these standards at least seven times.
Calculate the standard deviation, S_o, of the measured values	Calculate the standard deviation for each concentration level.
Calculate the LOD as 3 times S_o.	Plot the standard deviations of the three test standards as a function of the standard concentrations.
	Draw a best-fit straight line through the data points and extrapolate to zero concentration. The standard deviation at zero concentration is S_o.
	Calculate the LOD as 3 times S_o.

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7852–1]

RIN 2060–AM50

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to allocate essential use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2005. Essential use allowances enable a person to obtain controlled class I ODSs as an exemption to the regulatory ban of production and import of these chemicals, which became effective on January 1, 1996. EPA allocates essential use allowances for exempted production or import of a specific quantity of class I ODS solely for the designated essential purpose. The proposed allocations total 1,524.58 metric tons of chlorofluorocarbons for use in metered dose inhalers.

DATES: Written comments on this proposed rule must be received by the EPA Docket on or before January 21, 2005, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. eastern standard time on January 23, 2005. If a hearing is held, EPA will publish a document in the **Federal Register** announcing the hearing information.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0063, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention: Docket ID No. OAR–2004–0063.
- *Hand Delivery:* EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2004–0063. Deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Air Docket ID No. OAR–2004–0063. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. For instructions on how to submit CBI, see ''How do I submit confidential business information to EPA?'' under **SUPPLEMENTARY INFORMATION.**

The EPA EDOCKET and the federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or *regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet.

If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, namely CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for Docket ID No. OAR–2004–0063 is (202) 566–1742.

Materials related to previous EPA actions on the essential use program are contained in EPA Air Docket No. A–93–39. Docket A–93–39 may be reviewed at the Public Reading Room.

FOR FURTHER INFORMATION CONTACT: Scott Monroe, Essential Use Program Manager, by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; by courier service or overnight express: 1301 L Street, NW., Washington D.C., 20005, by telephone: 202–343–9712; or by e-mail: *monroe.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
  A. How should I submit confidential business information to EPA?
II. Basis for Allocating Essential Use Allowances
  A. What are essential use allowances?
  B. Under what authority does EPA allocate essential use allowances?
  C. What is the process for allocating essential use allowances?
III. Essential Use Allowances for Medical Devices
IV. Proposed Allocation of Essential Use Allowances for Calendar Year 2005
V. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act

I. General Information

A. How Should I Submit Confidential Business Information to EPA?

Comments that contain confidential business information should be submitted in two versions, one clearly marked ''Public'', to be filed in the

public docket, and the other clearly marked ''Confidential'' to be reviewed by authorized government personnel only. If the comments are not marked, EPA will assume they do not contain confidential business information and will docket them.

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

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Basis for Allocating Essential Use Allowances

A. What Are Essential Use Allowances?

Essential use allowances are allowances to produce or import certain ozone-depleting chemicals in the U.S. for purposes that have been deemed ''essential'' by the Parties to the Montreal Protocol and the U.S. Government.

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) is the international agreement to reduce and eventually eliminate the production and consumption [1] of all stratospheric ozone depleting substances (ODSs). The elimination of production and consumption of class I ODSs is accomplished through adherence to phase-out schedules for specific class I ODSs[2], including: chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform. As of January 1, 1996, production and import of most class I ODSs were phased out in developed countries, including the United States.

However, the Protocol and the Clean Air Act (Act) provide exemptions that allow for the continued import and/or production of class I ODS for specific uses. Under the Protocol, exemptions may be granted for uses that are determined by the Parties to be ''essential.'' Decision IV/25, taken by the Parties to the Protocol in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential use, as set forth in paragraph 1 of Decision IV/25, are the following:

''(a) that a use of a controlled substance should qualify as 'essential' only if:

(i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(b) that production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) the controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances.''

B. Under What Authority Does EPA Allocate Essential Use Allowances?

Title VI of the Act implements the Protocol for the United States.[3] Section 604(d) of the Act authorizes EPA to allow the production of limited quantities of class I ODSs after the phase out date for the following essential uses:

(1) Methyl Chloroform, ''solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available.'' Decision X/6 by the Parties to the Protocol established that ''* * * the remaining quantity of methyl chloroform authorized for the United States at previous meetings of the Parties [will] be made available for use in manufacturing solid rocket motors until such time as the 1999–2001 quantity of 176.4 tons (17.6 ODP-weighted tons) allowance is depleted, or until such time as safe alternatives are implemented for remaining essential uses.'' Prior to 2004, EPA issued allowances for production of approximately 34 metric tons of methyl chloroform out of the authorized balance of 176 metric tons. Under section 604(d)(1) of the Act, EPA may no longer allocate essential use allowances for production and import of methyl chloroform as of January 1, 2005. In light of this deadline, in the allocation rulemaking for calendar year 2004 (69 FR 4059) EPA allocated the remaining authorized production allowances for methyl chloroform, approximately 142 metric tons, to the National Aeronautics and Space Administration.

(2) Medical Devices (as defined in section 601(8) of the Act), ''if such authorization is determined by the Commissioner [of the Food and Drug Administration], in consultation with the Administrator [of EPA] to be necessary for use in medical devices.'' EPA issues allowances to manufacturers of metered-dose inhalers, which use CFCs as propellant for the treatment of asthma and chronic obstructive pulmonary diseases.

(3) Aviation Safety, for which limited quantities of halon-1211, halon-1301, and halon 2402 may be produced ''if the Administrator of the Federal Aviation Administration, in consultation with the Administrator [of EPA] determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes.'' Neither EPA nor the Parties have ever granted a request for essential

[1] ''Consumption'' is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported to Parties to the Montreal Protocol (*see* Section 601(6) of the Clean Air Act). Stockpiles of class I ODSs produced or imported prior to the 1996 phase out may be used for purposes not expressly banned at 40 CFR part 82.

[2] Class I ozone depleting substances are listed at 40 CFR Part 82 subpart A, appendix A.

[3] According to Section 614(b) of the Act, Title VI ''shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol * * * and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern.'' EPA's regulations implementing the essential use provisions of the Act and the Protocol are located in 40 CFR part 82.

use allowances for halon, because alternatives are available or because existing quantities of this substance are large enough to provide for any needs for which alternatives have not yet been developed.

The Protocol, under Decision X/19, additionally allows a general exemption for laboratory and analytical uses. This exemption is reflected in EPA's regulations at 40 CFR part 82, subpart A. While the Act does not specifically provide for this exemption, EPA has determined that an allowance for essential laboratory and analytical uses is allowable under the Act as a *de minimis* exemption. The *de minimis* exemption is addressed in EPA's final rule of March 13, 2001 (66 FR 14760–14770). The Parties to the Protocol subsequently agreed (Decision XI/15) that the general exemption does not apply to the following uses: testing of oil and grease, and total petroleum hydrocarbons in water; testing of tar in road-paving materials; and forensic finger-printing. EPA incorporated this exclusion at Appendix G to Subpart A of 40 CFR part 82 on February 11, 2002 (67 FR 6352).

C. What Is the Process for Allocating Essential Use Allowances?

Before EPA may allocate essential use allowances, the Parties to the Protocol must first approve the United States' request to produce or import essential class I ODSs. The procedure set out by Decision IV/25 calls for individual Parties to nominate essential uses and the total amount of ODSs needed for those essential uses on an annual basis. The Protocol's Technology and Economic Assessment Panel evaluates the nominated essential uses and makes recommendations to the Protocol Parties. The Parties make the final decisions on whether to approve a Party's essential use nomination at their annual meeting. This nomination cycle occurs approximately two years before the year in which the allowances would be in effect. The allowances allocated through today's action were first nominated by the United States in January 2003.

Once the U.S. nomination is approved by the Parties, EPA allocates essential use exemptions to specific entities through notice-and-comment rulemaking in a manner consistent with the Act. For medical devices, EPA requests information from manufacturers about the number and type of devices they plan to produce, as well as the amount of CFCs necessary for production. EPA then forwards the information to the Food and Drug Administration (FDA), which determines the amount of CFCs necessary for metered-dose inhalers in the coming calendar year. Based on FDA's assessment, EPA proposes allocations to each eligible entity. Under the Act and the Protocol, EPA may allocate essential use allowances in quantities that together are below or equal to the total amount approved by the Parties. EPA may not allocate essential use allowances in amounts higher than the total approved by the Parties. For 2005, the Parties authorized the United States to allocate up to 1,902 metric tons of CFCs for essential uses.

III. Essential Use Allowances for Medical Devices

The following is a step-by-step list of actions EPA and FDA have taken thus far to implement the exemption for medical devices found at section 604(d)(2) of the Act for the 2005 control period.

1. On February 24, 2004, EPA sent letters to MDI manufacturers requesting the following information under section 114 of the Act (''114 letters''):

a. The MDI product where CFCs will be used.

b. The number of units of each MDI product produced from 1/1/03 to 12/31/03.

c. The number of units anticipated to be produced in 2004.

d. The gross target fill weight per unit (grams).

e. Total amount of CFCs to be contained in the MDI product for 2005.

f. The additional amount of CFCs necessary for production.

g. The total CFC request per MDI product for 2005.

The 114 letters are available for review in the Air Docket ID No. OAR–2004–0063. The companies requested that their responses be treated as confidential business information; for this reason, EPA has not placed the responses in the docket.

2. On May 18, 2004, EPA sent FDA the information MDI manufacturers provided in response to the 114 letters with a letter requesting that FDA make a determination regarding the amount of CFCs necessary for MDIs for calendar year 2005. This letter is available for review in Air Docket ID No. OAR–2004–0063.

3. On July 28, 2004, FDA sent a letter to EPA stating the amount of CFCs determined by the Commissioner to be necessary for each MDI company in 2005. This letter is available for review in the Air Docket ID No. OAR–2004–0063. In their letter, FDA informed EPA that they had determined that 1524.58 metric tons of CFCs were necessary for use in medical devices in 2005.

In accordance with the determination made by FDA, today's action proposes to allocate essential use allowances for a total of 1524.58 metric tons of CFCs for use in MDIs for calendar year 2005. The amounts listed in this proposal are subject to additional review by EPA and FDA if new information demonstrates that the proposed allocations are either too high or too low. Commentors requesting increases or decreases of essential use allowances should provide detailed information supporting their claim for additional or fewer CFCs. Any company that needs less than the full amount listed in this proposal should notify EPA of the actual amount needed.

IV. Proposed Allocation of Essential Use Allowances for Calendar Year 2005

EPA proposes to allocate essential use allowances for calendar year 2005 to the entities listed in Table 1. These allowances are for the production or import of the specified quantity of class I controlled substances solely for the specified essential use. As explained in Section II.C. above, the amount of each allocation is based on the request of the company, which was reviewed by FDA to determine the quantities necessary for use in medical devices.

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2005

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11, or CFC–12, or CFC–114	29
Aventis Pharmaceutical Products	CFC–11, or CFC–12, or CFC–114	57
Boehringer Ingelheim Pharmaceuticals	CFC–11, or CFC–12, or CFC–114	480
Schering-Plough Corporation	CFC–11, or CFC–12, or CFC–114	816
3M Pharmaceuticals	CFC–11, or CFC–12, or CFC–114	69.18

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2005—Continued

Company	Chemical	Quantity (metric tons)
Wyeth	CFC–11, or CFC–12, or CFC–114	73.40

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA submitted this action to OMB for review and incorporated changes as a result. A copy of the rule showing changes that were made is available in EPA Docket OAR–2004–0063.

Under Section 6(a)(3)(B)(ii) of Executive Order 12866, the Agency must provide to OMB's Office of Information and Regulatory Affairs an ''assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.''

EPA is undertaking today's proposed action under the mandate established by Section 604(d) of the Clean Air Act Amendments of 1990, which directs the Administrator to authorize the production of limited quantities of class I substances solely for use in medical devices, if the Commissioner of FDA determines that the authorization is necessary. The proposed allocations in today's rule are the amounts determined by FDA to be necessary for calendar year 2005.

EPA has not assessed the costs and benefits specific to today's proposed action. The Agency examined the costs and benefits associated with a related regulation. The Agency's Regulatory Impact Analysis (RIA) for the entire Title VI phaseout program examined the projected economic costs of a complete phaseout of consumption of ozone-depleting substances, as well as the projected benefits of phased reductions in total emissions of CFCs and other ozone-depleting substances, including essential-use CFCs used for metered-dose inhalers (U.S. Environmental Protection Agency, ''Regulatory Impact Analysis: Compliance with Section 604 of the Clean Air Act for the Phaseout of Ozone Depleting Chemicals,'' July 1992).

B. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* MB previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.21).

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 instruction; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 1.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) Pharmaceutical preparations manufacturing businesses (NAICS code 325412) that have less than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule provides an otherwise unavailable benefit to those companies

that are receiving essential use allowances by creating an exemption to the regulatory phaseout of chlorofluorocarbons. We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impact of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, since it merely provides exemptions from the 1996 phase out of class I ODSs. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because this rule merely allocates essential use exemptions to entities as an exemption to the ban on production and import of class I ODSs.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule affects only the companies that requested essential use allowances. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule affects only the companies that requested essential use allowances. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it implements the phase-out schedule and exemptions established by Congress in Title VI of the Clean Air Act.

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

This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 Fed. Reg. 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule affects only the pharmaceutical companies that requested essential use allowances.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Environmental protection, Imports,

Methyl Chloroform, Ozone, Reporting and recordkeeping requirements.

Dated: December 16, 2004.

Michael O. Leavitt,

Administrator.

40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.4 is amended by revising the table in paragraph (n)(2) to read as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(n) * * *

(2) * * *

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2005

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11, or CFC–12, or CFC–114	29
Aventis Pharmaceutical Products	CFC–11, or CFC–12, or CFC–114	57
Boehringer Ingelheim Pharmaceuticals	CFC–11, or CFC–12, or CFC–114	480
Schering-Plough Corporation	CFC–11, or CFC–12, or CFC–114	816
3M Pharmaceuticals	CFC–11, or CFC–12, or CFC–114	69.18
Wyeth	CFC–11, or CFC–12, or CFC–114	73.40

* * * * *

[FR Doc. 04–27994 Filed 12–21–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF STATE

48 CFR Parts 619, 625, 628, and 652

[Public Notice 4938]

RIN 1400–AB90

Department of State Acquisition Regulation

AGENCY: State Department.

ACTION: Proposed rule.

SUMMARY: This proposed rule makes three changes to the DOSAR. It revises the DOSAR to: Formalize Department policy regarding the application of the Small Business Act to contracts awarded by domestic contracting activities where contract performance takes place overseas; add language to deal with U.S. Government support to contractors performing overseas; and, revise the coverage regarding Defense Base Act insurance.

DATES: The Department will accept comments from the public up to 60 days from December 22, 2004.

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

- *E-mail: ginesgg@state.gov.* You must include the RIN in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street, NW., Suite 603, State Annex Number 6, Washington, DC 20522–0602.
- *Fax:* 703–875–6155.

Persons with access to the Internet may also view this notice and provide comments by going to the *regulations.gov* Web site at: *http://www.regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street, NW., Suite 603, State Annex Number 6, Washington, DC 20522–0602; e-mail address: *ginesgg@state.gov.*

SUPPLEMENTARY INFORMATION: As indicated in the Summary, the proposed rule makes three changes to the DOSAR, as follows:

- DOSAR 619.000 is added to formalize the Department's policy regarding the application of the Small Business Act to contracts awarded by domestic contracting activities (*i.e.*, those located in the United States) where contract performance takes place overseas. Currently, FAR 19.000(b) states that part 19, with the exception of subpart 19.6, applies ''only in the United States or its outlying areas.'' This language is ambiguous and subject to interpretation. While the application is clear with respect to contracts both awarded and performed in the United States (it applies) and to contracts both awarded and performed outside the United States (it does not apply), the gray area is its applicability to contracts awarded by contracting offices located in the United States but where contract performance takes place overseas. The Department has subsequently followed an informal policy of applying part 19 to such contracts. This DOSAR change, therefore, states this policy in explicit terms.
- A new DOSAR subpart 625.71 is added to address the issue of the Department's administrative, logistical, and security support of contractor personnel performing overseas in locations where a contingency operation is ongoing or in high-risk locations. Essentially, the policy requires that contractors furnish their own in-country non-U.S. Government administrative, logistical, and security support. If the Department authorizes the use of U.S. Government-provided support, that support shall be set forth in the Statement of Work. An associated contract clause is added at 652.225–72. The clause is mandatory in Department contracts when the contract is in support of the operations/missions at one or more U.S. diplomatic or consular missions, and the location of the U.S. diplomatic or consular mission at which the work is to be performed is designated as a contingency operation, as defined in FAR 2.101. The clause is optional for use in contracts in support of the operations/missions at one or more U.S. diplomatic or consular missions in situations where a military contingency operation does not exist, but a high risk to personnel or property is known or anticipated.
- Subpart 628.3 is revised to clarify the application of Defense Base Act (DBA) insurance to local and third country nationals. The Department of

Labor (DOL) has granted the Department of State (DOS) waivers to cover local and third country nationals. These waivers state that DOS contractors need not provide DBA insurance for those DOS contractor employees who are local or third country nationals. However, the DOL waivers state that in lieu of DBA insurance, the DOS contractors must provide workers' compensation benefits to local and third country nationals in accordance with local law. The Department of State did not interpret the waivers as a DOL requirement for DOS contractors to provide DBA insurance to local or third country national contractor employees in countries where no workers' compensation law existed. Nevertheless, DOL recently stated that the absence of local workers' compensation laws in certain countries renders the DOL waivers ''ineffective'', and that where there is no local workers'' compensation law, DOS contractors must provide local and third country national employees with the DBA insurance. As a result, the Department is revising Subpart 628.3 to clarify this issue. In addition, the revision includes language regarding a statutory exemption from the DBA for contractor employees who perform work on an intermittent basis for not more than 90 days in a calendar year. This exemption is stated in Section 16 of the State Department Basic Authorities Act (22 U.S.C. 2680a), as amended. The DOSAR clause at 652.228–71 is revised accordingly. In addition, a new solicitation provision is added at 652.228–70. The purpose of the provision is to request information from prospective contractors on whether or not any covered contractor employees will be employed on the resultant contract. Finally, in looking at appropriate revisions to the DOSAR provisions at 652.228–74 and 652.228–76, it was determined that one provision to cover all types of contracts could be used. DOSAR 652.228–76 is therefore removed and 652.228–74 is revised to cover all contract types as opposed to just fixed-price.

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

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded 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 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

Information collection requirements have been approved under the Paperwork Reduction Act of 1980 by OMB, and have been assigned OMB control number 1405–0050.

List of Subjects in 48 CFR Parts 619, 625, 628, 652

Government procurement.

Accordingly, for the reasons set forth in the preamble, title 48, chapter 6 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for 48 CFR parts 619, 625, 628, and 652 continues to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subchapter D—Socioeconomic Programs

PART 619—SMALL BUSINESS PROGRAMS

2. A new section 619.000 is added to read as follows:

619.000 Scope of part.

(b) Notwithstanding FAR 19.000(b), it is the Department's policy to provide maximum opportunities for U.S. small businesses in all legislatively specified categories to participate in the acquisition process. Therefore, DOS contracts that are awarded domestically for performance overseas shall be subject to the Small Business Act as a matter of policy. Contracts awarded overseas should comply on a voluntary basis, where practicable.

PART 625—FOREIGN ACQUISITION

3. A new Subpart 625.71, consisting of sections 625.7101, 625.7101–1, and 625.7101–2, is added to read as follows:

Subpart 625.71—Contractor Personnel Performing Under Department of State Contracts Outside the United States

Sec.

625.7101 Government administrative, logistical, and security support of contractor personnel.
625.7101–1 Policy.
625.7101–2 Contract clause.

Subpart 625.71—Contractor Personnel Performing Under Department of State Contracts Outside the United States

625.7101 Government administrative, logistical, and security support of contractor personnel.

625.7101–1 Policy.

(a) This subpart does not apply to personal services contracts with individuals.

(b) Contractors shall provide their own in-country administrative, logistical, and security support for their personnel who are performing work at a diplomatic or consular mission outside the United States, unless otherwise specified in the contract (*see* paragraph (c) of this section). For the purposes of this subpart, ''at a diplomatic or consular mission'' is defined as any location under the span of influence of a specific diplomatic or consular mission.

(c) If the Government authorizes the use of Government-provided support, the Government shall set forth the exact support to be authorized in the Statement of Work.

(d) Contracting officers shall document the contract file with the basis for the decision to provide support.

625.7101–2 Contract clause.

(a) The contracting officer shall insert the clause at 652.625–72, Contractor Personnel Performing Under Department of State Contracts Outside the United States, in solicitations and contracts for services or construction, when the following conditions are met:

(1) The contract is in support of the operations/missions at one or more United States diplomatic or consular missions; and

(2) The location of the United States diplomatic or consular mission at which the work is to be performed is designated as a contingency operation, as defined in FAR 2.101.

(b) The contracting officer may insert the clause at 652.625–72 in contracts in support of the operations/missions at one or more United States diplomatic or consular missions in situations where a military contingency operation does not exist but a high risk to personnel or property is known or anticipated.

Subchapter E—General Contracting Requirements

PART 628—BONDS AND INSURANCE

4. Subpart 628.3 is revised to read as follows:

Subpart 628.3—Insurance

628.305 Overseas workers' compensation and war-hazard insurance.

(b)(1) It is the Department's policy that acquisitions for services, including construction but excluding personal services contracts, that require contractor personnel to perform work outside of the United States, shall include the contractual obligation for coverage under the Defense Base Act (42 U.S.C. 1651–1654, as amended), for covered contractor employees. For the purposes of this section, ''covered contractor employees'' includes the following individuals:

(i) United States citizens or residents;

(ii) Individuals hired in the United States or its possessions, regardless of citizenship; and

(iii) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(2) Exceptions are discussed in paragraphs (e)(1) and (f) of this section.

(c) The Department of State has entered into a contract with an insurance broker and carrier to provide Defense Base Act insurance, at a fixed rate for services and construction, to cover DOS contracts that require performance overseas by covered contractor employees. Upon award of a contract that requires Defense Base Act insurance, the contracting officer shall notify the contractor of the name of the insurance broker from which the contractor must acquire the Defense Base Act insurance.

(d) The authority to request a waiver from the Secretary of Labor of a particular country, as set forth in FAR 28.305(d), is reserved to the Secretary of State.

(e)(1) The Secretary of Labor has waived the applicability of the Defense Base Act for all DOS service contracts, including construction, for contractor employees who are local nationals or third country nationals. This waiver is conditioned on the requirement for the contractor to provide workers' compensation benefits against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention as prescribed by the applicable local laws.

(2) If contract performance takes place in a country where there are no local workers' compensation laws, any local and third country national contractor employees are considered to be ''covered contractor employees'', and the contractor shall acquire Defense Base Act insurance for those employees pursuant to the contract between the Department of State and the Defense Base Act insurance broker.

(f) Section 16 of the State Department Basic Authorities Act (22 U.S.C. 2680a), as amended, provides that the Defense Base Act shall not apply with respect to such contracts as the Secretary of State determines are contracts with persons employed to perform work for the Department of State on an intermittent basis for not more than 90 days in a calendar year. The Department of State has established that ''persons'' includes individuals hired by companies under contract with the Department. The Procurement Executive has the authority to issue the waivers for these individuals. However, as required by FAR 28.305(e), the contractor shall provide workers' compensation coverage against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention.

628.309 Contract clauses for workers' compensation insurance.

628.309–70 DOSAR provisions and clause.

(a) The contracting officer shall insert the provision at 652.228–70, Defense Base Act—Covered Contractor Employees, in all solicitations for services and construction to be performed outside of the United States.

(b) The contracting officer shall insert the clause at 652.228–71, Workers' Compensation Insurance (Defense Base Act)—Services, in solicitations and contracts for services to be performed outside of the United States when there is a reasonable expectation that offers will include covered contractor employees, as defined in 628.305(b)(1). If the contracting officer is unsure as to whether offers will include covered contractor employees, the contracting officer shall insert the clause. If the contract is for construction, the contracting officer shall insert the clause with its Alternate I.

(c) The contracting officer shall insert the provision at 652.228–74, Defense Base Act Insurance Rates—Limitation, in solicitations for services or construction to be performed outside of the United States when there is a reasonable expectation that offers will include covered contractor employees, as defined in 628.305(b)(1). If the contracting officer is unsure as to whether offers will include covered contractor employees, the contracting officer shall insert the provision.

Subchapter H—Clauses and Provisions

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 652.225–72 is added to read as follows:

652.225–72 Contractor Personnel Performing Under Department of State Contracts Outside the United States.

As prescribed in 625.7101–2, insert the following clause:

Contractor Personnel Performing Under Department of State Contracts Outside the United States (MO/YR)

(a) *Definition.* For the purposes of this clause, ''at a diplomatic or consular mission'' is defined as any location under the span of influence of a specific diplomatic or consular mission.

(b) *General.* Performance of this contract may require that contractor personnel work at locations outside the United States in support of one or more United States diplomatic or consular missions. Contract performance in support of such missions may be inherently dangerous.

(c) *Support.* (1) Unless specified elsewhere in the contract or as provided in paragraph (c)(2) of this clause, the Contractor is responsible for all administrative, logistical, and security support required for contractor personnel engaged in this contract.

(2) The Government may authorize or may require the use of certain Government-provided administrative, logistical, security, or in-country support.

(d) *Personnel data.* If requested by the contracting officer, the Contractor shall maintain and provide to the designated Government official(s) a current list of all

employees in the area of performance. The contracting officer shall indicate if this list must also contain each employee's next-of-kin notification information. The contracting officer shall designate the Government official to receive this data and the method for submission.

(e) *Pre-performance requirements.* The Contractor shall ensure that the following requirements are met before sending an employee to the work site. Specific requirements for each category will be set forth in the Statement of Work. The Contractor shall ensure that—

(1) All applicable specified security and background checks are completed;

(2) All personnel are medically and physically fit to endure the rigors of performance and have received all required vaccinations;

(3) All personnel possess the required licenses to operate all vehicles or equipment necessary to perform the contract, if required by the position;

(4) All personnel have all necessary passports, visas, entry permits, and other documents required for contractor personnel to enter and exit the foreign country, including those required for in-transit countries;

(5) All personnel have received a country clearance, if required by the Chief of Mission;

(6) All personnel have received personal security training. The training must at a minimum cover safety and security issues facing employees overseas; identify safety and security contingency planning activities; and identify ways to utilize safety and security personnel and other resources appropriately; and,

(7) All personnel who are U.S. citizens are registered with the U.S. Embassy or Consulate with jurisdiction over the area of operations. Personnel shall register on-line at *http://www.travel.state.gov*.

(f) *Processing and departure points.* The Contractor and its employees shall use a point of departure and transportation mode when directed by the contracting officer.

(g) *Military clothing and protective equipment.* Contractor personnel are prohibited from wearing military clothing unless specifically authorized by the contracting officer. However, contractor personnel may wear specific items required for safety and security such as ballistic, nuclear, biological, or chemical protective clothing.

(h) *Weapons.* (1) Contractor personnel may not possess privately owned firearms unless specifically authorized by the contracting officer.

(2) If the contracting officer authorizes the carrying of firearms in accordance with the Statement of Work, the Regional Security Officer may issue weapons and ammunition to the Contractor for issuance to specified contractor employees. The Contractor shall ensure that its personnel who receive weapons are adequately trained, are not barred from possession of a firearm by *18 U.S.C. 922(d)(9) or (g)(9)*, and adhere to all guidance and orders issued by the Regional Security Officer regarding possession, use, safety, and accountability of weapons and ammunition. Upon a revocation by the contracting officer of a contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the contracting officer. Whether or not weapons are Government-issued, all liability for the use of any weapon by contractor personnel rests solely with the Contractor.

(i) *Next of kin notification.* The Contractor shall be responsible for in-person notification of the employee-designated next of kin and notification as soon as possible to the U.S. consul responsible for the area in which the event occurred in the following circumstances:

(1) Death of the employee;

(2) An injury to the employee requiring evacuation;

(3) The employee is missing, *i.e.*, the employee's location is unknown after a reasonable amount of time and search efforts are unsuccessful; or,

(4) The employee is captured.

(j) *Return of remains.* In the event of the death of a contractor employee, the Contractor is responsible for the return of the remains from the point of identification to the location specified by the employee or next of kin, as applicable. The Contractor shall also be responsible for the return of all personal effects of deceased or missing contractor personnel, if appropriate, to next of kin.

(k) *Evacuation.* If the Chief of Mission orders a mandatory evacuation of some or all personnel, the level of assistance provided to employees of the Contractor shall be the same as the level of assistance provided to other private United States citizens. In the event of a non-mandatory evacuation order, the Contractor shall maintain personnel on location sufficient to meet contractual obligations under this contract until instructed to evacuate by the contracting officer, Contracting Officer's Representative, or Chief of Mission.

(l) *Changes in emergencies.* The contracting officer or the Contracting Officer's Representative may issue oral instructions to the Contractor in cases of emergencies, *e.g.*, enemy or terrorist activity or natural disaster that causes an immediate possibility of death or serious injury to contractor personnel. Such oral instructions shall be confirmed in writing in 48 hours, or as soon as practicable after the emergency incident has subsided.

(m) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (m), in all subcontracts that require subcontractor employees to provide services at a United States diplomatic or consular mission outside the United States.

(End of clause)

6. Section 652.228–70 is added to read as follows:

652.228–70 Defense Base Act—Covered Contractor Employees.

As prescribed in 628.309–70(a), insert the following provision:

Defense Base Act—Covered Contractor Employees (MO/YR)

(a) Bidders/Offerors shall indicate below whether or not any of the following categories of employees will be employed on the resultant contract, and, if so, the number of such employees:

Category	Yes/No	Number
(1) United States citizens or residents		
(2) Individuals hired in the United States, regardless of citizenship		
(3) Local nationals or third country nationals where contract performance takes place in a country *where there are no* local workers' compensation laws.	.....	Local nationals: _____. Third Country Nationals: _____.
(4) Local nationals or third country nationals where contract performance takes place in a country where there *are* local workers' compensation laws.	.....	Local nationals: _____. Third Country Nationals: _____.

(b) If the bidder/offeror has indicated ''yes'' in block (a)(4) of this provision, the bidder/offeror shall submit, as part of its offer, a statement that indicates that such local nationals and/or third country nationals will be provided workers' compensation coverage against the risk of work injury or death under a local workers' compensation law. For those employees, the bidder/offeror shall also assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention, in accordance with the clause at FAR 52.228–4.

(c) If the bidder/offeror has indicated ''yes'' in blocks (a)(1), (2), or (3) of this provision, the bidder/offeror shall compute Defense Base Act insurance costs covering those employees pursuant to the terms of the contract between the Department of State and the Department's Defense Base Act insurance carrier at the rates specified in DOSAR 652.228–74, Defense Base Act Insurance Rates ''Limitation. If DOSAR provision 652.228–74 is not included in this solicitation, the bidder/offeror shall notify the contracting officer before the closing date so that the solicitation can be amended accordingly.

(End of provision)

7. Section 652.228–71 is revised to read as follows:

652.228–71 Workers' Compensation Insurance (Defense Base Act)—Services.

As prescribed in 628.309–70(b), insert the following clause:

Workers' Compensation Insurance (Defense Base Act)—Services (MO/YR)

(a) This clause supplements FAR 52.228–3. For the purposes of this clause, ''covered contractor employees'' includes the following individuals:

(1) United States citizens or residents;

(2) Individuals hired in the United States or its possessions, regardless of citizenship; and

(3) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(b) The Contractor shall procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier for covered contractor employees, unless the Contractor has a DBA self-insurance program approved by the Department of Labor. The Contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award, if applicable.

(c) The current rate under the Department of State contract is [contracting officer insert rate] of compensation for services.

(d) The Contractor shall insert a clause substantially the same as this in all subcontracts. The Contractor shall require that subcontractors insert a similar clause in any of their subcontracts.

(e) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, the contracting officer shall modify this contract accordingly.

(f) The Contractor shall demonstrate to the satisfaction of the contracting officer that the equitable adjustment as a result of the insurance increase or decrease does not include any reserve for such insurance. Adjustment shall not include any overhead, profit, general and administrative expenses, etc.

(g) Section 16 of the State Department Basic Authorities Act (22 U.S.C. 2680a), as amended, provides that the Defense Base Act shall not apply with respect to such contracts as the Secretary of States determines are contracts with persons employed to perform work for the Department of State on an intermittent basis for not more than 90 days in a calendar year. ''Persons'' includes individuals hired by companies under contract with the Department. The Procurement Executive has the authority to issue the waivers for these Contractor employees. For those employees, the Contractor shall provide workers' compensation coverage against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention.

(End of clause)

Alternate I. (MO/YR) If the contract is for construction, as prescribed in 628.309–70(a), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The current rate under the Department of State contract is [contracting officer insert rate] of compensation for construction.

8. Section 652.228–74 is revised to read as follows:

652.228–74 Defense Base Act Insurance Rates—Limitation.

As prescribed in 628.309–70(c), insert the following provision:

Defense Base Act Insurance Rates—Limitation (MO/YR)

(a) The Department of State has entered into a contract with an insurance carrier to provide Defense Base Act (DBA) insurance to Department of State covered contractor employees at a contracted rate. For the purposes of this provision, ''covered contractor employees'' includes the following individuals:

(1) United States citizens or residents;

(2) Individuals hired in the United States or its possessions, regardless of citizenship; and

(3) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(b) In preparing the cost proposal, the bidder/offeror shall use the following rates in computing the cost for DBA insurance:

Services @ [contracting officer insert current rate] of compensation; or

Construction @ [contracting officer insert current rate] of compensation.

(c) Bidders/offerors shall compute the total compensation (direct salary plus differential, but excluding per diem, housing allowance and other miscellaneous allowances) to be paid to covered contractor employees and the cost of the DBA insurance in their bid/offer using the foregoing rate. The DBA insurance cost shall be included in the total fixed price or estimated cost. The Department shall reimburse the DBA insurance costs directly to the Contractor.

(End of provision)

9. Section 652.228–76 is removed.

Corey M. Rindner,

Procurement Executive, Bureau of Administration, Department of State.

[FR Doc. 04–27990 Filed 12–21–04; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 371

[Docket No. FMCSA–2004–17008]

RIN 2126–AA84

Brokers of Household Goods by Motor Vehicle

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments on petition for rulemaking.

SUMMARY: FMCSA seeks comments on whether additional regulations for property brokers of household goods (HHG) in interstate or foreign commerce are necessary and, if so, what these regulations should include. We have granted a petition from the American Moving and Storage Association to initiate this ANPRM. HHG property brokers sell, offer for sale, negotiate for, or hold themselves out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation of HHG in interstate commerce by motor carriers for compensation. This action is necessary to help determine whether the general property broker regulations have failed to adequately protect consumers during HHG transportation.

DATES: You must submit comments concerning this ANPRM on or before February 22, 2005.

ADDRESSES: You may submit general comments identified by DOT Docket Management System Number FMCSA–2004–17008 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number for this potential regulatory action. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Keenan, (202) 385–2400, Commercial Enforcement Division (MC–ECI), FMCSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: *Docket:* For access to the docket to read

background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of DOT's 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 (65 FR 19477). This statement is also available at *http://dms.dot.gov.*

History of Our Property Broker Regulations

We and our predecessor agencies, the Interstate Commerce Commission (ICC) and Federal Highway Administration, have regulated property brokers for many years. The ICC decided on May 16, 1949 (Ex Parte MC–39 ''Practices of Property Brokers,'' 49 M.C.C. 277, at 286) that it was necessary to regulate all property brokers, including HHG brokers [1], in interstate or foreign commerce. In that proceeding, the ICC decided it was unnecessary to regulate HHG brokers separately from general freight brokers.

The Motor Carrier Safety Improvement Act of 1999, Pub. L. 106–159, December 9, 1999, 113 Stat. 1748, in establishing FMCSA, granted to us continued regulatory oversight of the property broker regulations.

Brokers' Increasingly Significant Role

Brokers generally, and HHG brokers in particular, have played an increasingly significant role over the last 26 years in the transportation industry. Their role, when executed properly, is that of an arranger of transportation. This role is very helpful to the small commercial shipper, and to the unsophisticated consumer that is shipping HHG. However, since Congress substantially deregulated the motor carrier, broker, and freight forwarder industry through the ICC Termination Act of 1995, Pub. L. 104–88, December 29, 1995, 109 Stat. 803 (ICCTA), FMCSA has received complaints that a segment of the industry may be engaging in unscrupulous business practices which defraud motor carriers as well as consumers. The Internet has become a very convenient medium that allows HHG brokers to expand their customer base by advertising their services to a wider range of customers. News media have reported that many consumers now use the Internet to seek the best possible prices for all of their consumer purchases, including transportation of HHG.

Many of the complaints the agency receives involve HHG brokers who mislead consumers with lures of inexpensive transportation charges. In a typical case, the HHG broker enters into a contract with the consumer, takes a sizeable deposit, and arranges to have a motor carrier handle the shipment. When the shipper's goods are in the possession of the carrier, the carrier then demands additional freight charges. The complaints we receive show when problems between the consumer and motor carrier arise, the HHG broker disavows any responsibility for the motor carrier's actions, despite the HHG broker's role in acquiring the carrier's services on behalf of the shipper. FMCSA has not proven collusion or conspiracy between brokers and carriers in these cases. However, we believe this is an area of transportation that deserves further attention. We need to determine how extensive our role should be in regulating the HHG broker industry.

Current Regulations

HHG brokers must comply with the regulations in 49 CFR part 371, which apply to all regulated property brokers. We summarize these regulations below.

49 CFR Part 365—Rules Governing Applications for Operating Authority

A broker must register with us in accordance with part 365.

49 CFR Part 366—Designation of Process Agent

A broker must file designations of persons upon whom court process may be served. Every broker must make a designation for each State in which its offices are located or in which contracts will be written.

49 CFR Part 387 Subpart C—Surety Bonds and Policies of Insurance for Motor Carriers and Property Brokers

A broker must have a surety bond or trust fund in effect for $10,000. The FMCSA will not issue a property broker license until a surety bond or trust fund for the full limits of liability prescribed is in effect. The broker license will remain valid or effective only as long as a surety bond or trust fund remains in effect and will ensure a minimum level of financial responsibility for the broker.

49 CFR 371.3 Records To Be Kept by Brokers

A broker must keep a record of each of its transactions, and keep the records for three years. Each party to a brokered transaction has the right to review the record of the transaction applicable to them. For example, motor carriers accepting transportation shipments from brokers have the right to review any of the required documents retained by brokers. Shippers also are entitled to examine broker records containing the motor carrier's address and USDOT number. Brokers may keep master lists of consignors and the address and registration number of the motor carrier, rather than repeating this information for each transaction. Each transaction record must show:

(1) The name and address of the consignor;

(2) The name, address, and registration number of the originating motor carrier;

(3) The bill of lading or freight bill number;

(4) The amount of compensation received by the broker for the brokerage service performed and the name of the payer;

(5) A description of any non-brokerage service performed in connection with each shipment or other non-brokerage activity, the amount of compensation received for the service, and the name of the payer; and

(6) The amount of any freight charges collected by the broker and the date of payment to the motor carrier.

49 CFR 371.7 Misrepresentation

A broker must not perform or offer to perform any brokerage service (including advertising) in any name other than that in which FMCSA or one of our predecessor agencies has issued its registration. A broker must not, directly or indirectly, represent its operations to be that of a motor carrier. Any advertising must show the true nature of the broker role in services offered.

[1] HHG brokers are not themselves HHG motor carriers (persons providing motor vehicle transportation of HHG) or HHG freight forwarders. HHG freight forwarders are persons holding themselves out to the general public (other than as motor carriers) to provide transportation of HHG, unaccompanied baggage, or used automobiles for compensation. In the ordinary course of an HHG freight forwarder's business, it:

(A) Assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) Assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) Uses for any part of the transportation motor carriers or water carriers (persons providing water transportation for compensation) subject to jurisdiction under subtitle IV of title 49 of the ICC Termination Act of 1995, Pub. L. 104–88, December 29, 1995, 109 Stat. 803.

49 CFR 371.9 Rebating and Compensation

A broker must not charge or receive compensation from a motor carrier for brokerage service where: (1) The broker owns or has a material beneficial interest in the shipment; or (2) the broker is able to exercise control over the shipment because it owns the shipper, the shipper owns the broker or there is common ownership of the two. A broker must not give or offer to give anything of value to any consumer, consignor, or consignee (or their officers or employees), except inexpensive advertising items given for promotional purposes.

49 CFR 371.10 Duties and Obligations of Brokers

Where the broker acts on behalf of a person bound by law, or our regulation, as to the transmittal of bills or payments, the broker must also abide by the law or regulations which apply to that person.

49 CFR 371.13 Accounting

Each broker who engages in any other business must maintain accounts so that the revenues and expenses relating to the brokerage portion of its business are segregated from its other activities. Expenses that are common must be allocated on an equitable basis; however, the broker must be prepared to explain the basis for the allocation to us and the courts.

49 CFR 375.409 May Household Goods Brokers Provide Estimates?

We published an Interim Final Rule (IFR) applying to operations of HHG motor carriers on June 11, 2003 (68 FR 35064). We developed the rule to improve public understanding of our commercial rules, and to help consumers understand their roles and responsibilities along with those of HHG motor carriers to prevent moving disputes. We inserted § 375.409 in the IFR in an effort to make HHG carriers more responsible for the actions of HHG brokers who provide estimates on their behalf. Twenty-seven years ago, the ICC concluded that brokers were prohibited from providing estimates because the duty to comply with the HHG regulations rests with the motor carrier, and shippers aggrieved by an act or omission of a broker would be unprotected by our regulations. In *Entry Control of Brokers*, 126 M.C.C. 476, 520 (1977), the ICC stated:

> For example, if a broker provides a c.o.d. [cash on delivery] shipper with an estimate it has made, on which the shipper relies, the shipper would be deprived of the protection of 49 CFR 1056.8(b) [now 49 CFR 375.405(b)(8)] of the household goods regulations, which provides that where the transportation charges exceed a carrier-made estimate by more than 10 percent, the shipper must pay only 110 percent of the charges upon delivery and is given a period of 15 days following delivery to make payment in full. Since this protection applies only to carrier-made estimates, a c.o.d. shipper who relies upon an incorrect estimate of a broker will have to pay the carrier's entire freight charges upon delivery, regardless of the extent the actual charges might exceed the broker's estimate.

As we noted in the preamble to the IFR (June 11, 2003, 68 FR 35078), although brokers may not enter into agency agreements with HHG motor carriers because they are required to exercise discretion in allocating traffic among carriers, we believe it is permissible for a motor carrier to enter into a more limited type of agreement authorizing the broker to provide estimates on behalf of the motor carrier. Under such an agreement, the motor carrier must adopt the broker's estimate as a carrier-issued estimate and incorporate it into the order for service and bill of lading for purposes of compliance with part 375, particularly the 110 percent rule. We believe that under these circumstances, the individual shipper would not be deprived of the protections provided in part 375 because the carrier would still be held accountable for complying with that part. However, an HHG broker may not issue an estimate without entering into such an agreement with an HHG motor carrier because otherwise the requirements of part 375 would not apply to the broker-issued estimate. Thus, the IFR authorized an HHG broker to provide estimates, but only if it has a written agreement with the carrier under which the carrier agrees to adopt the estimate as its own.

Petition for Rulemaking

The American Moving and Storage Association (AMSA) petitioned us on March 6, 2003, to initiate a rulemaking to amend 49 CFR part 371, ''Brokers of Property,'' by imposing specific requirements on HHG brokers. AMSA's petition is in the docket. Title 49 U.S.C. subtitle IV, part B and 49 CFR 1.73 authorize us to adopt regulations for property brokers of HHG in interstate or foreign commerce.

AMSA asserts there are increasing numbers of ''moving-related'' Web sites hosted by unscrupulous HHG brokers, which have resulted in numerous complaints from consumers who use the Internet to secure the services of an HHG motor carrier.

AMSA's petition states a significant number of the complaints it receives involve the same Internet companies, many of which are based in Florida. AMSA argues the fact these companies are involved in moves having no connection to Florida as an origin or destination demonstrates the impact of the Internet on these HHG broker arrangements and how the Internet is being used to entrap unsuspecting consumers. AMSA states it often receives complaints from consumers who have dealt with a Florida-based Internet broker, who in turn arranged a move from a non-Florida origin to another non-Florida destination. AMSA states once these brokers establish a business relationship with the consumer, they require payment of a deposit of several hundred dollars or more, fade from the picture, and leave the consumer to deal with, in most cases, a motor carrier who has failed to register with FMCSA. AMSA believes that a significant network of unscrupulous HHG brokers and HHG motor carriers is functioning with the sole purpose of bilking the moving public by demanding charges that bear no relation to the legitimate costs of moving, or by collecting charges for services that are not performed.

AMSA provided ten additional examples of complaints it has received to illustrate the nature of the problems being experienced by the moving public. The examples generally involve circumstances similar to the Florida example discussed in the previous paragraph.

AMSA wants us to amend our regulations to:

- Specifically name and include HHG brokers in 49 CFR part 371, Brokers of Property;
- Require an HHG broker to identify itself as a broker and provide its location and telephone number;
- Add a requirement for HHG brokers to provide consumers with 49 CFR part 375, Appendix A, the pamphlet ''Your Rights and Responsibilities When You Move;''
- Add a requirement that an HHG broker must only use FMCSA-registered HHG motor carriers (those with a U.S. DOT identification number, insurance on file with us, and registered to transport HHG in interstate or foreign commerce);
- Add a requirement for full written disclosure concerning estimates in advance of the move;
- Add a requirement that the broker will refund consumer deposits if the consumer cancels the shipment;
- Add a requirement to advise the consumer about the existence of the HHG broker's surety bond/trust fund; and

• Add a requirement to report illegal operations of HHG carriers to us.

AMSA's concerns include lack of public awareness and advertising practices of unscrupulous HHG brokers. AMSA argues that its suggested regulations would:

• Fill an existing regulatory gap; and

• Ensure that HHG brokers do not use the Internet as a device to avoid regulation.

AMSA suggests that we consider a regulatory solution applying only to brokers of HHG. It explains that the primary concept underlying its regulatory solution is disclosure. Its regulatory alternative would apply regardless of the medium through which services are advertised and would therefore ensure that the Internet is not used as a device to avoid regulation.

Suggested Definitions in Present Section 371.2

AMSA suggests we consider adding paragraphs (e) and (f), defining ''household goods broker'' and ''individual shipper.'' AMSA said it designed its definitions to mirror the definitions of ''household goods'' and ''brokers'' contained in the statute, and the definition of ''shipper'' contained in the consumer protection regulations under 49 CFR part 375 applicable to HHG motor carriers. AMSA suggests we consider amending paragraph (c) to include the transportation of HHG within the definition of brokerage service.

Suggested Section 371.14

AMSA suggests we consider adding a new § 371.14 applicable only to HHG brokers.

Suggested paragraph (a) would subject HHG brokers to both the existing and the new regulations.

Suggested paragraph (b) would require the HHG broker to identify whether it has HHG broker or HHG motor carrier authority, and reveal its location and telephone number so that customers can communicate with a person. AMSA states it designed this paragraph to remove the cloak of anonymity.

Suggested paragraph (c) would require HHG brokers to use only FMCSA-registered HHG motor carriers in an effort to eliminate or reduce the use of unauthorized carriers. AMSA believes this will help ensure that the HHG motor carrier performing service has insurance, offers arbitration, is a responsible entity in the event of a dispute, and otherwise is held to the requirements of the consumer protection regulations under 49 CFR part 375.

Suggested paragraph (d) would require HHG brokers to provide the pamphlet, ''Your Rights and Responsibilities When You Move'' to shippers, explain HHG motor carrier liability for loss and damage, and advise consumers of the availability of arbitration.

AMSA believes it is appropriate that the broker provide this information when first contacted by the consumer. AMSA argues our regulations presently require HHG motor carriers to furnish this information, but often times HHG motor carriers do not provide it. The overlapping requirement would serve to provide a safety net for consumers to ensure that they receive this important information.

Suggested paragraphs (e), (f), (g) and (h) would require full written disclosure in advance regarding shipment charges. A persistent source of disputes among HHG motor carriers, brokers, and shippers involves estimates of shipment charges. AMSA states some estimates are simply inaccurate, while others are deliberately deceptive. AMSA believes this is often the case with Internet quotes given solely on the basis of a customer's oral or electronic description of the goods to be transported without an actual physical shipment survey. AMSA also believes disputes arise when brokers do not inform individual shippers the estimate is not binding, and the actual weight of the shipment determines the charges or the estimate does not cover unanticipated services at delivery. AMSA states the customer is often simply given an oral quotation that HHG motor carriers subsequently disavow.

AMSA believes requiring full written disclosure in advance of the move could prevent many disputes. If brokers disclose at the outset of the transaction all of the factors that could affect the HHG motor carrier's charges, customers are less likely to claim surprise or that they are the subject of a bait and switch maneuver. Alternatively, AMSA believes that if the broker does not disclose to the customer that actual charges may differ from the quote, and the reasons why, the HHG motor carrier should not be authorized to collect a higher amount.

Suggested paragraph (i) would require full disclosure of the terms governing deposits and forfeiture requirements before payment of a deposit. A frequent complaint AMSA hears from consumers involves deposits required to secure broker service. Presently, AMSA states, there is no prohibition against requiring a deposit. Inasmuch as an Internet customer can disappear as readily as an unscrupulous broker, AMSA believes it may be prudent to permit a deposit from a customer to secure the transportation service. By the same token, AMSA states if the customer cancels the request for service before the move, the deposit could be returned in varying amounts, depending upon how close or far in advance the customer provides notice of cancellation. In any case, AMSA believes brokers should disclose the terms governing deposits and forfeitures before a deposit can be demanded.

Suggested paragraph (j) would require the HHG broker to advise the consumer/shipper about the existence of its surety bond or trust fund agreement. Due to the nature of the broker's business, AMSA believes unscrupulous brokers are able to ''close shop'' and disappear, leaving shippers and HHG motor carriers without any recourse. Accordingly, we require brokers to have a bond or trust agreement as a protective measure for shippers and carriers in such an event. See *Property Broker Security For Protection of Public*, 4 I.C.C. 2nd 358 (1988). The AMSA suggested regulation would require HHG brokers to disclose the existence of the bond or trust agreement, so the consumer is aware there is the potential for recourse.

Suggested paragraph (k) would require HHG brokers to identify and disclose to individual shippers AMSA's suggested regulations. AMSA states many consumers are unaware of their rights and the responsibilities of service providers prescribed by us. AMSA believes this requirement would serve to make consumers aware of these rights and responsibilities.

Suggested paragraph (l) would require HHG brokers to report violations of regulations by HHG motor carriers to us. AMSA believes this would enhance enforcement of our regulations. Some consumers, subjected to unlawful practices by HHG motor carriers failing to comply with, or who violate existing HHG regulations under 49 CFR part 375, do not know where or to whom such violations should be reported. Since brokers are typically the only independent point of contact a consumer may have with the service provider, AMSA believes it is appropriate to require the broker to report violations to us in an effort to improve the remedies available to consumers.

Suggested paragraph (m) would prohibit misleading and deceptive trade practices. Before the ICC revised the regulations in 1980, the broker regulations imposed an affirmative duty on brokers to fairly protect the interests of their shipper customers and prohibited misrepresentations and false

promises. Former 49 CFR 1045.10 (1978). Given the practices AMSA described in its petition and the Congressional directive to protect shippers in 49 U.S.C. 13904, Registration of Brokers, AMSA suggests reviving the former prohibition against misleading and deceptive practices.

Further AMSA discussion and the text of its suggested regulations are contained in its petition, which is publicly available in docket FMCSA–2004–17008.

AMSA Petition Granted

On December 11, 2003, we granted the AMSA petition and initiated this ANPRM to help determine whether the public, HHG brokers, motor carriers, and freight forwarders, as well as Federal and State regulatory agencies, believe there is sufficient need to amend 49 CFR part 371, as AMSA requested.

Scope and Necessity of Separate Regulations

We request public comments regarding the need for any further regulatory changes, requirements, or non-regulatory alternatives specifically for HHG brokers. We would also like specific comments on what effects such regulatory or non-regulatory alternatives may have in deterring illegal HHG broker and motor carrier activities.

We request information on the economic structure of the property broker entities which would be subject to potential actions we might consider and may initiate in a subsequent regulatory action, and the effect that such potential actions may have on small property brokers. We also ask whether current surety bond or trust fund requirements are sufficient to ensure a minimum level of financial responsibility.

Penalties

Sanctions and penalties for HHG brokers are addressed in 49 U.S.C. chapter 149—Civil and Criminal Penalties (sections 14901 through 14914), and 49 CFR part 386—Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings. Paragraph (c) of 49 U.S.C. 14901 requires that when we are determining and negotiating the amount of a civil penalty concerning the transportation of HHG, we are to take into account the degree of culpability, any history of such prior conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the proceeding, and such other matters as fairness may require.

Section 14901(d) requires a motor carrier or freight forwarder of household goods, or their receiver or trustee, that does not comply with any regulation relating to the protection of individual shippers, to be liable for a minimum penalty of $1,100 per violation.[2] No comparable sanction or penalty relating to the protection of individual shippers, however, exists currently in 49 U.S.C. Chapter 149 for brokers or HHG brokers.

We seek comment on the enforcement strategies we should consider for any potential actions we may initiate in response to this ANPRM. We also seek comment on the range of appropriate sanctions or penalties we should consider for HHG brokers, alternative remedial actions we may consider, and whether we should seek Congressional action to extend 49 U.S.C. 14901(d) to property brokers, including HHG brokers.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

We have determined this ANPRM is a significant regulatory action within the meaning of Executive Order 12866 and the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). We are considering setting up a new regulatory program for HHG brokers engaged in interstate and foreign commerce that could have an affect on other governments, particularly States. However, we are not yet in a position to analyze fully any potential actions we may initiate in response to this ANPRM, as there is some uncertainty as to the size of the specific HHG broker population that we may affect, given that the agency has not developed any specific set of alternatives.

There are approximately 535 active HHG brokers currently registered in the FMCSA Licensing and Insurance (L&I) database *http://li-public.fmcsa.dot.gov/*. There are also 1,087 HHG brokers included in the L&I database that are listed either as inactive (*i.e.*, they have allowed their authority to lapse) or had their applications dismissed by FMCSA for some reason. It is unclear whether some portion of these 1,087 inactive or dismissed HHG brokers may still be operating illegally in some capacity within the HHG broker industry, and would thus be affected by any potential actions we may initiate in response to this ANPRM. Additionally, we believe it is also logical to assume that there may be some HHG brokers operating illegally who have never registered with FMCSA. They of course would also be affected by any potential actions we may initiate. As the AMSA petition notes, there are ''no fewer than several hundred websites offering to perform, arrange, or manage moving services in one form or another on behalf of consumers,'' and presumably some portion of these entities have never registered with FMCSA and would therefore not appear in the above estimates of active and inactive/dismissed HHG brokers engaged in interstate or foreign commerce. Regardless, our initial research indicates that the population of HHG brokers potentially affected by any actions we may initiate is most likely less than 2,000 entities. However, to be sure, we are asking for comments from the public on our initial HHG broker population estimate as part of this ANPRM.

FMCSA receives approximately 4,000 to 6,000 HHG consumer complaints annually. We receive approximately 50 complaints that would be classified as hostage loads per week. While these estimates include complaints against HHG motor carriers, the FMCSA Offices of Communications and Household Goods Enforcement believe the majority of these consumer complaints are related to HHG brokers.

With regard to the economic impact on the HHG broker population, we do not anticipate that any potential action we may initiate would have a significant impact on the industry for two reasons. First, as noted above, we believe the total number of entities potentially affected is probably low. Secondly, while we have yet to recommend any specific sets of alternatives (without which we cannot conduct an economic evaluation), most appear to have a modest economic impact, in that they require greater disclosure to consumers or strengthen the opportunities for redress by the consumer. For instance, the AMSA petition recommends regulatory amendments to:

- Specifically name and include HHG brokers in 49 CFR part 371;
- Require an HHG broker to identify itself as an HHG broker, provide its location, and telephone number;

[2] The Debt Collection Improvement Act of 1996 [Pub. L. 104–134, Title III, Chapter 10, Sec. 31001, par. (s), 110 Stat. 1321–373] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 [Pub. L. 101–410, October 5, 1990, 104 Stat. 890)]. We must adjust for inflation ''each civil monetary penalty provided by law'' within our jurisdiction after having published the regulation in the **Federal Register**. The last time we made this adjustment for 49 U.S.C. Chapter 149 was on March 31, 2003 (68 FR 15383). Pursuant to that authority and this **Federal Register**, the inflation-adjusted civil penalties listed in paragraphs (a) through (g) of Appendix B to 49 CFR part 386 supersede the corresponding civil penalty amounts listed in 49 U.S.C. chapter 149 (14901 through 14914).

• Require an HHG broker to provide consumers shipping HHG with 49 CFR part 375, Appendix A, the pamphlet ''Your Rights and Responsibilities When You Move;''

• Require an HHG broker to disclose estimates fully in writing in advance of an interstate or foreign HHG shipment;

• Require an HHG broker to refund consumer deposits, if the consumer cancels the interstate or foreign HHG shipment;

• Require an HHG broker to advise the consumer about the existence of the HHG broker's surety bond/trust fund agreement; and

• Require an HHG broker to report illegal operations of HHG motor carriers to FMCSA.

However, because of the uncertainties noted above, we seek specific comment on the costs and benefits to the public and the impact potential alternatives would create on State governments and others.

Before initiating an analysis, we must first determine whether there exists a significant failure or failings by HHG brokers to deal fairly and equitably with consumers. In particular, our analysis must distinguish actual failures from potential failures that can be resolved by non-regulatory means. If we find a significant failure by HHG brokers to deal fairly and equitably with consumers, our analysis must show how various alternatives will address the specified failures.

Appropriateness of Alternatives to Federal Regulation

Even if comments in this proceeding confirm the HHG broker activities alleged in AMSA's petition, there may be no need for our regulatory intervention, if other means of addressing the HHG broker industry would adequately resolve the problem. We would like to know whether we should consider legislative measures that use economic incentives, such as changes in surety and trust fund provisions.

Another important factor to consider in assessing the appropriateness of a Federal regulation is whether State or local regulation of HHG brokers may be an option. In this case, AMSA has stated Florida-based brokers are its largest problem. Where our regulations appear appropriate, our analysis will need to attempt to determine whether the burdens on interstate and foreign commerce arising from different State and local regulations, including the compliance costs imposed on national and international firms, are greater than the potential advantages of uniform application.

We seek comments on these issues for our analysis of a possible notice of proposed rulemaking.

Regulatory Flexibility ACT

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), (RFA) requires Federal agencies to analyze the impact of regulatory alternatives on small entities, unless we certify that a regulatory alternative will not have a significant economic impact on a substantial number of small entities, and to consider non-regulatory alternatives that could achieve our goal while minimizing the burden on small entities.

We are not yet in a position to analyze fully any potential actions we may initiate in response to this ANPRM. We need specific information about which industry classification designation is appropriate for property brokers under the Office of Management and Budget's (OMB) North American Industry Classification System (NAICS)[3] for the United States. We use the NAICS to analyze small entity impacts in accordance with the RFA. Some of the questions at the end of this ANPRM relate directly to the RFA and our need for NAICS information to assist us in properly analyzing small property broker entity impacts.

We believe property brokers of HHG would classify and identify themselves generally under the NAICS code 488510 Freight Transportation Arrangement. The OMB description for 488510 is ''Shipping agents, Customs brokers, Freight forwarding, Marine shipping agency, Shipping agents (freight forwarding)'' as seen at: *http://www.census.gov/epcd/naics02/naicod02.htm* and *http://www.census.gov/epcd/naics02/def/NDEF488.HTM#N4885*. We request HHG brokers provide information on the NAICS code they believe best fits their operation.

The Statistics of U.S. Business (SUSB) for 2001 estimates that 11,716 firms engage primarily in freight transportation arrangement. See ''Freight transportation arrangement NAICS 4885'' on page 14 of ''Employer Firms, and Employment by Employment Size of Firm by NAICS Codes, 2001'' at: *http://www.sba.gov/advo/stats/us_01_n6.pdf*. The U.S. Census Bureau provides the SUSB with data on employer firm size by NAICS code to the Small Business Administration. See *http://www.sba.gov/advo/stats/data.html*. As we stated above, we believe HHG brokers would classify themselves as freight transportation arrangers, though we are asking for comment on this assumption.

One challenge facing us is identifying HHG brokers that should be registered with us, but are not. Another challenge is estimating the benefits to consumers from potential alternatives we might consider in response to this ANPRM. Although our Offices of Communications and Household Goods Enforcement believe a majority of our consumer complaints are related to HHG brokers, our HHG complaint database has very limited information on the exact nature of complaints received. Thus, it is difficult to determine what percentage of complaints, including complaints that are filed with our state divisions, could be averted by potential actions we may initiate.

We request comments from the public on how potential alternatives may impact HHG brokers. This information would represent a major input to estimating the costs of any potential alternatives. We also specifically request comments on the benefits of potential alternatives to prevent harm to those consumers who might otherwise suffer negative economic or other consequences, absent such alternative solutions. In addition, we ask entities and associations of small entities to identify their gross revenues.

Executive Order 13132 (Federalism)

We are not yet in a position to analyze fully any potential actions in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). As we have said earlier in this ANPRM, we and our predecessor agencies have regulated the brokering, arranging, and forwarding of property in interstate or foreign commerce, including the transportation of HHG, since 1949. We believe these issues are national in scope. Congress transferred the property broker regulations to DOT in the ICCTA. Title 49 U.S.C. 13904 confers authority on the Secretary of Transportation to register brokers and ''provide for the protection of shippers by motor vehicle.'' The Secretary subsequently delegated this

[3] OMB published the NAICS on April 9, 1997 (62 FR 17288) and an amendment on January 16, 2001 (66 FR 3826). NAICS is the North American international system for classifying establishments (individual business locations) by type of economic activity in Canada, Mexico, and the United States. Its purposes are: (1) To facilitate the collection, tabulation, presentation, and analysis of data relating to establishments, and (2) to promote uniformity and comparability in the presentation and analysis of statistical data describing the North American economy.

authority to FMCSA under 49 CFR 1.73(a)(5).

The primary federalism issue is whether 49 U.S.C. 13904 preempts State and local attempts to regulate the business practices of interstate HHG brokers. Although 49 U.S.C. 14501(b)(1) prohibits a State, a political subdivision of a State, an intrastate agency, or other political agency of two or more States to enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to *intrastate* rates, routes, or services of a broker, there is no express preemption regarding interstate broker operations.

The Carmack Amendment (June 29, 1906, ch. 3591, § 7 (pars. 11, 12), 34 Stat. 595) to the Interstate Commerce Act (Feb. 4, 1887, ch. 104, 24 Stat. 379) as amended, codified at 49 U.S.C. 14706, imposes a uniform system of motor carrier and freight forwarder liability for interstate and foreign shipments of property. Congress designed Carmack to eliminate uncertainty resulting from potentially conflicting State laws. Federal and State courts have consistently held that Carmack preempts a broad range of State consumer protection laws potentially applicable to HHG motor carriers and freight forwarders engaged in interstate or foreign commerce.

The Carmack Amendment by its terms applies to ''carriers,'' ''motor carriers,'' and ''freight forwarders.'' Therefore, we do not believe Carmack would apply to typical broker operations, especially since brokers seldom take possession of property. We invite comment regarding whether potential actions we may initiate in response to this ANPRM would preempt many, if not all, State regulations that directly, or indirectly regulate the brokerage of transportation of HHG subject to Federal jurisdiction.

Consultations With State and Local Officials

We specifically request comment from State and local officials on any federalism issues. In particular, we request comment on whether we should seek legislative changes to allow States to assist FMCSA in enforcing regulations applicable to HHG brokers engaged in interstate or foreign commerce.

Because AMSA has reported the most problems with brokers allegedly doing business in Florida, we would specifically like to hear from State officials in Florida, including the Florida Attorney General.

Unfunded Mandates Reform ACT of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government, or by the private sector of $100 million or more (adjusted for inflation) in any one year, must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. We are not yet in a position to analyze fully any potential actions we may initiate and that may meet the requirements of the Unfunded Mandates Reform Act. We seek specific comments whether such impacts are likely for any regulatory or non-regulatory alternatives we might consider in our deliberations.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), a Federal agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations.

As referenced above, part 371 requires a broker to keep a record of each transaction and to retain the records for a period of three years. Each party to a brokered transaction has the right to review the record of the transaction applicable to them. Brokers may keep master lists of consignors and the address and registration number of the motor carrier, rather than repeating this information for each transaction. Under section 371.3, each transaction record must show:

(1) The name and address of the consignor;

(2) The name, address, and registration number of the originating motor carrier;

(3) The bill of lading or freight bill number;

(4) The amount of compensation received by the broker for the brokerage service performed and the name of the payer;

(5) A description of any non-brokerage service performed in connection with each shipment or other activity, the amount of compensation received for the service, and the name of the payer; and

(6) The amount of any freight charges collected by the broker and the date of payment to the motor carrier.

Each broker who engages in any other business, must maintain accounts so that the revenues and expenses relating to the brokerage portion of its business are segregated from its other activities. Expenses that are common must be allocated on an equitable basis; however, the broker must be prepared to explain the basis for the allocation.

The AMSA suggested alternative would also require an HHG broker to:

(1) Identify itself, the capacity in which it holds itself out, and reveal its location and telephone number;

(2) Use only FMCSA-registered motor carriers for HHG movements placed in interstate or foreign commerce;

(3) Provide to shippers the pamphlet ''Your Rights and Responsibilities When You Move;'

(4) Explain motor carrier liability for loss and damage;

(5) Advise of the availability of arbitration;

(6) Require full written disclosure in advance regarding shipment charges;

(7) Require full disclosure of the terms governing deposits and forfeiture requirements before payment of a deposit;

(8) Advise the consumer about the existence of its surety bond or trust fund agreement;

(9) Direct the consumer to appropriate rights and responsibility assistance; and

(10) Report violations of regulations by HHG motor carriers to us.

We are not yet in a position to analyze fully any potential action we may initiate that may fall within the scope of the Paperwork Reduction Act. If we initiate a potential regulatory alternative in the future incorporating these or other relevant provisions, we would seek approval of any collection of information *requirements to generate, maintain, retain, disclose, and provide information to,* or for, the agency under 49 CFR part 371. The information collected would assist individual HHG consumers and HHG motor carriers in their commercial dealings with HHG brokers. The collection of information would be used by prospective HHG consumers to make informed decisions about contracts and services to be ordered, executed, and settled within the HHG motor carrier industry.

When the ICCTA transferred the current regulations to DOT, OMB assigned no control number to cover the information collection transfer of the six items in section 371.3. We seek specific comments from property brokers and HHG brokers concerning what information collection burdens they currently experience to comply with part 371, and what burdens they would anticipate under AMSA's suggested alternative and other alternatives we

might consider for a possible subsequent regulatory action.

National Environmental Policy Act

We are not yet in a position to analyze fully any potential actions under the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and our environmental procedures Order 5610.1 (issued on March 1, 2004, 69 FR 9680). We believe potential actions we may initiate in response to this ANPRM may be categorically excluded (CE) from further environmental documentation under Appendix 2 6.k. of Order 5610.1, which contains a categorical exclusion for regulations for all brokers of transportation by motor vehicle. In addition, we believe potential actions we may initiate would not involve extraordinary circumstances that would affect the quality of the environment.

We are not yet in a position to analyze fully any potential actions under the requirements of the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. We believe potential actions we may initiate would be exempt from the CAA's general conformity requirement since they would involve policy development and civil enforcement activities, such as investigations, inspections, examinations, and the training of law enforcement personnel. See 40 CFR 93.153(c)(2). We anticipate potential actions we may initiate in response to this ANPRM would not result in any emissions increase or result in emissions that are above the general conformity rule's *de minimis* emission threshold levels because the AMSA suggested alternative or other potential actions would merely establish standards for arrangements between HHG brokers and shippers.

We seek comment on the effect on the environment of the AMSA suggested alternative and other potential action alternatives.

Executive Order 12630 (Taking of Private Property)

We are not yet in a position to analyze fully any potential actions that may constitute a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. We seek comment on whether potential actions we may initiate in response to this ANPRM would constitute a taking of private property or otherwise have implications under Executive Order 12630.

Executive Order 12372 (Intergovernmental Review)

We are not yet in a position to analyze fully any potential actions that may require intergovernmental consultation on Federal programs and activities under Executive Order 12372, as amended. We seek comment on whether potential actions we may initiate in response to this ANPRM would require any intergovernmental consultation on Federal programs and activities under Executive Order 12372, as amended.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We are not yet in a position to analyze fully any potential actions that may affect energy supply, distribution, or use under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We seek comment on whether potential actions we may initiate in response to this ANPRM would affect any regulatory or non-regulatory alternatives that may significantly affect energy supply, distribution, or use.

Executive Order 12988 (Civil Justice Reform)

We are not yet in a position to analyze fully any potential actions that may meet 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. We seek comment on whether potential actions we may initiate in response to this ANPRM would meet the standards in Executive Order 12988.

List of Subjects in 49 CFR Part 371

Brokers, Motor carriers, Reporting and recordkeeping requirements.

Questions

We would like the public to answer the following questions:

General

1. Is the statement/description of the problem accurate? Please explain.

2. What non-regulatory actions could address the problem?

3. What State or local actions could address the problem without our Federal regulatory action?

4. Is the problem of shipper abuse by HHG brokers serious enough to expedite the rulemaking process in some way? Please explain.

5. Are there other consumer protection models being utilized by other Federal or State agencies that we should study and/or emulate? Please explain.

Statistics for Cost-Benefit Analysis

6(a). How many entities in the United States sell, offer for sale, negotiate for, or hold themselves out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, HHG transportation by motor carrier in interstate or foreign commerce for compensation, and are not an HHG motor carrier or HHG freight forwarder?

6(b). How many entities outside the United States sell, offer for sale, negotiate for, or hold themselves out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, HHG transportation by motor carrier in the United States in interstate or foreign commerce for compensation, and are not an HHG motor carrier or HHG freight forwarder?

7. If you are a property broker of HHG, under what North American Industry Classification System code at *http://www.census.gov/epcd/naics02/naicod02.htm* would you classify yourself?

8. If you are a property broker of HHG, what was your gross revenue for your most recent fiscal year?

Information Collection Burdens

9. If you are a property broker, what are your current time and dollar burdens to generate, maintain, retain, disclose, and provide information to us or the public:

9(a). For each record of every transaction?

9(b). For each record for a period of three years?

9(c). To review each record of each transaction applicable to the parties of each transaction?

9(d). About your HHG broker operation advertising?

9(e). About how you maintain your accounts so that the public may see the revenues and expenses relating to the brokerage portion of your business are segregated from your other activities?

9(f). For allocating your expenses that are common on an equitable basis?

10. If you are a property broker, do you keep master lists of consignors and the address and registration number of the motor carriers, rather than repeating this information for each transaction?

11. If you are a property broker of HHG, what do you estimate your anticipated time and dollar burdens would be to generate, maintain, retain, and provide:

11(a). Full written disclosure in advance regarding your shipment charges?

11(b). Full disclosure of your terms governing deposits and forfeiture requirements before you demand payment of a deposit?

11(c). Information advising consumers about existence of your surety bond or trust fund agreement?

11(d). Information directly to consumers about their appropriate rights and responsibility assistance as requested by AMSA?

11(e). Information to us about violations of our regulations by HHG motor carriers, as requested by AMSA?

11(f). Information to us and the public to ensure you, your employees, and your agents do not provide misleading or deceptive information?

Federalism Implications

12. Does 49 U.S.C. 13904 preempt States from enforcing consumer protection laws potentially applicable to property brokers?

13. Have current interpretations of the Carmack Amendment frustrated the ability of States to use their consumer protection statutes in cases of HHG broker abuse? If so, will the AMSA suggested alternative or would a different alternative be helpful to your State? Is something else needed?

14. What role, if any, may State or local enforcement agencies and attorneys general provide in helping enforce potential action alternatives?

15. Do you believe only FMCSA should enforce regulations or other alternatives on HHG brokers?

16. Do you believe States and local government agencies should be involved in enforcing regulations or other alternatives on HHG brokers?

HHG Carrier Related Pamphlet

17. Should HHG brokers be required to provide consumers with the 49 CFR part 375, Appendix A, ''Your Rights and Responsibilities When You Move'' pamphlet?

New Regulations Specifically for HHG Brokers

18. Should HHG brokers be required to provide refunds of consumer deposits if the consumer cancels the shipment? Why or why not?

19. Should HHG brokers advise the consumer about the existence of the HHG broker's surety bond or trust fund? Please explain.

20. Should HHG brokers be required to report to us illegal operations of HHG motor carriers? Please explain.

Economic Implications

21. What are the economic issues and impacts of the AMSA suggested alternative and other alternatives that we should evaluate?

Regulatory Flexibility/Small Business Issues

22. What are the small entity economic issues and impacts of the AMSA suggested alternative and other alternatives that we should evaluate?

Unfunded Mandates

23. What are the potential unfunded mandates that may be involved in the AMSA suggested alternative and other alternatives?

Environmental Issues

24. What are the potential effects of the AMSA suggested alternative and other alternatives on the quality of the environment that we should consider in any potential NEPA analysis?

Private Property Taking Issues

25. Would the AMSA suggested alternative and other alternatives constitute a taking of private property or otherwise have taking implications under Executive Order 12630? Please explain.

Intergovernmental Consultation Issues

26. Would the AMSA suggested alternative and other alternatives require any intergovernmental consultations on other Federal programs and activities under Executive Order 12372? Please explain.

Energy Supply Issues

27. Would the AMSA suggested alternative and other alternatives affect any actions that significantly affect energy supply, distribution, or use under Executive Order 13211? Please explain.

Financial Responsibility Issues

28. Should HHG brokers be subject to more stringent surety bond/trust fund requirements than apply to brokers of general freight? If so:

28(a). Should the surety bond/trust fund requirements be increased?

28(b). What should the surety bond/trust fund requirement amount be to deter sufficiently non-compliant behavior and protect the public? What would be the impact of this requirement on small businesses?

Contract Issues

29. Should HHG brokers be required to enter into specific contractual agreements for all motor carriers for which they provide estimates? Please explain.

30. The current § 375.409 places the responsibility of complying with the estimating requirements on the HHG motor carrier. Should the same responsibility be placed upon the HHG broker? Please explain.

HHG Motor Carrier Issues

31. How will the AMSA suggested alternative and other alternatives affect HHG motor carriers?

31(a). What additional paperwork burdens could reasonably be seen?

31(b). How important are HHG brokers and freight forwarders to HHG motor carrier business operations?

HHG Freight Forwarder Issues

32(a). Are there any HHG freight forwarder problems similar to the problems reported by AMSA concerning HHG brokers?

32(b). Should a potential action FMCSA may initiate consider regulatory requirements for HHG freight forwarder operations?

HHG Motor Carrier Business Protection Issues

33. How and to what extent should we protect HHG motor carriers from unscrupulous HHG broker activities?

Enforcement Strategies

34. Given the current e-business environment, what enforcement strategies should we use to protect HHG shippers from unscrupulous HHG broker activities?

35. What should be the range of appropriate sanctions or penalties for violating potential actions FMCSA may initiate?

36. Paragraph (d) of 49 U.S.C. 14901 requires a motor carrier or freight forwarder of household goods, or their receiver or trustee, that does not comply with any regulation relating to the protection of individual shippers, to be liable for a minimum penalty of $1,100 per violation, as adjusted for inflation. Should we seek Congressional action to extend applicability of 49 U.S.C. 14901(d) to HHG brokers? Why or why not?

Issued on: December 16, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–27933 Filed 12–21–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 041213348–4348–01; I.D. 110904E]

RIN 0648–AS95

Endangered and Threatened Wildlife and Plants: Proposed Threatened Status for Southern Resident Killer Whales

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, the NMFS, have completed an update on the status review of Southern Resident killer whales (*Orcinus orca*) under the Endangered Species Act (ESA). Based on the review of the best available scientific and commercial information, including new data, published papers, and workshop reports available since the review in 2002, we are proposing to list the Southern Resident killer whales as threatened because these killer whales constitute a distinct population segment (DPS) under the ESA and are likely to become endangered in the foreseeable future throughout all or a significant portion of their range. We are not proposing to designate critical habitat at this time, but are requesting public comments on the issues pertaining to this proposed rule.

DATES: Comments must be received by March 22, 2005. Requests for public hearings must be made in writing by February 7, 2005. We have already scheduled public hearings on this proposed rule as follows:

Thursday, February 17, 2005, from 1:30 – 4:30 pm and 6:30 – 9 pm at the Seattle Aquarium, 1483 Alaskan Way, in Seattle, WA 98101;

Monday, February 28, 2005, from 1:30 – 4:30 pm and 6:30 - 9 pm at the Friday Harbor Labs, 620 University Road, Friday Harbor, WA 98250.

The 1:30 – 4:30 pm afternoon sessions will be provided for local practitioners and stakeholder parties, and the 6:30 – 9:30 pm evening ''open house'' sessions are designed for broader public participation. Additional information regarding the meetings is available via the Internet at *http://www.nwr.noaa.gov*.

ADDRESSES: Comments should be submitted to Chief, Protected Resources Division, 525 NE Oregon Street, Suite 500, Portland, OR, 97232–2737. Comments may also be submitted electronically via the Federal e-Rulemaking Portal at *http://www.regulations.gov* or by sending an e-mail message to *SRKWstatus.nwr@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Garth Griffin, Northwest Regional Office, Portland, OR (503) 231–2005, or Ms. Marta Nammack, Office of Protected Resources, Silver Spring, MD (301) 713–1401, ext. 180.

SUPPLEMENTARY INFORMATION:

Electronic Access

A list of references cited in this notice is available via the Internet at *http://www.nwr.noaa.gov*. Additional information, including agency reports and written comments, is also available at this Internet address.

Background

On May 2, 2001, we received a petition from the Center for Biological Diversity and 11 co-petitioners (CBD, 2001) to list Southern Resident killer whales as threatened or endangered under the ESA. On August 13, 2001, we provided notice of our determination that the petition presented substantial information that a listing may be warranted and requested information to assist with a status review to determine if Southern Resident killer whales warranted listing under the ESA (66 FR 42499). To assist in the status review, we formed a Biological Review Team (BRT) of scientists from our Alaska, Northwest, and Southwest Fisheries Science Centers. We convened a meeting on September 26, 2001, to gather technical information from co-managers, scientists, and individuals having research or management expertise pertaining to killer whale stocks in the North Pacific Ocean. Additionally, the BRT discussed its preliminary scientific findings with Tribal, State and Canadian co-managers on March 25, 2002. The BRT considered information from the petition, the September and March meetings, and comments submitted in response to our information request to prepare a final scientific document on Southern Resident killer whales (NMFS, 2002).

After conducting the status review, we determined that listing Southern Resident killer whales as a threatened or endangered species was not warranted because Southern Resident killer whales did not constitute a species as defined by the ESA. The population was considered in the context of the global taxon (i.e., all killer whales worldwide) and we found that Southern Resident killer whales did not meet the significance criteria for consideration as a DPS. The finding, along with supporting documentation, was published on July 1, 2002 (67 FR 44133). The 2002 status review and other documents supporting the ''not warranted'' finding are available on the Internet (see Electronic Access). Because of the uncertainties regarding killer whale taxonomy (i.e., whether the killer whale should be considered as one species or as multiple species and/or subspecies), we announced that it would reconsider the taxonomy of killer whales within 4 years.

The scientific information evaluated during the ESA status review indicated that Southern Resident killer whales may be depleted under the Marine Mammal Protection Act (MMPA). We initiated consultation with the Marine Mammal Commission (Commission) in a letter dated June 25, 2002, and published an advance notice of proposed rulemaking (ANPR) on July 1, 2002 (67 FR 44132), to request pertinent information regarding the status of the stock and potential conservation measures that may benefit these whales. After considering comments received in response to the ANPR and from the Commission, we published a proposed rule to designate the Southern Resident stock of killer whales as depleted (68 FR 4747; January 30, 2003) and solicited comments on the proposal. Based on the best scientific information available, consultation with the Commission, and consideration of public comment, we determined that the Southern Resident stock of killer whales was depleted under the MMPA (68 FR 31980; May 29, 2003) and announced our intention to prepare a Conservation Plan.

On December 18, 2002, the Center for Biological Diversity (and other plaintiffs) challenged our ''not warranted'' finding under the ESA in U.S. District Court. The U.S. District Court for the Western District of Washington issued an order on December 17, 2003, which set aside our ''not warranted'' finding and remanded the matter to us for redetermination of whether the Southern Resident killer whales should be listed under the ESA (*Center for Biological Diversity, et al.,* v. *Robert Lohn, et al.*, 296 F. Supp. 2d. 1223 W.D. Wash. 2003). The court order held that ''[w]hen the best available science indicates that the 'standard taxonomic distinctions' are wrong . . . NMFS must rely on the best available science.''

Although we announced in 2002 that the status of killer whales would be revisited in 4 years, the schedule for reevaluating Southern Resident killer

whales was expedited as a result of the court's order. We reconvened a BRT in 2004 to consider new scientific and commercial data available since 2002 and update the status review for Southern Residents in accordance with that order. We announced the status review update and requested that interested parties submit pertinent information to assist us with the update (69 FR 9809, March 2, 2004). In addition, we co-sponsored a Cetacean Taxonomy workshop in 2004, which included a special session on killer whales. The papers and reports from the workshop were made available to the BRT.

In August 2004, we met with Washington State and Tribal co-managers to provide information on the status review update and receive comments. These comments were evaluated by the BRT, who then prepared a final status review document for Southern Resident killer whales (NMFS, 2004).

Biological Background

Killer whales are one of the most strikingly pigmented of all cetaceans, making field identification easy. Killer whales are black dorsally and white ventrally, with a conspicuous white oval patch located slightly above and behind the eye. A highly variable gray or white saddle is usually present behind the dorsal fin. Saddle shape varies among individuals, pods, and from one side to the other on a single animal. Sexual dimorphism occurs in body size, flipper size, and height of the dorsal fin. More detailed information regarding this species' distribution, behavior, genetics, morphology, and physiology are contained in the BRT's status review documents (NMFS, 2002, 2004) and the Washington State Status Report for the Killer Whale (Wiles, 2004).

Killer whales are classified as top predators in the food chain and the world's most widely distributed marine mammal (Leatherwood and Dahlheim, 1978; Heyning and Dahlheim, 1988). Although observed in tropical waters and the open sea, they are most abundant in coastal habitats and high latitudes. In the northeastern Pacific Ocean, killer whales occur in the eastern Bering Sea (Braham and Dahlheim, 1982) and are frequently observed near the Aleutian Islands (Scammon, 1874; Murie, 1959; Waite *et al.*, 2001). They reportedly occur year-round in the waters of southeastern Alaska (Scheffer, 1967) and the intercoastal waterways of British Columbia and Washington State (Balcomb and Goebel, 1976; Bigg *et al.*, 1987; Osborne *et al.*, 1988). There are occasional reports of killer whales along the coasts of Washington, Oregon, and California (Norris and Prescott, 1961; Fiscus and Niggol, 1965; Rice, 1968; Gilmore, 1976; Black et al., 1997; NMFS, 2004), both coasts of Baja California (Dahlheim *et al.*, 1982), the offshore tropical Pacific (Dahlheim *et al.*, 1982), the Gulf of Panama, and the Galapagos Islands. In the western North Pacific, killer whales occur frequently along the Soviet coast in the Bering Sea, the Sea of Okhotsk, the Sea of Japan, and along the eastern side of Sakhalin and the Kuril Islands (Tomilin, 1957). There are numerous accounts of their occurrence off China (Wang, 1985) and Japan (Nishiwaki and Handa, 1958; Kasuya, 1971; Ohsumi, 1975). Data from the central Pacific are scarce. They have been reported off Hawaii, but do not appear to be abundant in these waters (Tomich, 1986; Caretta *et al.*, 2001).

The killer whale is the largest species within the family Delphinidae. Various scientific names have been assigned to the killer whale (Hershkovitz, 1966; Heyning and Dahlheim, 1988). These various names can be explained by sexual and age differences in the size of the dorsal fin, individual variations in color patterns, and the cosmopolitan distribution of the animals. The genus *Orcinus* is currently considered monotypic with geographical variation noted in size and pigmentation patterns. Two proposed Antarctic species, *O. nanus* (Mikhalev *et al.*, 1981) and *O. glacialis* (Berzin and Vladimirov, 1982; Berzin and Vladimirov, 1983), both appear to refer to the same type of smaller individuals. However, because of significant uncertainties regarding the limited specimen data, these new taxa have not been widely accepted by the scientific community. New observations of color pattern, size, habitat and feeding ecology have led to the conclusion that there are three types of killer whales in Antarctica (Pitman and Ensor, 2003). Recent genetic investigations note marked differences between some forms of killer whale (Hoelzel and Dover, 1991; Hoelzel *et al.*, 1998; Barrett-Lennard, 2000; Barrett-Lennard and Ellis, 2001). Killer whale taxonomy was reviewed as part of the ''Workshop on Shortcomings of Cetacean Taxonomy in Relation to Needs of Conservation and Management'' held on April 30 - May 2, 2004 in La Jolla, California, and the results were published in a report (Reeves *et. al.*, 2004).

Ecotypes of Killer Whales

Killer whales in the Eastern North Pacific region (which includes the petitioned whale pods) have been classified into three forms, or ecotypes, termed residents, transients, and offshore whales. Significant genetic differences occur among resident, transient, and offshore killer whales (Stevens *et al.*, 1989; Hoelzel and Dover, 1991; Hoelzel *et al.*, 1998; Barrett-Lennard, 2000; Barrett-Lennard and Ellis, 2001; Hoelzel *et al.*, 2002). The three forms also vary in morphology, ecology, and behavior. All of these characteristics play an important role in determining whether the monotypic species *O. orca* can be subdivided under the ESA.

Resident Killer Whales

Resident killer whales in the Eastern North Pacific are noticeably different from both the transient and offshore forms. The dorsal fin of resident whales is rounded at the tip and falcate (curved and tapering). Resident whales have a variety of saddle patch pigmentations with five different patterns recognized (Baird and Stacey, 1988). Resident whales occur in large, stable pods with membership ranging from 10 to approximately 60 whales. Their presence has been noted in the waters from California to Alaska. The primary prey of resident whales is fish. A recent summary of the differences between resident and transient forms is found in Baird (2000).

Resident killer whales in the North Pacific consist of the following groups: Southern, Northern, Southern Alaska (includes Southeast Alaska and Prince William Sound whales), western Alaska, and western North Pacific Residents.

Southern Residents: The Southern Resident killer whale assemblage contains three pods-- J pod, K pod, and L pod--and is considered a stock under the MMPA. Their range during the spring, summer, and fall includes the inland waterways of Puget Sound, Strait of Juan de Fuca, and Southern Georgia Strait. Their occurrence in the coastal waters off Oregon, Washington, Vancouver Island, and more recently off the coast of central California in the south and off the Queen Charlotte Islands to the north has been documented. Little is known about the winter movements and range of the Southern Resident stock. Southern Residents have not been seen to associate with other resident whales, and mitochondrial and nuclear genetic data suggest that Southern Residents interbreed with other killer whale populations rarely if at all (Hoelzel *et al.*, 1998; Barrett-Lennard, 2000; Barrett-Lennard and Ellis, 2001).

Northern Residents: The Northern Resident killer whale assemblage

contains approximately 16 pods. They range from Georgia Strait (British Columbia) to Southeast Alaska (Ford *et al.*, 2000; Dahlheim, 1997). On occasion they have been known to occur in Haro Strait (west of San Juan Island, Washington). Although some overlap in range occurs between the Northern and Southern Residents, no intermixing of pods has been noted. However, in Southeast Alaska, Northern Resident whales are seen in close proximity to Southern Alaska Residents (Dahlheim *et al.*, 1997), and there may be limited gene flow between the two populations (Hoelzel *et al.*, 1998; Barrett-Lennard, 2000; Barrett-Lennard and Ellis, 2001).

Alaska Residents: There are two groups of Alaska Resident animals, Southern Alaska Residents and Western Alaska Residents. The resident whales of Southeast Alaska and Prince William Sound comprise the Southern Alaska Resident killer whale assemblage. At least 15 pods have been identified in these two regions. Resident killer whales photographed in Southeast Alaska travel frequently to Prince William Sound and intermix with all resident groups from this area (Dahlheim *et al.*, 1997; Matkin and Saulitis, 1997). Prince William Sound Resident whales have not been seen in Southeast Alaska, but have been noted off Kodiak Island intermixing with other, yet unnamed, resident pods (Dahlheim, 1997; NMFS, 2004). Vessel surveys in the southeastern Bering Sea have provided preliminary estimates of approximately 400 killer whales (Waite *et al.*, 2001) and preliminary counts, based on photo-identification, suggest a minimum of 800 individual resident whales inhabiting this region (NMFS, 2004).

Western North Pacific Residents: The presence of resident killer whales has been documented along the coastline of Russia (NMFS, 2004). It is likely that resident killer whales also occur along the coastline of Japan, but additional information is required to confirm this hypothesis.

Transient Killer Whales

Transient whales occur throughout the Eastern North Pacific with a preference towards coastal waters. Their geographical range overlaps that of the resident and offshore whales. Individual transient killer whales have been documented to move great distances reflecting a large home range (Goley and Straley, 1994). There are several differences between transient and resident killer whales; these have most recently been summarized by Baird (2000). The dorsal fin of transient whales tends to be more erect (i.e., straighter at the tip) than those of resident and offshore whales. Saddle patch pigmentation of Transient killer whales is restricted to three patterns (Baird and Stacey, 1988). Pod structure is small (e.g., fewer than 10 whales) and dynamic in nature. The primary prey of transient killer whales is other marine mammals. Transient whales are not known to intermix with resident or offshore whales. Recent genetic investigations indicate that up to three genetically different groups of transient killer whales exist in the eastern North Pacific (the ''west coast'' Transients, the ''Gulf of Alaska Transients'' and the AT1 pod) (Barrett-Lennard, 2000; Barrett-Lennard and Ellis, 2001).

Offshore Killer Whales

Offshore killer whales are similar to resident whales, but can be distinguished (i.e., their fins appear to be more rounded at the tip with multiple nicks on the trailing edge, smaller overall size, less sexual dimorphism), but these characteristics need to be further quantified. Offshore whales have been seen in considerably larger groups (up to 200 whales) than residents or transients have. They are known to range from central coastal Mexico to Alaska and occur in both coastal and offshore waters (300 miles off Washington State). While foraging, it is assumed that the main target is fish, but observations of feeding events are extremely limited. Offshore whales are not known to intermingle with resident or transient whales. Genetic analysis suggests that offshore whales are substantially reproductively isolated from other killer whale populations (Barrett-Lennard, 2000; Hoelzel *et al.*, 2004).

Consideration as a ''Species'' under the ESA

The ESA defines a species to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' Guidance on what constitutes a DPS is provided by the joint NMFS-U.S. Fish and Wildlife Service (FWS) interagency policy on vertebrate populations (61 FR 4722; February 7, 1996). To be considered a DPS, a population, or group of populations, must be ''discrete'' from other populations and ''significant'' to the taxon (species or subspecies) to which it belongs. A population segment of a vertebrate species may be considered discrete if:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological or behavioral factors. Quantitative measures of genetic or morphological discontinuity may also provide evidence of this separation; or

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

If a population segment is considered discrete, we must then consider whether the discrete segment is ''significant'' to the taxon to which it belongs. Criteria that can be used to determine whether the discrete segment is significant include:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these criteria to be considered significant. Furthermore, the list of criteria is not exhaustive; other criteria may be used, as appropriate.

Killer Whale Taxonomy

Correctly identifying the killer whale taxon is critical because the criteria used to evaluate ''significance'' of a DPS are defined relative to the larger taxon to which it belongs. Uncertainty about the taxonomic status of killer whales posed a problem for the 2002 BRT. In particular, it noted that the current designation of one global species for killer whales was likely inaccurate because there was increasing evidence to suggest that additional species or subspecies of killer whales probably exist. The previous prevailing concept of a single species has recently evolved into a diversity of views that include the possibility of multiple species. Recent new observations and data on morphology and genetics of both the Antarctic and North Pacific killer whales have re-opened the question, and two divergent bodies of expert opinion have emerged. At the 2004 Cetacean Taxonomy workshop, experts prepared cases for two taxonomic scenarios. Under one line of reasoning, killer whales are a single highly variable species, with locally differentiated

forms, or ecotypes, representing recently evolved and relatively ephemeral forms not deserving species status. According to the opposing body of opinion, congruence of several lines of evidence for the distinctness of sympatrically (i.e., same place, same time) occurring forms support multiple species.

In the North Pacific, the seasonally sympatric resident and transient killer whale forms show consistent differences in mitochondrial and nuclear genetic markers, coloration, acoustic calls, and foraging habits. The majority of experts participating in the killer whale working group at the Cetacean Taxonomy workshop believed that the resident and transient ecotypes in the North Pacific might be distinct species or subspecies.

The 2004 BRT reviewed new information and the competing lines of evidence cited during the Cetacean Taxonomy workshop and considered whether killer whales are a single species or multiple species. After discussion of this information, the BRT reached consensus that, although multiple species may exist and may be confirmed in the future, the present data do not adequately support recognition of any new species. In particular, the BRT concluded that, provisionally, North Pacific transients and residents should be considered as belonging to a single species.

The 2004 BRT next considered the question of whether North Pacific residents, transients and offshore whales likely belong to different subspecies, although current standard taxonomic classification does not include any named subspecies. A number of differences between residents and transients have been suggested to support subspecific separation between the two groups: (1) Residents and transients differ on average in external morphology, including dorsal-fin size and shape, saddle-patch shape, and pigmentation; (2) differences between the two ecotypes have been found in skull features, although the sample size is still small and uncontrolled for age and sex; (3) residents and transients are sympatric in the summer range, but no intermingling or interbreeding has ever been observed; (4) the two groups have markedly different feeding specializations and social organization; (5) the two ecotypes exhibit markedly different acoustic dialects and acoustic practices that may relate to differences in feeding ecology; (6) the two forms are genetically divergent at both mitochondrial DNA (mtDNA) and nuclear DNA markers, and the average level of divergence between the residents and transients is higher than the average level of divergence within populations of either group; and (7) residents and transients fall into two different global mtDNA clades. The BRT concluded that Southern Residents likely belong to a subspecies separate from that of transients.

The 2004 BRT agreed that if the Southern Residents belong to a subspecies separate from that of the transients, the subspecies would include the Southern Residents and the Northern Residents, as well as the resident killer whales of Southeast Alaska, Prince William Sound, Kodiak Island, the Bering Sea and Russia. In short, the subspecies would include all of the resident, fish-eating killer whales of the North Pacific. The rationale for this decision was that all of these groups are apparently fish-eating specialists, occupy relatively similar habitats, and appear to be genetically more closely related to each other than to sympatric transient populations. After considering the arguments for existence of subspecies and the conclusions of the Cetacean Taxonomy workshop, the BRT concluded that the taxon to use for determining a DPS under the ESA should be the North Pacific residents, an unnamed subspecies of *O. orca*. After considering whether the North Pacific offshore or eastern Tropical Pacific killer whales belonged to the same taxon as the North Pacific residents, the BRT concluded that they did not.

Determination of DPS

Discreteness

The first criterion for determining if a population or group is a DPS is that it meets the test for discreteness. Two types of genetic data for killer whales have proven useful for identifying DPS boundaries in other species: microsatellite (nuclear) DNA and mitochondrial DNA (mtDNA). The magnitude of the genetic differences between Southern and Northern Residents was about half that found between residents and transients and about twice that found between Northern Residents and Southern Alaska Residents. These differences indicate that the Southern Resident, Northern Resident, and Alaska Resident populations are reproductively isolated populations and that the isolation of Southern and Northern Residents from each other is greater than the isolation between Northern and Southern Alaska Residents. There may be some gene flow between the Northern Residents and Southern Alaska Residents (Hoelzel *et al.*, 1998; Barrett-Lennard, 2000; Barrett-Lennard and Ellis, 2001).

Two mtDNA sequences have been found in North Pacific Resident killer whales. The Southern Residents have one sequence and the Northern Residents have another that differs by one DNA nucleotide. Southern Alaska Residents have both sequences. Both males and females inherit the mtDNA of their mother, so these data indicate that females from the Southern and Northern Resident populations have not been migrating between populations within at least the recent evolutionary history of these populations.

The understanding of killer whale population genetic structure has expanded considerably since the last status review in 2002. In particular, the mtDNA differentiation among eastern North Pacific resident, transient and offshore populations can now be seen in the context of variation worldwide. The most notable result from the new mtDNA data is the lack of strong mtDNA structure worldwide, suggesting that the current distribution of killer whales populations may be relatively young on an evolutionary scale (e.g., several hundred thousand years compared to the approximate 5 million year old age of the *Orcinus* genus and possibly associated with a population bottleneck followed by a worldwide expansion). With regard to identifying DPSs, one of the implications of the new data is that the relative degree of mtDNA divergence among populations is not necessarily a good predictor of the length of time that the populations have evolved independently. For example, animals with the ''southern resident'' haplotype have been found in populations from Washington (the Southern Residents), Alaska, Russia, Newfoundland and the United Kingdom. Evolutionarily, these populations are almost certainly more closely related to other geographically proximate populations than to each other (a hypothesis supported by the microsatellite data) and therefore, share a mtDNA haplotype purely by chance. Thus, it would be inappropriate to rely heavily on simple mtDNA divergence as a criterion for identifying a DPS, especially on a global scale. On a local scale, however, mtDNA remains useful for helping to identify populations, especially when combined with other types of information.

In addition to more mtDNA data, the amount of nuclear microsatellite data expanded greatly in the last 2 years, both in terms of numbers of whales and loci analyzed. Within the eastern North Pacific, both the mtDNA and microsatellite data remain consistent with a hypothesis of four to five resident populations, at least two to three transient populations and at least one offshore population. The issue of

whether any contemporary gene flow occurs among eastern North Pacific populations remains unresolved, but the microsatellite data are consistent with low levels of gene flow (at most a few mating events among populations per generation). Despite some uncertainty about the evolutionary history that produced the current patterns of variation, both the mtDNA and the microsatellite data indicate a high degree of contemporary reproductive isolation among eastern North Pacific killer whale populations.

The BRT concluded that Southern Residents are an independent population that is discrete from other North Pacific resident killer whale populations. Southern Resident whales have a core summer range that is spatially separate from other North Pacific Resident whales including their closest neighbor, the Northern Residents. In addition, Southern Residents exhibit behaviors unique with respect to other North Pacific Residents. Southern Residents exhibit a distinct ''greeting'' behavior. They have not been observed using rubbing beaches or taking fish from longline gear, which appear to be unique to other North Pacific Resident Populations. Based on range, demography, behavior, and genetics, the BRT determined that Southern Residents meet the criterion for ''discreteness'' under the DPS policy.

Significance

The second test for determining if a population is a DPS is its significance to the taxon to which it belongs. The BRT discussed at length the significance of the Southern Residents with respect to the North Pacific resident taxon. The BRT concluded that the Southern Residents are significant with regard to the North Pacific resident taxon and, therefore, should be considered a DPS. The arguments favoring significance were as follows:

Ecological setting. The Southern Residents appear to occupy an ecological setting distinct from the other North Pacific resident populations. In particular, the Southern Residents are the only North Pacific resident population to spend a substantial amount of time in the California Current ecosystem, an ocean habitat that differs considerably from the Alaskan Gyre occupied by the Alaska Residents and Northern Residents. There is some evidence of differences in prey utilization, with Southern and Northern Residents favoring chinook salmon and certain Alaska Residents also eating groundfish such as halibut and turbot.

Range. The BRT discussed data related to the Southern Residents' year round and summer core ranges and concluded that loss of the Southern Residents would result in a significant gap in the range of the North Pacific resident taxon. In particular, the Southern Residents are the only North Pacific resident population to be sighted in the coastal areas off of California, Oregon and Washington and are the only population to regularly inhabit Puget Sound. Based on experience from other cetaceans, the BRT found little reason to believe that these areas would be repopulated by other North Pacific resident populations in the foreseeable future should the Southern Resident population become extinct.

This conclusion differs from that of the 2002 BRT for several reasons. New sightings of the Southern Residents in recent years have provided additional information on the amount of overlap in range between Southern Residents and other North Pacific resident populations. Also, the 2002 BRT considered transient, offshore, and other resident killer whales and their respective range overlap with Southern Resident killer whales when determining if the loss of Southern Resident would represent a significant gap in the range of the global taxon. The 2004 BRT considered only the overlap with other North Pacific residents.

Genetic differentiation. The Southern Residents differ markedly from other North Pacific resident populations at both nuclear and mitochondrial genes. The Southern Residents also differ from other North Pacific resident populations in the frequency of certain saddle patch variants, a trait believed to have a genetic basis.

Behavioral and cultural diversity. The BRT noted that culture (knowledge passed through learning from one generation to the next) is likely to play an important role in the viability of killer whale populations. For example, the Southern Residents may have unique knowledge of the timing and location of salmon runs in the southern part of the North Pacific Residents' range. The BRT also noted that there was some evidence that cultural traditions, such as greeting behavior, beach rubbing, and utilization of prey from longlines, differed among the resident populations.

Conclusions

The BRT concluded: (1) although multiple species of O. orca may exist and be confirmed in the future, there is currently insufficient evidence to describe any new species; and (2) provisionally the North Pacific Residents and transients should be considered to belong to one species; however, (3) there is sufficient information to indicate that there is likely a North Pacific Resident subspecies of *O. orca*. Given the District Court's direction, the BRT considered this unnamed subspecies as the reference taxon for making a DPS determination and concluded that Southern Resident killer whales are discrete from other populations within the North Pacific Resident taxon and are significant to the North Pacific Resident taxon. The BRT also considered the hypothesis that the North Pacific Residents and offshores belong to the same subspecies, and concluded that Southern Residents would also meet the DPS criteria under this alternative taxonomic scenario.

The 2002 BRT had also explored the plausibility of various taxa and DPS scenarios, including Southern Residents as a DPS of a North Pacific Resident taxon. The 2002 BRT was almost evenly split on the question of whether the Southern Residents would be a DPS of a putative North Pacific Resident taxon and there was only minor support to the idea that Southern Residents would be a DPS of a taxon consisting of North Pacific residents and offshores. In contrast, the 2004 BRT was more confident that the Southern Residents should be considered a DPS under either scenario. The 2004 BRT discussed this increase in support for the Southern Residents as a DPS and attributed it primarily to the amount of new information that has been collected since 2002. For example, knowledge about worldwide patterns of genetic variation in killer whales has increased dramatically and has demonstrated that sharing of a similar mitochondrial DNA haplotype does not necessarily indicate a close evolutionary relationship between two populations. This is important because the offshores and Southern Residents are characterized by very similar mtDNA haplotypes, a factor that influenced the conclusions of the 2002 BRT. In addition, the 2004 BRT was aware of recently collected information about the social structure, morphology, behavior and diet of offshore killer whales that was unavailable at the time of the 2002 status review. This information tends to suggest that the offshores are more distinct from resident killer whales than was appreciated by the 2002 BRT. Finally, knowledge about ecological and behavioral diversity within killer whales has increased as a result of ongoing studies in British Columbia, Alaska, and the Russian Far East. The BRT generally concluded that this new information tended to suggest

substantial ecological differentiation between the Southern Residents and other populations.

Risk Assessment

Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. We must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence. The 2004 BRT identified the factors that currently pose a risk for Southern Residents and discussed whether they might continue in the future. Concern remains about whether reduced quantity or quality of prey are affecting the Southern Resident population. In addition, levels of organochlorine contaminants are not declining appreciably and those of many ''newly emerging'' contaminants (e.g., brominated flame retardants) are increasing, so Southern Residents are likely at risk for serious chronic effects similar to those demonstrated for other marine mammal species (e.g., immune and reproductive system dysfunction). Other important risk factors that may continue to impact Southern Residents are oil spills, as well as noise and disturbance from vessel traffic.

The BRT conducted a Population Viability Analysis (PVA) to synthesize the potential biological consequences of a small population size, a slowly increasing or a declining population trend, and potential risk factors. The probability of the Southern Resident population going extinct was estimated using demographic information from the yearly census through 2003. Both the probability of extinction (defined as <1 male or 1 female) as well as the probability of ''quasi-extinction,'' (defined as <10 males or 10 females) were determined, because the BRT believed that a population at the quasi-extinction level would be ''doomed'' to extinction, even though literal extinction might still take decades for long-lived organisms, such as killer whales. Under the assumption that population growth rates in the future will accurately be predicted by the full 29–year time series of available data (the most optimistic scenario considered), the model predicted the probability of Southern Residents becoming extinct was less than 0.1 to 3 percent in 100 years and 2 to 42 percent in 300 years. If a quasi-extinction threshold was used instead of actual extinction, the predicted probability of meeting the threshold ranged from 1 to 15 percent in 100 years and 4 to 68 percent in 300 years. For both scenarios, the higher percentages in each range were associated with higher probability and magnitude of potential catastrophic mortality events (e.g., oil spills, disease outbreaks), as well as with a smaller carrying capacity (i.e., K = 100). When it was assumed that the population survival for a subset (the last 10 years) of all data available would best predict the future (the most pessimistic scenario considered), the analysis predicted a probability of extinction of 6 to 19 percent in 100 years and 68 to 94 percent in 300 years. If a quasi-extinction threshold was used in lieu of actual demographic extinction, the predicted probability of meeting the threshold ranged from 39 to 67 percent in 100 years to 76 to 98 percent in 300 years.

The PVA modeled combinations of a variety of parameters, some of which are unknown (e.g., carrying capacity and probability of catastrophic mortality), so multiple scenarios were analyzed in order to address the uncertainty of how these parameters would affect the probability that the population would go extinct. For the unknown parameters, a range of inputs were used in the model and this resulted in a range of results. The PVA produced some high probabilities for extinction, which were associated with the highest levels of potential catastrophic mortality, small carrying capacity, and when only a subset of available data was used. Scenarios incorporating the most optimistic parameters produced probabilities for extinction that were low, but not insignificant. There is no indication that the optimistic scenario is the most likely and therefore, the PVA extinction probabilities, even under the most optimistic conditions, indicate that Southern Resident killer whales are at risk.

The population dynamics of the Southern Residents describe a population that is at risk of extinction, due either to incremental small-scale impacts over time (e.g., reduced fecundity or subadult survivorship) or to a major catastrophe (e.g., disease outbreak or oil spill). Additionally, the small size of this killer whale DPS makes it potentially vulnerable to Allee effects (e.g., inbreeding depression) that could cause a major decline. Furthermore, the small number of breeding males, as well as possible reduced fecundity and subadult survivorship in the L-pod, may limit the population's potential for rapid growth in the near future. Although the Southern Resident DPS has demonstrated the ability to recover from lower levels in the past and has shown an increasing trend over the last several years, the factors responsible for the decline are unclear, may still exist and may continue to persist, which would potentially preclude a substantial population increase.

Summary of Conclusions

Although multiple species of killer whales may exist and may be confirmed in the future, the 2004 BRT concluded that present data do not adequately support designation of any new species. Accordingly, North Pacific transients and residents should be considered to belong to a single species. The BRT agreed that Southern Residents likely belong to a subspecies that includes the Southern and Northern Residents, as well as the resident killer whales of Southeast Alaska, Prince William Sound, Kodiak Island, the Bering Sea and Russia (but not the transients or offshores). Thus, the smallest taxon to which the Southern Residents belong would be resident killer whales in the North Pacific, an unnamed subspecies of *O. orca*. The BRT unanimously concluded that the Southern Residents are discrete from other North Pacific resident killer whale populations. The BRT also concluded that the Southern Residents are significant with respect to the North Pacific resident taxon and therefore should be considered a DPS. Factors that might pose a future risk to the Southern Resident population are: reduced quantity and quality of prey; persistent pollutants that could cause immune or reproductive system dysfunction; oil spills; and noise and disturbance from vessel traffic. The BRT conducted a PVA and the most optimistic model (29–year data set) predicted that the probability of Southern Residents becoming extinct was less than 0.1 to 3 percent in 100 years and 2 to 42 percent in 300 years. Using the most pessimistic model (the last 10 years of data; quasi-extinction threshold), the probability of meeting the threshold ranged from 39 to 67 percent in 100 years to 76 to 98 percent in 300 years. For both scenarios, the higher percentages in each range were associated with higher probability and magnitude of potential catastrophic mortality events (e.g., oil spills), as well as with a smaller carrying capacity (i.e., K = 100).

Overall, the BRT was concerned about the viability of the Southern Resident DPS and concluded that it is at risk of

extinction, because of either small-scale impacts over time (e.g., reduced fecundity or subadult survivorship) or a major catastrophe (e.g., disease outbreak or oil spill). Additionally, the small size of this killer whale DPS makes it potentially vulnerable to Allee effects (e.g., inbreeding depression).

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species in the foreseeable future throughout all or a portion of its range (16 U.S.C. 1532 (6) and (20)). Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect and conserve the species.

We have reviewed the petition, the reports of the BRT (NMFS, 2002, 2004), co-manager comments, Cetacean Taxonomy workshop papers and reports, and other available published and unpublished information, and we have consulted with species experts and other individuals familiar with killer whales. On the basis of the best available scientific and commercial information, the Southern Resident killer whale population meets the discreteness and significance criteria for a DPS. The genetic differences, spatial separation, unique behavior, and demography indicate that the Southern Resident killer whale population segment is discrete from other population segments. The gap in the range of the North Pacific Resident killer whale taxon that would occur if the Southern Resident killer whale population segment were to disappear is an important factor indicating that the Southern Resident killer whale population segment is significant with regard to the North Pacific Resident killer whale taxon, though other factors such as unique ecological setting, frequency of certain saddle patch variants, and greeting behavior lend further support.

This DPS is not presently in danger of extinction throughout all or a significant portion of its range. The small population increase in the past several years and population increases after previous declines, the presence of reproductive age males in each pod, several juvenile males reaching the age of sexual maturity in the next 2 to 6 years and several juvenile females reaching reproductive age in a few years all indicate that the Southern Resident killer whale DPS is not presently in danger of extinction. Based on our evaluation of the best available scientific information, however, the Southern Resident killer whale DPS is threatened (likely to become a endangered in the foreseeable future throughout all or a significant portion of its range). This threatened determination is based on concerns regarding the population decline from 1996–2001, the limited number of reproductive age males, the presence of females of reproductive age that are not having calves, and that the factors for the decline may continue to persist until more is known and actions are taken. The small population size of the Southern Residents and their socially cohesive nature makes them susceptible to catastrophic events such as oil spills and disease outbreaks. While the PVA included some high probabilities for extinction, particularly at the highest levels of catastrophic mortality, the PVA was conducted under the assumption that the Southern Residents are a closed population and also included Allee effects (e.g., inbreeding depression) for the small population. This is a conservative approach until the uncertainty regarding breeding patterns is more thoroughly understood. Therefore, NMFS proposes to list the Southern Resident killer whale DPS as threatened.

Conservation Measures

Conservation measures that may apply to listed species include conservation measures implemented by tribes, states, foreign nations, local governments, and private organizations. Also, Federal, tribal, state, and foreign nations' recovery actions (16 U.S.C. 1533(f)), Federal consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538) constitute conservation measures. In addition, recognition through Federal government or state listing promotes public awareness and conservation actions by Federal, state, tribal governments, foreign nations, private organizations, and individuals.

The Southern Resident killer whale stock was designated as depleted under the MMPA, and a Conservation Plan is under development. In addition to the Conservation Planning process, NMFS has responded to requests for immediate conservation actions by implementing and supporting several programs. Working in partnerships with The Seattle Aquarium and The Whale Museum, we have supported education, outreach and stewardship activities to increase public awareness about the conservation status and needs of killer whales. To promote responsible viewing of killer whales, we have also provided support for additional hours of on-water stewardship through the Soundwatch program and enforcement presence through the Washington Department of Fish and Wildlife (WDFW).

On April 3, 2004, the Washington Fish and Wildlife Commission voted to add Washington State's killer whale population to the list of the State's endangered species. The State endangered designation is given to native Washington species that are seriously threatened with extinction throughout all or a significant portion of that range within the state (WAC 232–12–297). The designation directs special management attention and priority to recover the species in Washington. WDFW is working with us on conservation strategies for killer whales.

Southern Resident killer whales are listed as endangered and Northern Residents are listed as threatened under Canada's Species at Risk Act (SARA). Under SARA ''endangered species'' means a wildlife species that is facing imminent extirpation or extinction and ''threatened species'' means a wildlife species that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction. Canada's Department of Fisheries and Oceans has convened a Recovery Team, which includes WDFW and NMFS staff members, and has begun developing a Recovery Plan for Southern and Northern Resident Whales under the SARA.

In addition to conservation and recovery planning efforts, our Northwest Fisheries Science Center (NWFSC) is engaged in an active research program for Southern Resident killer whales. Research that is currently being conducted is designed to fill identified data gaps and to improve our understanding of the risk factors that may be affecting the decline or recovery of the Southern Resident killer whales. The new information from research will be used to enhance our understanding of the risk factors affecting recovery thereby improving our ability to develop effective management measures. The Conservation Plan under the MMPA will contain both management measures based on the known current condition and research objectives from the NWFSC Long-Range Research Plan.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These

prohibitions apply to all individuals, organizations and agencies subject to U.S. jurisdiction. Section 4(d) of the ESA directs the Secretary of Commerce (Secretary) to implement regulations ''to provide for the conservation of [threatened] species,'' that may include extending any or all of the prohibitions of section 9 to threatened species. Section 9(a)(1)(g) also prohibits violations of protective regulations for threatened species implemented under section 4(d). We will evaluate protective regulations pursuant to section 4(d) for Southern Resident killer whales and if necessary propose such regulations in a forthcoming rule that will be published in the **Federal Register**.

Sections 7(a)(2) and (4) of the ESA require Federal agencies to consult with us to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or to adversely modify critical habitat or proposed critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Examples of Federal actions that may affect Southern Resident killer whales include coastal development, oil and gas development, seismic exploration, point and non-point source discharge of persistent contaminants, contaminated waste disposal, water quality standards, emerging chemical contaminant practices, vessel operations and noise level standards and fishery management practices.

Sections 10(a)(1)(A) and (B) of the ESA provide us with authority to grant exceptions to the ESA's Section 9 ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of a listed species. The type of activities potentially requiring a section 10(a)(1)(A) research/enhancement permit include scientific research that targets killer whales.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species, as long as the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include scientific research, not targeting killer whales, that incidentally takes Southern Resident killer whales.

Our Policies on Endangered and Threatened Wildlife

On July 1, 1994, we and FWS published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

Role of Peer Review

The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, we will solicit the expert opinions of three qualified specialists, concurrent with the public comment period. Independent specialists will be selected from the academic and scientific community, Federal and state agencies, and the private sector.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

The intent of this policy is to increase public awareness of the effect of our ESA listing on proposed and ongoing activities within the species' range. We will identify, to the extent known at the time of the final rule, specific activities that will be considered likely to result in violation of section 9, as well as activities that will not be considered likely to result in violation. Activities that we believe could result in violation of section 9 prohibitions against ''take'' of the Southern Resident killer whale DPS include, but are not limited to, the following:

1. Coastal development that adversely affects Southern Resident killer whales (e.g., dredging, land clearing and grading, waste treatment).
2. Discharging or dumping toxic chemicals or other pollutants into areas used by Southern Resident killer whales.
3. Operating vessels in a manner that disrupts foraging, resting or care for young or results in noise levels that disrupt foraging, communication, resting or care for young.
4. Land/water use or fishing practices that result in reduced availability of prey species during periods when Southern Resident killer whales are present.

We believe, based on the best available information, the following actions will not result in a violation of Section 9:

1. Federally funded or approved projects for which ESA section 7 consultation has been completed, and that are conducted in accordance with any terms and conditions we provide in an incidental take statement accompanying a biological opinion.
2. Takes of killer whales that we authorize pursuant to section 10 of the ESA.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that we might or might not consider as constituting a take of Southern Resident killer whales under the ESA and its regulations.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(3)) as: (1) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the ESA, in which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary.

Section 4(a)(3)(a) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat. Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure that they do not fund, authorize or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to the section 7 requirement that Federal agencies ensure that their actions do not jeopardize the continued existence of listed species.

We are currently in the information-gathering phase, compiling information to prepare a critical habitat proposal for Southern Resident killer whales. In previous **Federal Register** notices (69 FR 9809, March 2, 2004; and 66 FR 42499, August 13, 2001) we requested specific information on critical habitat and are again seeking public input and information to assist in gathering and analyzing the best available scientific data to support critical habitat

designations. We will continue to meet with comanagers and other stakeholders to review this information and the overall designation process. We will then initiate rulemaking with the publication of a proposed designation of critical habitat, opening a period for public comment and the opportunity for public hearings.

Joint NMFS/FWS regulations for listing endangered and threatened species and designating critical habitat at section 50 CFR 424.12(b) state that the agency ''shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection (hereafter also referred to as 'Essential Features').'' Pursuant to the regulations, such requirements include, but are not limited to the following: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally; (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. These regulations go on to emphasize that the agency shall focus on essential features within the specific areas considered for designation. These features ''may include, but are not limited to, the following: spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, geological formation, vegetation type, tide, and specific soil types.''

Southern Resident killer whales reside for part of the year in the inland waterways of the Strait of Georgia, Strait of Juan de Fuca, and Puget Sound, particularly during the spring, summer and fall. Southern Residents visit coastal sites off Washington, Oregon and Vancouver Island and are known to travel as far south as central California and as far north as the Queen Charlotte Islands, British Columbia. Information on the range of Southern Residents along the outer Pacific Coast is limited, with only 27 confirmed coastal sightings over the last 20 years (NMFS, 2004). Killer whale habitat utilization is dynamic and does not appear to include use of specific breeding, nursing or resting areas. Foraging areas are dependent on variable temporal and spatial patterns of migratory prey species. These characteristics present challenges in identifying critical habitat for Southern Resident killer whales. The physical or biological features of their habitat include:

(1) Water quality to support growth and development;

(2) Prey species of sufficient quantity, quality and availability to support growth and development;

(3) Sound levels that do not exceed thresholds that inhibit communication or foraging activities or result in temporary or permanent hearing loss; and

(4) Safe passage conditions to support migration and foraging.

We are seeking information and comment on the appropriateness of considering these features for critical habitat designation.

The geographical area occupied by Southern Resident Killer Whales, where these features may be found, includes the Strait of Georgia, Strait of Juan de Fuca, Puget Sound, coastal Washington, Oregon and California. We are seeking comment and information on the specific areas within this geographical area where these features may be found.

Section 4(b)(2) of the ESA requires the Secretary to consider the ''economic impact, impact on national security, and any other relevant impact,'' of designating a particular area as critical habitat. For this, section 4(b)(2) authorizes the Secretary to exclude from a critical habitat designation those particular areas where the Secretary finds that the benefits of exclusion outweigh the benefits of designation, unless excluding that area will result in extinction of the species. As such, we seek information regarding the conservation benefits of designating areas in the Strait of Georgia, Strait of Juan de Fuca, Puget Sound, coastal Washington, Oregon and California as critical habitat. We also seek information on the economic benefit of excluding areas from the critical habitat designation, and the economic benefits of including an area as part of the critical habitat designation. In keeping with the guidance provided by the Office of Management and Budget (2000, 2003), we seek information that would allow it to monetize these effects to the extent possible, as well as information on qualitative impacts to economic values. We are also seeking information on impacts to national security and any other relevant impacts of designating critical habitat in these areas.

In accordance with the Secretarial Order on American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act, we will coordinate with Federally recognized American Indian Tribes on a Government-to-Government basis to determine how to make critical habitat assessments in areas that may impact Tribal trust resources. In accordance with our regulations at 50 CFR 424.13, we will consult as appropriate with affected states, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed may include, but are not limited to, scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts, and comments from interested parties.

Public Comments

We exercised our best professional judgment in developing this proposal to list Southern Resident killer whales. To ensure that the final action resulting from this proposal will be as accurate and effective as possible, we are soliciting comments and suggestions from the public, other governmental agencies, the Government of Canada, the scientific community, industry, and any other interested parties. Comments are encouraged on this proposal as well as on the Status Review (See **DATES** and **ADDRESSES**) . Specifically, we are interested in information regarding: (1) the factors we considered in determining whether the Southern Resident killer whale population is significant to the North Pacific resident killer whale taxon; (2) biological or other relevant data concerning any threats to Southern Resident killer whales; (3) the range, distribution, and abundance of Southern Resident killer whales; (4) current or planned activities within the range of Southern Resident killer whales and their possible impact on Southern Resident killer whales; (5) efforts being made to protect Southern Resident killer whales; and (6) areas that may qualify as critical habitat.

We will review all public comments and any additional information regarding the status of Southern Resident killer whales and will complete a final determination within 1 year of publication of this proposed rule, as required under the ESA. Final promulgation of the regulation(s) on this species will consider the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 675 F. 2d825 (6th Cir. 1981), We have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA). (See NOAA Administrative Order 216–6.)

Executive Order 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, this proposed rule will be given to the relevant state agencies in each state in which the species is believed to occur, who will be invited to comment. We have conferred with the State of Washington in the course of assessing the status of Southern Resident killer whales, and considered, among other things, state and local conservation measures. Washington has listed killer whales under the Washington Administrative Code 232–12–014 and is coordinating with us to develop a State recovery plan. As the process continues, we intend to continue engaging in informal and formal contacts with Washington, and other affected local or regional entities, giving careful consideration to all written and oral comments received. We also intend to consult with appropriate elected officials in the establishment of a final rule.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, exports, imports, transportation.

Dated: December 15, 2004.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

2. In § 223.102, paragraph (c), add the following to the List of Threatened Marine and Anadromous Species, in alphabetical order under MARINE MAMMALS:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(c) Marine Mammals.

* * * * *

Killer whale (*Orcinus orca*), Southern Resident population (DPS), which consists of whales from J, K and L pods.

* * * * *

[FR Doc. 04–27929 Filed 12–21–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–4332–01; I.D. 112204A]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; 2005 and 2006 Proposed Harvest Specifications for Groundfish; Correction

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

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule to implement 2005 and 2006 harvest specifications and prohibited species catch (PSC) allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This document corrects errors in Table 8 to the proposed specifications.

DATES: Comments must be received by January 7, 2005.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- E-mail to *2005AKgroundfish.tacspecs@noaa.gov* and include in the subject line of the e-mail comments the document identifier: 2005 Proposed Specifications. E-mail comments, with or without attachments, are limited to 5 megabytes;
- FAX to 907–586–7557; or
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS at the addresses above or from the Alaska Region website at *www.fakr.noaa.gov*. Copies of the final 2003 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2003, are available from the North Pacific Fishery Management Council (Council), West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809), or from its website at *www.fakr.noaa.gov/npfmc*.

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

SUPPLEMENTARY INFORMATION: NMFS proposed 2005 and 2006 harvest specifications and PSC allowances for the groundfish fishery of the BSAI on December 8, 2004 (69 FR 70974). That rule lists proposed pollock allocations to the seven inshore catcher vessel pollock cooperatives. Allocations in the proposed rule reflect cooperative applications for 2005 that are due to NMFS by December 1 of each year. All of the changes based on these applications were not reflected in the proposed Table 8. This document corrects the proposed rule by reflecting accurately all of the applications received for the 2005 year.

Correction

As published, proposed rule FR Doc. 04–26952, December 8, 2004 (69 FR 70974) contains an error and needs to be corrected. The corrected table adds member vessel PACIFIC CHALLENGER to the Peter Pad Fleet Cooperative and corrects data in columns 2, 3, 4, and 5 for the Westward Fleet Cooperative. The corrected table reads as follows:

TABLE 8 (CORRECTED)—2005 AND 2006 PROPOSED BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

[Amounts are in metric tons]

Cooperative name and member vessels	Sum of member vessel's official catch histories[1] (mt)	Percentage of inshore sector allocation	2005 Annual co-op allocation (mt)	2006 Annual co-op allocation (mt)
Akutan Catcher Vessel Association ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA, DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MAJESTY, MARCY J, MARGARET LYN, MARK I, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM, PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER	245,922	28.130%	180,110	180,055
Arctic Enterprise Association BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER	36,807	4.210%	26,957	26,948
Northern Victor Fleet Cooperative ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL	73,656	8.425%	53,945	53,929
Peter Pan Fleet Cooperative AJ, AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PACIFIC CHALLENGER, PROVIDIAN, TOPAZ, WALTER N	23,850	2.728%	17,467	17,462
Unalaska Cooperative ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN	106,737	12.209%	78,173	78,149
UniSea Fleet Cooperative ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, MAR-GUN, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE, STARWARD	213,521	24.424%	156,380	156,333
Westward Fleet Cooperative ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC KNIGHT, PACIFIC PRINCE, VIKING, WESTWARD I	173,744	19.874%	127,248	127,209
Open access AFA vessels	0	0%	0	0
Total inshore allocation	874,238	100%	640,280	640,085

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

All other information previously published remains the same.

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

Dated: December 16, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–27979 Filed 12–21–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 245

Wednesday, December 22, 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

Agricultural Marketing Service

[Doc. # TM–04–12]

Notice of Program Continuation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice Inviting Proposals for fiscal year (FY) 2005 grant funds under the Federal-State Marketing Improvement Program.

SUMMARY: Notice is hereby given for proposals for FY 2005 grant funds under the Federal-State Marketing Improvement Program (FSMIP). FSMIP anticipates that approximately $1.3 million will be available for support of this program in FY 2005. States interested in obtaining funds under the program are invited to submit proposals. While only State Departments of Agriculture or other appropriate State Agencies are eligible to apply for funds, State Agencies are encouraged to involve industry groups, academia, and community-based organizations in the development of proposals and the conduct of projects.

DATES: Funds will be allocated on the basis of one round of consideration. Proposals will be accepted through February 11, 2005.

ADDRESSES: Proposals may be sent to: FSMIP, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 4009 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, FSMIP Staff Officer, (202) 720–2704.

SUPPLEMENTARY INFORMATION: FSMIP is authorized under Section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). FSMIP provides matching grants on a competitive basis to assist State Departments of Agriculture or other appropriate State agencies in conducting studies or developing innovative approaches related to the marketing of U.S. food and agricultural products. Other organizations interested in participating in this program should contact their State Department of Agriculture's Marketing Division to discuss their proposal.

Proposals are submitted by the State Agency and must be accompanied by completed Standard Forms (SF) 424 and 424A. AMS will not approve the use of FSMIP funds for advertising or, with limited exceptions, for the purchase of equipment. Detailed program guidelines may be obtained from your State Department of Agriculture, the above AMS contact, or the FSMIP Web site: *http://www.ams.usda.gov/tmd/fsmip.htm.*

FSMIP funds can be requested for a wide range of marketing research and marketing service activities, including projects aimed at:

(1) Developing and testing new or more efficient methods of processing, packaging, handling, storing, transporting, and distributing food and other agricultural products;

(2) Assessing customer response to new or alternative agricultural products or marketing services and evaluating potential opportunities for U.S. producers, processors and other agribusinesses, in both domestic and international markets; and,

(3) Identifying problems and impediments in existing channels of trade between producers and consumers of agricultural products and devising improved marketing practices, facilities, or systems to address such problems.

While all proposals which fall within the FSMIP guidelines will be considered, States are encouraged to submit proposals that have regional or national significance and that foster innovation in the following areas:

(1) Market analysis—collecting and analyzing unique and relevant economic data and transportation and marketing statistics relating to targeted domestic and international markets.

(2) Transportation and distribution—finding ways to improve efficiency and reduce barriers in local, regional, national, and international transportation and distribution systems to promote free movement of U.S. food and agricultural products.

(3) Competitiveness and new markets—identifying new opportunities for traditional and non-traditional products and by-products of agricultural production and processing in domestic and international markets. Assessing consumer preferences and consumer response to marketing and labeling claims.

(4) Quality and variety—enhancing the value of food and agricultural products through improvements in product quality and traceability. Using technology to address marketing challenges and opportunities such as developing new products and innovative packaging, or improving handling and storage methods.

Applicants have the option of submitting FSMIP applications electronically through the central Federal grants Web site, *http://www.grants.gov* instead of mailing hard copy documents. Applicants considering the electronic application option are strongly urged to familiarize themselves with the Federal grants Web site well before the application deadline and to begin the application process before the deadline. Additional details about the FSMIP application process for all applicants are available at the FSMIP Web site: *http://www.ams.usda.gov/tmd/fsmip.htm.*

FSMIP is listed in the ''Catalog of Federal Domestic Assistance'' under number 10.156 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally assisted programs.

Authority: 7 U.S.C. 1621–1627.

Dated: December 14, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–27932 Filed 12–21–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Domestic Sugar Program—2005–Crop Sugar Marketing Allotments and Company Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice which sets forth the establishment of the sugar overall allotment quantity for the 2004 crop year (FY 2005) which runs from October 1, 2004 through September 30, 2005. Although CCC already has announced all of the information in this notice, CCC is statutorily required to publish in the **Federal Register** determinations establishing sugar marketing allotments. CCC set the 2004-crop overall allotment quantity (OAQ) of domestic sugar to 8.100 million short tons raw value (STRV) on July 16, 2004; 4.402 million STRV to the beet sector, and 3.698 million STRV to the cane sector. On July 22, 2004, CCC announced the 2004 crop year, proportionate-share percentage of 83.4 percent for Louisiana. On September 28, 2004, CCC announced the allotments to sugarcane-producing States and allocations to sugarcane and sugar beet processors. At that time, because Puerto Rico had ceased production of sugar for more than two years, CCC also eliminated the allotment to Puerto Rico and allocations to Puerto Rico's two sugarcane processors.

ADDRESSES: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146.

SUPPLEMENTARY INFORMATION: Section 359b(b)(1) of the Agricultural Adjustment Act of 1938, as amended, (7 U.S.C. 1359bb(a)(1)), requires the Secretary to establish, by the beginning of each crop year, an appropriate allotment for the marketing by processors of sugar processed from sugar beets and from domestically produced cane sugar at a level the Secretary estimates will result in no forfeitures of sugar to the CCC under the loan program. When CCC announced an 8.100 million ton OAQ in July 2004, it noted the existence of sugar market uncertainties and that the OAQ would be adjusted if warranted.

To establish cane state allotments, weights of 25 percent, 25 percent and 50 percent, respectively, are assigned to the three-factor criteria: past marketings; processing capacity; and ability to market. This notice reflects the recent change in the ''ability to market'' definition, which is now based on historical data. *See* 69 FR 55061–55063. Beginning with FY 2005, the cane processor allocations are fixed shares of the cane sugar allotment and will change only if the Commodity Credit Corporation (CCC) adjusts the OAQ or determines that a processor cannot fulfill its cane sugar allocation and reassigns the unused allocation to other processors.

CCC is required to limit the amount of sugarcane acreage that may be harvested in Louisiana for sugar or seed whenever marketing allotments are in effect and the quantity of sugarcane estimated to be produced in Louisiana, plus a reasonable carryover, exceeds the marketing allotment allocation for Louisiana. This limitation is referred to as a ''proportionate share,'' and is applied to each farm's sugarcane acreage base to determine the quantity of sugarcane that may be harvested on that farm. Because production will be excessive in Louisiana, CCC has determined that the proportionate share of a sugarcane acreage base that may be harvested in Louisiana for sugar or seed for the 2004 crop year will be 83.4 percent of each farm's sugarcane acreage base.

CCC has determined that Puerto Rico's processors permanently terminated operations because no sugar had been processed for two complete years. Consequently, the allocation of 6,356 STRV was permanently reassigned to the mainland sugarcane-producing states. Hawaii received none of Puerto Rico's reassignment because it is not expected to use all of its current cane sugar allotment. A request for an allocation as a new entrant would be required for any mills in Puerto Rico to market cane sugar in the future.

These actions apply to all domestic sugar marketed for human consumption in the United States from October l, 2004, through September 30, 2005. The established 2004-crop beet and cane sugar marketing allotments are listed in the following table:

FY 2005 OVERALL BEET/CANE ALLOTMENTS AND ALLOCATIONS

	Initial FY 2005 allocations	Reassignment of Puerto Rican allotment	Beginning FY 2005 allotments/allocations
Beet Sugar	4,402,350		
Cane Sugar	3,697,650		
TOTAL OAQ	8,100,000		
BEET PROCESSORS' MARKETING ALLOCATIONS:			
Amalgamated Sugar Co.	917,207		
American Crystal Sugar Co.	1,692,713		
Holly Sugar Corp.	295,372		
Michigan Sugar Co.	281,254		
Minn-Dak Farmers Co-op.	274,650		
Monitor Sugar Co.	161,164		
So. Minn Beet Sugar Co-op.	282,812		
Western Sugar Co.	438,449		
Wyoming Sugar Co.	58,729		
TOTAL BEET SUGAR	4,402,350		
STATE CANE SUGAR ALLOTMENTS:			
Florida	1,812,722	3,416	1,816,139
Louisiana	1,402,345	2,643	1,404,987
Texas	157,583	297	157,880
Hawaii	318,644	0	318,644
Puerto Rico	6,356	−6,356	0
TOTAL CANE SUGAR	3,697,650	0	3,697,650
SUGARCANE PROCESSORS' MARKETING ALLOCATIONS:			
Florida:.			
Atlantic Sugar Assoc.	152,198	287	152,485

FY 2005 OVERALL BEET/CANE ALLOTMENTS AND ALLOCATIONS—Continued

	Initial FY 2005 allocations	Reassignment of Puerto Rican allotment	Beginning FY 2005 allotments/allocations
Growers Co-op. of FL	326,082	615	326,697
Okeelanta Corp.	383,847	723	384,570
Osceola Farms Co.	210,300	396	210,697
U.S. Sugar Corp.	740,295	1,395	741,690
TOTAL	1,812,722	3,416	1,816,139
Louisiana:.			
Alma Plantation	76,478	144	76,622
Cajun Sugar Co-op.	106,225	200	106,426
Cora-Texas Mfg. Co.	130,258	245	130,504
Harry Laws & Co.	57,006	107	57,113
Iberia Sugar Co-op.	67,712	128	67,839
Jeanerette Sugar Co.	64,078	121	64,199
Lafourche Sugars Corp.	76,381	144	76,525
Louisiana Sugarcane Co-op.	87,247	164	87,411
Lula Westfield, LLC	165,601	312	165,913
M.A. Patout & Sons	368,356	694	369,051
St. Mary Sugar Co-op.	92,814	175	92,989
So. Louisiana Sugars Co-op.	110,189	208	110,396
TOTAL	1,402,345	2,643	1,404,987
Texas:.			
Rio Grande Valley	157,583	297	157,880
Hawaii:.			
Gay & Robinson, Inc.	73,145	0	73,145
Hawaiian Commercial & Sugar Company	245,499	0	245,499
TOTAL	318,644	0	318,644
Puerto Rico:.			
Agraso	4,076	−4,076	0
Roig	2,280	−2,280	0
TOTAL	6,356	−6,356	0

Signed in Washington, DC on December 3, 2004.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 04–27966 Filed 12–21–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Power Fire Restoration; Eldorado National Forest, Amador County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In October of 2004, the Power Fire burned approximately 16,993 acres on the Eldorado National Forest and on private timberlands. The project area for this analysis is the approximately 13,611 acre portion of the Power Fire on National Forest lands within the Amador Ranger District administrative boundary. The USDA, Forest Service, Eldorado National Forest will prepare an environmental impact statement (EIS) on a proposal to treat approximately 7,914 acres of fire killed and damaged trees in the Power Fire burned area. The land allocations within the fire area identified in the Sierra Nevada Forest Plan Supplemental EIS are old forest emphasis, threat zone, defense zone, protected activity centers (PACs) for spotted owls and goshawks, spotted owl home range core areas (HRCAs), and riparian conservation areas (RCAs) adjacent to perennial, seasonal and ephemeral streams. A portion of the Mokelumne Wilderness and the Salt Springs State Game Refuge is also within the fire area. The Mokelumne River, Bear River, Beaver Creek, Cole Creek and Green Creek, having outstandingly remarkable cultural resource values, are eligible for possible inclusion in the National Wild and Scenic River system.

The purpose of the project is to reduce long term fuel loading for the purpose of reducing future fire severity and resistance to control, improve roads and establish effective ground cover in severely burned areas for the purpose of reducing erosion and sedimentation to streams in the short term and contributing to long term soil productivity, recover the volume and value of timber killed or severely injured by the fire for the purpose of generating funds to offset the cost of future restoration activities and supplying wood fiber to local sawmills, and reduce safety hazards to the public and forest workers.

DATES: Comments concerning the scope and implementation of this proposal should be received by January 7, 2005.

ADDRESSES: Send written comments to Patricia Ferrell, Project Leader, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Patricia Ferrell, at the above address, or call her at 530–642–5146.

SUPPLEMENTARY INFORMATION: The fire burned with varying intensity. Many areas of the fire burned at high and moderate intensity, killing 75%–100% of the trees and burning the duff and litter that protects the soil. In these areas, the fire resulted in high rates of soil erosion, sedimentation to streams, destruction of wildlife habitat for sensitive species, and loss of old forest. The fire killed ten of thousands of trees that if left untreated will contribute to extremely high fuel loading over time. As these dead trees fall and fuel accumulates, future fires will be even more severe. Treating the dead and dying tree component of the landscape is the first step in reducing long term fuel loading and restoring the historic

fire regime, thereby reducing the impacts of fires on the future forest and contributing to the restoration of old forest habitats. Without treatment to begin to restore the fire area, significant additional impacts to soil, water quality, cultural resources, and wildlife habitat are likely over the short and long term. This Environmental Impact Statement (EIS) addresses treating the dead and dying tree component of the landscape and improving roads to reduce sediment delivery to streams. The process of removing dead trees would reduce soil erosion by immediately increasing effective ground cover (limbs, twigs, and small holes) and maintain soil productivity for tree growth. The proposed action would remove dead trees using ground based, skyline, and helicopter logging methods. Trees posing a safety hazard to the public and forest workers would be removed along maintenance level 3, 4, and 5 roads. Roads would be reconstructed and improved to facilitate tree removal and improve watershed condition. Slash and small dead trees would be treated to provide ground cover and reduce short term fuel loading. Protection would be applied to sensitive plants, wildlife species, and cultural resources.

The proposed action is consistent with the 1989 Eldorado National Forest Land and Resource Management Plan as amended by the Sierra Nevada Forest Plan Amendment Record of Decision (2004).

The decision to be made is whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to remove fire killed and damaged trees in the project area and undertake road improvements and fuel treatments.

Other alternatives will be developed based on significant issues identified during the scoping process for the environmental impact statement. All alternatives will need to respond to the specific condition of providing benefits equal to or better than the current condition. Alternatives being considered at this time include: (1) no Action and (2) the Proposed Action.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from the Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. To facilitate public participation information about the proposed action will be mailed to all who express interest in the proposed action and notification of the public scoping period will be published in the Mountain Democrat, Placerville, CA.

Comments submitted during the scoping process should be in writing and should be specific to the proposed action. The comments should describe as clearly and completely as possible any issues the commenter has with the proposal. The scoping process includes:

(a) Identifying potential issues;

(b) Identifying issues to be analyzed in depth.

(c) Eliminating nonsignificant issues or those previously covered by a relevant previous environmental analysis;

(d) Exploring additional alternatives;

(e) Identifying potential environmental effects of the proposed action and alternatives.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 2005. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Eldorado National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS 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 EIS stage, but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803f. 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 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 EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS 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).

The final EIS is scheduled to be completed in June 2005. In the final EIS, The Forest Service is required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal.

John D. Berry, Forest Supervisor, Eldorado National Forest is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 215).

Dated: December 15, 2004.

John D. Berry,

Forest Supervisor.

[FR Doc. 04–27952 Filed 12–21–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Public Meeting of the Black Hills National Forest Advisory Board Date Charge

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting date change.

SUMMARY: The Black Hills National Forest Advisory Board (NFAB) has changed its January meeting date to Monday, January 10, 2005 to ensure a quorum is present. The agenda includes member consideration of the Black Hills National Forest 1997 Land and Resource Management Plan (LRMP) Phase II Amendment Draft Environmental Impact Statement so as to make recommendations to the forest supervisor. The meeting is open, and the public may attend any part of the meeting.

ADDRESSES: SDSU West River Ag Center, 1905 Plaza Boulevard, Rapid City, SD.

FOR FURTHER INFORMATION CONTACT: Frank Carroll, Black Hills National Forest, 25041 North Highway 16, Custer, SD 57730, (605) 673–9200.

Dated: December 13, 2004.

Brad Exton,

Acting Forest Supervisor.

[FR Doc. 04–27925 Filed 12–21–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121504E]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold public meetings in January 2005. The agenda topics for these meetings can be found under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The Council will convene on Wednesday, January 26, 2005, from 9 a.m. to 5 p.m., and will reconvene on Thursday, January 27, 2005, from 9 a.m. to 5 p.m., approximately.

ADDRESSES: The meetings will be held at the Best Western San Juan Airport Hotel located at the Luis Muñoz Marín International Airport in Carolina, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 117th regular public meeting to discuss the items contained in the following agenda:

January 26, 2005, 9 a.m. to 5 p.m.

- Call to Order
- Adoption of Agenda
- Consideration of 116th Council Meeting Verbatim Minutes
- Executive Director's Report
- Sustainable Fisheries Act (SFA) Document

January 27, 2005, 9 a.m. to 5 p.m.

- Continuation of Discussion on SFA Document
- Other Business
- Next Council Meeting

The meetings are open to the public, and will be conducted in English, however simultaneous translation (English to Spanish) will be provided. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

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 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. For more information or to request sign language interpretation and/other auxiliary aids, please contact Miguel A. Rolón at the Caribbean Fishery Management Council (see **ADDRESSES**) at least five days prior to the meeting date.

Dated: December 17, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–3764 Filed 12–21–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121504D]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Shrimp Advisory Panel (AP). The AP will receive reports on the status and health of the shrimp stocks as well as a report on the biological and economic aspects of the 2004 Cooperative Shrimp Closure with the state of Texas. The AP will also review Draft Amendment 13 to the Shrimp Fishery Management Plan (FMP) addressing maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT) for shrimp stocks, as well as improved effort alternatives and standardized bycatch reporting methodologies and alternatives for a shrimp permit moratorium.

DATES: The meeting is scheduled to begin at 8:30 a.m. on Thursday, January 6, 2005.

ADDRESSES: The meeting will be held at the New Orleans Airport Ramada Inn & Suites, 110 James Drive East, St. Rose, LA; telephone: (504) 466–1355. Copies of the meeting agenda can be obtained by calling (813) 228–2815.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The Shrimp AP will receive reports from NMFS on the status and health of the shrimp stocks as well as a report on the biological and economic aspects of the 2004 Cooperative Shrimp Closure with the state of Texas. The Shrimp AP may make recommendations for a cooperative closure with Texas for 2005. The Shrimp AP will also review Draft Amendment 13 to the FMP addressing MSY, OY, MSST, and MFMT for shrimp stocks, as well as improved effort alternatives and standardized bycatch reporting methodologies and alternatives for a shrimp permit moratorium.

The Shrimp AP consists principally of commercial shrimp fishermen, dealers, and association representatives.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by December 29, 2004.

Dated: December 16, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–27930 Filed 12–21–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121504C]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings along with the Council's Administrative Policy Committee, Data Collection Committee, Habitat Protection Committee, Mackerel Management Committee, Reef Fish Management Committee, Shrimp Management Committee, and the Sustainable Fisheries/Ecosystem Committee. Joint meetings will also be held by the Artificial Reef/Reef Fish Committees and the Reef Fish/Mackerel Committees. The agenda for these meetings can be found under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The Council will meet January 12, 2005, from 1 to 5:15 p.m. and January 13 from 8:30 am. to 1 p.m. The Committee meetings will be held January 10, 2005, from 9:30 a.m. to 5:30 p.m., January 11 from 8:30 am. to 5:30 p.m., and January 12 from 8:30 am. to 11:30 a.m.

ADDRESSES: The meetings will be held at the Sheraton Baton Rouge, 102 France Street, Baton Rouge, LA.

Council address: Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Agenda for the Fishery Management Council Meeting

Wednesday, January 12, 2005

1 p.m. - Convene.

1:15 p.m. — 3:30 p.m. - Receive public testimony on (1) Final Reef Fish Amendment 24, (2) Final CMP Amendment 15, (3) Final essential fish habitat (EFH) Amendment 3, (4) the Texas Shrimp Closure, and (5) exempted fishing permits (if any).

3:30 p.m. — 3:45 p.m. - Receive the Habitat Protection Committee report.

3:45 p.m. — 4:15 p.m. - Receive the Shrimp Management Committee report.

4:15 p.m. — 4:45 p.m. - Receive the Mackerel Management Committee report.

4:45 p.m. — 5:15 p.m. - Receive the Joint Artificial Reef/ Reef Fish Committee report.

Thursday, January 13, 2005

8:30 a.m. — 10:30 a.m. - Receive the Reef Fish Management Committee report.

10:30 a.m. — 10:45 a.m. - Receive the Data Collection Committee report.

10:45 a.m. — 11 a.m. - Receive the Joint Reef Fish/Mackerel Committee report.

11 a.m. — 11:15 a.m. - Receive the Sustainable Fisheries/Ecosystem Committee report.

11:15 a.m. — 11:30 a.m. - Receive the Administrative Policy Committee report.

11:30 a.m. — 11:45 a.m. - Receive the International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting report.

11:45 a.m. — 12 noon - Receive the U.S. Coral Reef Task Force meeting report.

12 noon — 12:15 p.m. - Receive Enforcement Reports.

12:15 p.m. — 12:30 p.m. - Receive the NMFS Regional Administrator's report.

12:30 p.m. — 12:45 p.m. - Receive Director's Reports.

12:45 p.m. — 1 p.m. - Other business.

Agenda for Committee Meetings

Monday, January 10, 2005

9:30 a.m. — 11:30 a.m. - The Shrimp Management Committee will review the public hearing draft of Shrimp Amendment 13 which addresses limited access in the shrimp fishery. They will also review scientific analyses of the effect of the cooperative shrimp closure with the state of Texas and determine whether the closure should be implemented in 2005.

1 p.m. — 5:30 p.m. - The Reef Fish Management Committee will meet take final action on Reef Fish Amendment 24. The Committee will discuss a proposed vessel buy-out program for the Gulf commercial grouper fishery based on funding provided by Congress and review a biological opinion on the effect of the Gulf reef fish fishery, proposed by NMFS, under the Endangered Species Act. The Committee will also review a draft of Reef Fish Amendment 18A addressing the grouper fishery and a preliminary draft of a red grouper regulatory amendment providing for commercial vessel trip limits.

Tuesday, January 11, 2005

8:30 a.m. — 10:30 a.m. - The Reef Fish Management Committee will reconvene to complete its work.

10:30 a.m. — 11:30 a.m. - The Mackerel Management Committee will meet to take final action on CMP Amendment 15.

1 p.m. — 2 p.m. - The Joint Artificial Reef/Reef Fish Committees will review a Mississippi Fishing Banks Special Management Zone Request.

2 p.m. — 3 p.m. - The Data Collection Committee will hear an update by the Gulf States Marine Fisheries Commission on its Fisheries Information Network (FIN) program.

3 p.m. — 4:30 p.m. - The Joint Reef Fish/Mackerel Committees will review an options paper for an amendment that would extend the charter vessel permit moratorium.

4:30 p.m. — 5:30 p.m. - The Administrative Policy Committee will review feasibility studies for distribution of Council mail via email and video/teleconferencing of public hearings or meetings.

Wednesday, January 12, 2005

8:30 a.m. — 9:30 a.m. - The Habitat Protection Committee will take final action on the EFH Amendment by developing their recommendations to Council.

9:30 a.m. — 11:30 a.m. - The Sustainable Fisheries/Ecosystem Committee will meet to review NMFS actions on developing social survey documents and address developing a Request for Proposal (RFP) for soliciting contractual support in carrying out social ecosystem surveys. They will also discuss the role of the Ecosystem Scientific and Statistical Committee (SSC).

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the

emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the untimely completion of discussion relevant to other agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by December 29, 2004.

Dated: December 17, 2004.

Alan D. Risenhoover

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

[FR Doc. E4–3763 Filed 12–21–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce

ACTION: Notice of solicitation for Hydrographic Services Review Panel.

SUMMARY: This notice responds to the Hydrographic Services Improvement Act Amendments of 2002, Public Law 107–372, which requires the Under Secretary of Commerce for Oceans and Atmosphere to solicit nominations for membership on the Hydrographic Services Review Panel. This advisory committee will advise the Under Secretary on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, (the Act) and such other appropriate matters as the Under Secretary refers to the Panel for review and advice.

DATES: Resumes should be sent to the address, e-mail, or fax specified and must be received by February 1, 2005.

ADDRESSES: Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD, 20910, FAX: 301–713–4019, e-mail: *Hydroservices.panel@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Captain Roger Parsons, Director, Office of Coast Survey, NOS/NOAA, 301–713–2770 x 134, fax 301–713–4019, e-mail: *Roger.L.Parsons@noaa.gov.*

SUPPLEMENTARY INFORMATION: Under 33 U.S.C. 883a, *et seq.,* NOAA's National Ocean Service (NOS) is responsible for providing nautical charts and related information for safe navigation. NOS collects and compiles hydrographic, tidal and current, geodetic, and a variety of other data in order to fulfill this responsibility. The Hydrographic Services Review Panel provides advice on topics such as NOAA's Hydrographic Survey Priorities, technologies relating to operations, research and development, and dissemination of data pertaining to:

(a) Hydrographic surveying and data;
(b) Nautical charting;
(c) Water level measurements;
(d) Current measurements;
(e) Geodetic measurements; and
(f) Geospatial measurements.

The Panel comprises fifteen voting members appointed by the Under Secretary in accordance with Section 105 of the Act. Members are selected on a standardized basis, in accordance with applicable Department of Commerce guidance. The Directors of the Joint Hydrographic Center and no more than two employees of the National Oceanic and Atmospheric Administration serve as nonvoting members of the panel. This solicitation is to obtain candidates to replace five of the original voting members whose original two-year appointments expire in late 2005 or early 2006.

The voting members of the Panel are individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more disciplines relating to hydrographic surveying, tides, current, geodetic and geo-spatial measurements, marine transportation, port administration, vessel pilotage, and coastal and fishery management. An individual may not be appointed as a voting member of the Panel if the individual is a full-time officer or employee of the United States. Any voting member of the Panel who is an applicant for, or beneficiary of, (as determined by the Under Secretary) any assistance under the Act shall disclose to the Panel that relationship, and may not vote on any matter pertaining to that assistance.

Voting members of the Panel serve for a term of four years. Members serve at the discretion of the Under Secretary and are subject to government ethics standards. Any individual appointed to a partial or full term may be reappointed for one additional full term. A voting member may serve until his or her successor has taken office. The Panel selected one voting member to serve as the Chair and another to serve as the Vice Chair. The Vice Chair acts as Chair in the absence or incapacity of the Chair.

At a minimum, meetings occur biannually, and at the call of the Chair or upon the request of a majority of the voting members or of the Under Secretary. Voting members receive compensation at a rate established by the Under Secretary, not to exceed the maximum daily rate payable under section 5376 of title 5, United States Code, when actually engaged in the performance of duties for such Panel and shall be reimbursed for actual and reasonable expenses incurred in the performance of such duties.

Dated: December 13, 2004.

Captain Roger L. Parsons, NOAA,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 04–27949 Filed 12–21–04; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121504F]

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 and Scallop Oversight Committees in January, 2005. Recommendations from these committees will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will held on Thursday, January 13, 2005 and Wednesday, January 26, 2005.

ADDRESSES: The meetings will be held in Mansfield and Revere, MA.

Council address: New England Fishery Management Council, 50 Water Street, 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

Thursday, January 13, 2005, 9:30 a.m. – Groundfish Oversight Committee Meeting

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508)339–2200.

Regulations implementing Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP) were implemented on May 1, 2004. This amendment calls for an updated assessment of multispecies stocks in 2005 to evaluate stock status and the effectiveness of the regulations. Subsequent to that assessment, the Council will be considering changes to the management measures, if necessary, in order to meet the objectives of Amendment 13. In addition to changes that may be needed to respond to the updated assessments, the Council may consider changes to other management measures. These could include, but are not limited to, an extension of the days-at-sea leasing program, modifications to the default measures, modifications to existing Special Access Programs (SAPs) or additional SAPs, changes to permitting conditions, reviews of bycatch information, etc. As a result of the extensive scope of this next management action, the committee will meet to develop recommendations on the broad issues to be addressed in the next adjustment, identify the information that will be needed to support decisions on those issues, develop a timeline for the Committee's work, and may begin to identify specific measures that will be included. The committee's recommendations will be presented to the full Council for consideration at a later date.

Wednesday, January 26, 2005, 9:30 a.m. – Scallop Oversight Committee Meeting

Location: Four Points By Sheraton,407 Squire Road, Revere, MA 02151; telephone: (781) 284–7200.

The committee will review the analysis of general category Vessel Monitoring System (VMS) alternatives in Framework Adjustment 17 and recommend a final alternative to the Council. The committee will also discuss scallop research priorities and the total allowable catch/days-at-sea (TAC/DAS) set-aside research application review process following a presentation by the NMFS Regional Office staff. Other business may be discussed, as needed. Finally, the agenda includes a closed-door session at the end of the meeting to develop Advisory Panel appointment recommendations.

Although non-emergency issues not contained in these agendas 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 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: December 17, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–3765 Filed 12–21–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121704C]

New England Fishery Management Council; Public Meetings

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Ad Hoc Bycatch Committee in January, 2005 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on January 14, 2005. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held in Mansfield, MA. See **SUPPLEMENTARY INFORMATION** for specific location.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: *Friday, January 14, 2005 at 9:00 a.m.* – Ad Hoc Bycatch Committee Meeting.

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (978) 339–2200.

The Ad Hoc Bycatch Committee will meet to continue development of fishery management measures to reduce potential bycatch of the very large 2003–year class of haddock. They will also review available bycatch information and refine practicable management measures identified at the last meeting to address anticipated haddock bycatch issues in the herring, groundfish and whiting fisheries.

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

This meeting is 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 five days prior to the meeting dates.

Dated: December 17, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–3768 Filed 12–21–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121504G]

Western Pacific Fishery Management Council; Public Meeting

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 a meeting of the Coral Reef

Ecosystem Plan Team (CREPT) in Honolulu, HI.

DATES: The CREPT meeting will be held on January 18 and 19, 2005, from 8:30 a.m to 5 p.m. See **SUPPLEMENTARY INFORMATION** for specific times.

ADDRESSES: The meeting of the CREPT will be held at the Western Pacific Fishery Management Council conference room, 1164 Bishop Street, Suite 1400, Honolulu, HI.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808)522–8220.

SUPPLEMENTARY INFORMATION: The CREPT will meet on January 18 and 19, 2005 to discuss the following agenda items.

January 18, 2004, 8:30 a.m to 5 p.m.

1. Introductions
2. Approval of draft agenda and assignment of rapporteurs
3. Review of the last plan team meeting and actions from the 123rd and 124th Council meetings
4. Northwestern Hawaiian Islands (NWHI) Fisheries Management
5. Development of Western Pacific Fishery Ecosystem Plans

January 19, 2005, 8:30 a.m. to 5 p.m.

6. Coral Reef Ecosystem Fishery Management Plan, Management Unit Species Designations
7. Development of Annual Report for Coral Reef Ecosystem Fisheries of the Western Pacific Region

The order in which agenda items addressed may change. Public comment periods will be provided throughout the agenda. The Plan Team will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the Plan Team for discussion, those issues may not be the subject of formal action during this meeting. 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: December 17, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–3766 Filed 12–21–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121704B]

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 (Council) will hold meetings of its Commercial, Recreational, Subsistence/Indigenous, and Ecosystem and Habitat Advisory Panel members throughout the western pacific in January and February 2005.

DATES: The Advisory Panel members from the Commonwealth of the Northern Mariana Islands (CNMI) will meet at the Pedro T. Tenorio Multipurpose Center on January 11–12, 2005 from 9 a.m to 5 p.m. each day. The Advisors from Guam will meet at the Guam Hyatt Regency Hotel on January 13–14, 2005 from 9 a.m. to 5 p.m. each day. Advisors from Hawaii will meet at the Council office conference room on January 26–27, 2005 from 9:00 a.m. to 5:00 p.m. each day. Advisors from American Samoa will meet at the American Samoa Department of Marine and Wildlife Resources on February 2–3, 2005 from 9:00 a.m. to 5:00 p.m. each day.

ADDRESSES: CNMI Governor Pedro P. Tenorio Multipurpose Center, Office of the Governor, Susupe, P.O. Box 10007, Saipan, MP 96950; telephone: 670–664–1014. Guam Hyatt Regency Hotel, 1155 Pale San Vitores Road, Tumon, Guam 96913–4206, Telephone 671–647–1234. Council Office Conference Room, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813; telephone: 808–522–8220. American Samoa Department of Marine & Wildlife Resources, P.O. Box 3730, Pago Pago, AS 96799, Telephone: 684–633–5102.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The Advisory Panel members from their respective areas will be provided an orientation on the Council process, legislative mandates, advisory group roles and responsibilities and discuss fishery issues of concern in their area.

The agenda for the Advisory Panel meetings will include the items listed below:

Day 1

(1) Introduction of attendees
(2) Overview of Council and advisory bodies
(3) Responsibilities of Council staff and island coordinators
(4) Legislative mandates and directives, including Magnuson Stevens Act, National Environmental Policy Act, Endangered Species Act, Marine Mammal Protection Act
(5) Overview of Council process and program
(6) Schedule of up coming events (Calendar of events on island meetings, Council Honolulu meeting, etc.)
(7) Review of June 2004 Advisory Panel Recommendations and Status
(8) Discussion and wrap-up

Day 2

(9) Major fishery program initiatives
a. Fishery Ecosystem Plans
b. NWHI management
c. Protected Species mitigation, conservation and management
d. Fishery Data Collection
e. Indigenous Program
f. Status of American Samoa Longline fishery management
g. CNMI Bottomfish Management Amendment
h. International fishery management
(10) Report on new fishery issues and activities
(11) Advisor Discussion and Recommendations
(12) Other business

The order in which the agenda items are addressed may change. The AP will meet as late as necessary to complete scheduled business. Although non-emergency issues not contained in this agenda may come before the AP for discussion, those issues may not be the subject of formal action during these meetings. Advisory Panel 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: December 17, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–3767 Filed 12–21–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 21, 2005.

Title, Form, and OMB Number: Individual MCJROTC Instructor Evaluation Summary; NAVMC 10942; OMB Control Number 0703–0016.

Type of Request: Extension.

Number of Respondents: 450.

Responses Per Respondent: 1.

Annual Responses: 450.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 225.

Needs and Uses: This form provides a written record of the overall performance of duty of Marine instructors who are responsible for implementing the Marine Corps Junior Reserve Officers' Training Corps (MCJROTC). The Individual MCJROTC Instructor Evaluation Summary is completed by principals to evaluate the effectiveness of individual Marine instructors. The form is further used as a performance related counseling tool and as a record of service performance to document performance and growth of individual marine instructors. Evaluating the performance of instructors is essential in ensuring that they provide quality training.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligations: Voluntary.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: December 15, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–27963 Filed 12–21-04; 8:45 am]

BILLING CODE 5001–06—M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 21, 2005.

Title, Form, and OMB Number: Academic Certification for Marine Corps Officer Candidate Program; NAVMC 10469; OMB Control Number 0703–0011.

Type of Request: Extension.

Number of Respondents: 3,500.

Responses Per Respondent: 1.

Annual Responses: 3,500.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 875.

Needs and Uses: Used by Marine Corps officer procurement personnel, this form provides a standardized method for determining the academic eligibility of applicants for all reserve officers candidate programs. Use of this form is the only accurate and specific method to determine a reserve officer applicant's academic qualifications. Each applicant interested in enrolling in an undergraduate or graduate reserve officer commission program completes and returns the form.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: December 15, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–27964 Filed 12–21–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 21, 2005.

Title, Forms, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Appendix F, Material Inspection and Receiving Report; DD Form 250, DD Form 250c, DD Form 250–1; OMB Control Number 0704–0248.

Type of Request: Extension.

Number of Respondents: 34,180.

Responses Per Respondent: 228 (average).

Annual Responses: 7,800,000.

Average Burden Per Response: 3 minutes (average).

Annual Burden Hours: 344,500.

Needs and Uses: Collection of this information is necessary to process the shipping and receipt of materials and payment to contractors under DoD contracts.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed

information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: December 15, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–27965 Filed 12–21–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research Advisory Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meetings.

SUMMARY: The Ocean Research Advisory Panel (ORAP) will meet to discuss National Oceanographic Partnership Program (NOPP) activities. All sessions of the meetings will remain open to the public.

DATES: The meetings will be held on Wednesday, January 5, 2005, from 9 a.m. to 5 p.m. and Thursday, January 6, 2005, from 9 a.m. to 3 p.m. In order to maintain the meetings time schedules, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meetings to the meeting Point of Contact.

ADDRESSES: The meetings will be held at the Consortium for Oceanographic Research and Education, 1201 New York Ave, NW., Suite 420, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Melbourne G. Briscoe, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5660, telephone (703) 696–4120.

SUPPLEMENTARY INFORMATION: This notice of open meetings is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of this meeting is to discuss NOPP activities. The meetings will include discussions on ocean observations, current and future NOPP activities, and other current issues in the ocean sciences community.

Dated: December 15, 2004.

J.H. Wagshul,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–27927 Filed 12–21–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 22, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 16, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Paul Douglas Teachers Scholarship Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 684.

Abstract: This program has not received funding since 1994. It was originally designed to assist State agencies provide scholarships to talented and meritorious students who were seeking teacher careers at the pre-school, elementary, or secondary level.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2652. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–27973 Filed 12–21–04; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plans Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** material changes to HAVA State plans previously submitted by Arkansas, Illinois, Nebraska and North Dakota.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual States at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the 50 States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254 (a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates.

The submissions from Arkansas, Illinois, Nebraska and North Dakota address material changes to the original State plans and, in accordance with HAVA section 254(a)(12), provide information on how the State succeeded in carrying out the previous State plan. Arkansas has received its 2003 and 2004 HAVA requirements payments, but is submitting updates to its previous State plan, primarily to address a change in the State's plans for procuring HAVA compliant voting systems. Illinois and North Dakota are submitting material changes to their previous State plans that address, among other matters, the expected 2004 HAVA requirements payments, which is a prerequisite to receiving these funds. (Illinois' certification for its 2003 requirements payment is pending; North Dakota has received its 2003 requirements payment.) Nebraska has received its 2003 HAVA requirements payment but is submitting material changes, among which are those addressing the increased amount of the 2004 requirements payment expected by the State and an increase in the amount set aside by the State for the 5% match, required by HAVA section 253(b)(5) to receive such funds.

Upon the expiration of 30 days from December 22, 2004, the States whose plans are published herein will be eligible to implement any material changes addressed therein, in accordance with HAVA section 254(a)(11)(C). At that time, in accordance with HAVA section 253(d), Illinois and North Dakota also may file a statement of certification to obtain the fiscal year 2004 requirements payments for which the States did not previously qualify under HAVA section 253(b)(1) and Nebraska may also file a statement of certification to obtain its fiscal year 2004 payment for which it did not previously qualify under HAVA section 253(b)(5). These statements of certification must confirm that the jurisdiction is in compliance with all of the requirements referred to in HAVA section 253(b) and must be provided to the Election Assistance Commission in order for the State to receive a requirements payment under HAVA Title II, Subtitle D.

EAC notes that plans published herein include only those that have already met the notice and comment requirements of HAVA section 256, as required by HAVA section 254(a)(11)(B). EAC wishes to acknowledge the effort that went into the revising the State plans and encourages further public comment, in writing, to the chief election official of the individual States at the address listed below.

Chief State Election Officials

Arkansas

The Honorable Charlie Daniels, Secretary of State, 256 State Capitol Bldg, Little Rock AR 72201, Phone: 501–682–1010, Fax: 501–682–3510, E-mail: *ElectionsEmail@sosmail.state.ar.us*

Illinois

Daniel W. White, Executive Director, State Board of Elections, 1020 S. Spring St, Springfield IL 62704, Phone: 217–782–4141, Fax: 217–524–5574, E-mail: *dwhite@elections.state.il.us*

Nebraska

The Honorable John A. Gale, Secretary of State, State Capitol, Ste 2300, Lincoln NE 68509–4608, Phone: 402–471–2555, FAX 402–471–3237, E-mail: *Jgale@nol.org*

North Dakota

The Honorable Alvin A. Jaeger, Secretary of State, 600 East Boulevard Ave., Dept. 108, Bismarck ND 58505–0500, Phone: 701–328–2900, Fax: FAX 701–328–2992, Email: *sos@state.nd.us*

Thank you for your interest in improving the voting process in America.

Dated: December 15, 2004.

DeForest B. Soaries, Jr.,

Chairman, U.S. Election Assistance Commission.

BILLING CODE 6820–YN–P

State of Arkansas
Secretary of State

Charlie Daniels
Secretary of State

October 27, 2004

Dear Members of the Election Assistance Commission:

In accordance with section 255 of the Help America Vote Act of 2002 (HAVA), I am pleased to file with the Election Assistance Commission (EAC), for publication in the *Federal Register*, this letter and the following new pages (comprising, [a] **page 2**, [b] **page 4**, [c] **page 10**, [d] **page 12**, [e] **page 15** and, [f] **page 18**) of the Arkansas Implementation Plan for the Help America Vote Act (HAVA) for the 2005 Fiscal Year. These new pages, together with non-substantive changes that we have made, will constitute the State of Arkansas's Plan for Implementation for Fiscal Year 2005.

As required by section 254(a)(12) of the HAVA, Section AA herein describes the material changes that Arkansas has made to the State Plan Filed in 2003. Additionally, Section AA lists progress that the State of Arkansas has made with regard to the State Plan filed with the EAC.

Please note that a number of non-material changes to the State Plan have been made. After consulting with EAC staff, Arkansas has elected not to include those changes for publication in the *Federal Register*. Instead we would direct the EAC and members of the public to the Arkansas Secretary of State's website, www.sos.arkansas.gov to view the complete Arkansas State Plan as is has been amended.

The 2004 Amendments to the Arkansas State Plan were developed in accordance with section 255 of the HAVA and the requirements for public notice and comment prescribed by section 256 of the HAVA.

On behalf of the State of Arkansas, I thank the Commission for its assistance. I look forward to our continued collaboration to improve the administration of elections.

Very truly yours,

Charlie Daniels

Room 256 State Capitol o Little Rock, Arkansas 72201-1094
501-682-1010 o Fax 501-682-3510
e-mail: sos@aristotle.net o www.sosweb.state.ar.us

State Plan Introduction, page 2.

2004 – The previous fourth paragraph on the Introduction page (page 2) is deleted and replaced by the following:

In 2003, the Arkansas General Assembly passed Acts 994 and 995 to put the state in compliance with the provisions of Public Law 107-252. A committee of stakeholders met to discuss various elements of these acts and the broad requirements of HAVA. During the planning process, the committee discussed various options available to meet HAVA mandates contingent on the level of federal funding available over the next three years.

2004 – The previous third and fourth paragraphs under **Other Requirements** on page 4 are deleted and replaced by the following:

The Title III requirements are most easily and efficiently met by direct read electronic (DRE) voting machines. Only five counties currently use DRE's in Arkansas, and whether the machines in some of those counties meet the requirements of Title III has not yet been determined. An additional 46 counties in Arkansas use optical scan ballots that are tabulated in a central location. Three counties use optical scan ballots that are tabulated at the polling sites, and 8 counties use paper ballots that are counted by hand. The 13 counties that use lever machines or punch card systems will have those systems replaced with a combination precinct-count optical scan and DRE voting system solution OR a full DRE voting system solution depending on county needs, preference and available dollars using Title I funds and supplemented with a percentage of Title II funds.

Arkansas's preference with regard to compliance with Title III voting system requirements is to use requirements payments, local funds (if necessary) and state funds (if possible) to purchase uniform, Title III compliant voting systems for each county in the state

2004 – The second and fourth paragraphs under **Distribution and Monitoring of Requirements Payments** on previous page 10 are deleted and replaced by the following:

If sufficient funds are appropriated to allow the purchase of a uniform voting system, and if legislation is enacted to require the counties to use such a system, the State will use its purchasing power to enter into a contract with a vendor (or vendors) to purchase the equipment necessary to implement a system. The counties will then purchase the equipment through the State contract with requirement payment funds and any state and/or local funds available.

The counties' access to requirements payments funding would be by grant application based on one, some or all of the following factors:

1. The amount of federal funds available;
2. The amount of state funds appropriated for such purchases
3. The number of ballot styles;
4. The number of registered voters;
5. Voter turnout;
6. The number of polling places;
7. And/or other demographic and geographic factors that provide a reasonable representation of need.

2004 - The previous second paragraph under **Voting System Requirements** is deleted and replaces with the following:

Title III compliant DRE's or other such accessible units will be purchased and deployed to each polling site to ensure that there is at least one accessible voting system at each poll. Additionally, The Secretary of State's office will develop a formula to ensure that requirements payment funds will be made available only for the purchase and implementation of election systems that meet Title III requirements. Guidelines will be developed by the State Board of Election Commissioners office in the form of rules and regulations to ensure voting system guidelines and processes that are consistent with the requirements of section 301. Any legislation introduced regarding the implementation of voting systems will include the requirement that the requirements of section 301 be followed. The Secretary of State and State Board of Election Commissioners offices will continue to survey the counties and review polling sites to ensure access. Any legislation that mandates a uniform statewide voting system should define that system as consistent with the voting system guidelines required by HAVA.

2004 – The previous Page 15, the Cost Estimate Table, is deleted and replaced by the following:

Cost Estimate	*Federal Share (Excluding Title I)*	*State Match*	*% of Requirements Payments Needed*
Section 301: Installation of a combination of precinct-count optical scan and DRE voting system solutions or other accessible units per polling site statewide. **Cost: As Much As $26 Million**	$14,255,056	$712,752	66%
Section 302: Provisional Voting & Voting Information Requirements	$20,000	$1,000	.09%
Section 303: ***Statewide Voter Registration List—HAVA Compliant with Improved Connectivity for local users and Improved Addressing System*** ***Cost: $5M***	$3,671,756	$183,587	17%
Other Activities: ***--Training & Education for all poll workers & volunteers.*** ***-- Administrative Complaint Procedures***	$3,550,000	$177,500	16%

2004 – The previous Page 18, State Plan Element (Performance Goal) is deleted and replaced by the following:

State Plan Element (Performance Goal)	*Implementation Timetable*	*Suggested Criteria For Measuring Performance*[ii]	*Official Responsible*
Replacement of Punch Card & Lever Voting Systems	January-March 2005	Number of jurisdictions converting to electronic systems.	Secretary of State & County Election Commissions.
Installation of one DRE per polling site for individuals with disabilities	January 2005-January 2006	Number of polling sites compliant.	Secretary of State & County Election Commissions.
Statewide Voting System compliant with § 301	January 1, 2006	Number of jurisdictions compliant. Other factors included in evaluating performance of all voting system elements to include training programs, voter education, tabulation/reporting time, voter satisfaction.	Secretary of State & County Election Commissions.
Provisional Voting	January 1, 2004	Number of provisional ballots cast and operation of free access system.	Secretary of State & County Election Commissions.
Voting Information	January 1, 2004	Quality, quantity, effectiveness of information posted.	Secretary of State & County Clerks.
Statewide Voter Registration List	January 1, 2004 (or January 1, 2006 in event of a waiver).	Conversion from a uniform, locally maintained system to a centralized statewide system shared in 75 jurisdictions. Effectiveness of data-sharing with partnering state agencies and accuracy of data and reports.	Secretary of State & County Clerks.
Voter Education & Training	Immediate & Ongoing	Success of voter education programs, turnout, number of complaints, surveys.	Secretary of State, County Clerks, and County Election Commissions.
Poll Worker Training	January 2004-ongoing	Number and type of training programs provided, number of poll workers trained.	Secretary of State and State Board of Election Commissioners
Administrative Complaint Process	July 15, 2003	Number of complaints received, processed, and resolved.	State Board of Election Commissioners
Accessibility of Polling Sites	January 1, 2004—January 2006	Number of polling sites ADA compliant, number improved by modification, number out of	Secretary of State and State Board of Election

2004 – All previous information in the **Yearly Changes in Plan** section is deleted and replaced with the following:

(12) In the case of a State With a State plan in effect under Subtitle D of Title II of HAVA during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for the previous fiscal year.

Proposed changes to the 2003 Plan were described at a meeting of the State HAVA Committee and public hearing in August 2004. At an October 2004 meeting of the State HAVA Committee and public hearing, final proposed changes were presented, discussed and adopted.

This section was drafted by the Arkansas Secretary of State's staff. The amended language of this section will be sent to the EAC as an update required by section 254(a)(12) of the HAVA.

The four material changes to the State Plan are:

1. Voting Systems. The intent to implement a uniform system of DRE's has been changed to the intent to provide counties with either a full DRE system or a combination of DRE and precinct-count optical scan voting systems, depending on county needs.
2. Budget Allocation. The new budget allocation reflects the change from an all DRE voting system to a mixed system, and it presents only a single level of costs.
3. Implementation Timetable. The implementation timetable has been amended to reflect the implementation waiver granted for conversion of punchcard and lever systems.
4. Updates of the State's actions and progress. These updates are listed below in the order they appear in the amended State Plan.

State's Progress:

- Voting Systems Standards. The State requested and was granted a waiver, as authorized by section 102(a)(3)(B) of the HAVA, to postpone replacement of punchcard and lever voting systems.
- Voting Information. The State has published and distributed posters to all counties for use in polling sites that provide voter information concerning; voting instructions (including how to cast a provisional ballot), instructions for first time voters who registered by mail, general information on voting rights, and on voter fraud laws. The same voter information has been provided on the Arkansas Secretary of State's web site. The State has provided specific to HAVA training and information to poll workers and election officials.
- Statewide Voter Registration System. The state has published a Request for Proposals for a new statewide voter registration system. The selected system will be installed and functional statewide no later than December 31, 2005.
- Arkansas Act 994 and Act 995 of 2003 addressed the HAVA requirements for: Title III provisional voting, Title III voting information, Title III statewide voter registration list, Title III first time voters who register by mail, Title III voter registration form, and a uniform, non-discriminatory state-based administrative complaint procedure

HELP AMERICA VOTE ACT

STATE OF ILLINOIS

STATE PLAN

Daniel W. White
Executive Director
Illinois State Board of Elections

October 25, 2004

The state plan is also available at
http://www.elections.state.il.us/VoteInfo/Pages/HAVA.htm

Daniel W. White
Executive Director
Illinois State Board of Elections

The State Board of Elections is an independent constitutional agency responsible for general supervision over the administration of the registration and election laws throughout the State of Illinois. The Board consists of eight members – four Democrat and four Republican. The Board appoints an Executive Director and Assistant Executive Director to oversee the day-to-day activities of the State Board of Elections. The Executive Director serves as the Chief Election Officer for the state.

During its thirty year existence, the legislature has expanded the duties of the State Board of Elections to include many other aspects of the election process. The Board oversees and provides services to 110 election jurisdictions throughout the state. With the passage of The Help America Vote Act of 2002 (HAVA), the Board will be responsible for ensuring the provisions of HAVA are implemented in a proper and timely fashion.

Legislation was passed and signed by the Governor to implement provisions under the Help America Vote Act of 2002. Among other things, Public Act 93-0574 established the Help Illinois Vote Act fund so that Illinois could receive federal funds; established new criteria in the Election Code for provisional voting; provided for the definition of a vote for punch card systems, optical scan systems and the Populex system; and authorized the use of direct recording electronic voting systems in Illinois.

During the spring legislative session, the legislature passed, and the Governor signed, a bill which appropriates $5 million from the Capital Development Fund to the State Board of Elections for grants to local governments for the purchase of handicapped accessible polling machine. The will meet the HAVA requirement that the state has appropriated funds for carrying out the activities for which the requirements payment is made in an amount equal to 5 percent .

Work continues on the computerized statewide voter registration system in bringing it into compliance with HAVA. Illinois does anticipate having a fully HAVA compliant system by January 1, 2006.

INTRODUCTION

The revised Illinois State Plan continues to outline how the state will distribute and monitor the monies received and how the state is meeting or will meet the requirements of the Act. It is designed to be a flexible document and subject to alteration as conditions might warrant.

State Board of Elections' staff is working diligently to bring Illinois into compliance with the Help America Vote Act of 2002. The plan which follows is divided into the thirteen sections which are enumerated in Section 254 of the Act.

Section 1. Title III Requirements Payment

How the State will use the requirements payment to meet the requirements of Title III, and if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

Section 301 Voting Systems Standards

Public Act 93-0574 (PA 93-0574) authorized the use of Direct Recording Electronic Voting systems (DRE) approved by the State Board of Elections. SBE staff is in the process of promulgating rules so that the certification process can begin. Once these systems are certified for use in Illinois, it is anticipated that the State Board of Elections will consider using Title II monies to possibly assist with purchase of compliant systems. If so, it will formulate a distribution and allocation process to distribute monies to the election jurisdictions for purchase of the system. HAVA requires one fully accessible machine in each polling place. The process for distribution of these funds has not yet been determined. These systems must be fully accessible to permit blind or visually impaired voters as well as physically disabled voters to exercise their right to vote in private and without assistance.

The updated Election Judge manual includes a section on assisting voters with disabilities. This portion suggests common courtesies and guidelines for the election judges in assisting voters. In addition, the SBE recently distributed to all election authorities a disability etiquette booklet published by the Eastern Paralyzed Veterans Association. This booklet provides tips on interacting with people with disabilities.

Many election jurisdictions are now using an optical scan voting system. These systems do meet HAVA requirements in that they 1) permit the voter to verify their vote before the ballot is cast and counted, 2) provide the voter with the opportunity to change the ballot before it is cast and counted, and 3) provide notice to the voter of an overvote with an opportunity to correct the ballot before it is cast and counted.

The election jurisdictions currently using the punch card system have access to the SBE website education program and which also includes instructions on how to vote as well as how to correct the ballot before it is cast and counted. Also, SBE staff continues to conduct election judge's training schools for jurisdictions using the punch card system.

All voting systems currently produce a permanent paper record. PA 93-0574 also requires a permanent paper record on the DRE's.

Pursuant to Public Act 93-0574, the State Board of Elections, in evaluating the feasibility of any new voting system, shall seek and accept public comment from persons of the disabled community, including but not limited to organizations of the blind.

Illinois applied for and received the Election Assistance for Individuals for Disabilities grants for FY 03 and FY 04. These two grants together amount to $870,164. Section 101 monies are also being used to increase the amount to be spent on making polling places accessible. Election authorities will continue to audit polling places on a regular basis to ascertain if they meet accessibility standards and also publish the polling places that are accessible. Illinois will strive to have all polling places 100% accessible.

Section 302 Provisional Voting and Voting Information Requirements

Public Act 93-0574 provided statutory language authorizing provisional voting in Illinois. All provisional voting requirements for this provision are now met. Election authorities shall continue to train election judges on implementing this new provision. As provided in Section 302(a)(5)(3), the State Board of Elections, at the March 2004 primary election, provided a toll free telephone number for election authorities to utilize for voters who cast provisional ballots to access to discover whether their vote was counted. Out of 110 jurisdictions, 67 used the SBE system. The remaining 33 jurisdictions utilized a system of their own design. In November, the State Board of Elections Internet website will be available to all Illinois jurisdictions, if they choose to participate.

Illinois law now allows for provisional voting if the polls remain open after closing time due to a Federal or State court order.

All election jurisdictions were notified of the requirement for posting Voting Information Requirements in each polling place on the day of each election for Federal office.

The revised voter registration form includes instructions for mail-in registrants and first time voters. The Administrative Complaint procedure is in the approval process and will continue through the implementation of rules of procedure. These will allow individuals who feel their rights have been violated to seek recourse.

Section 303 Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register By Mail.

Illinois continues work on the single, uniform, official centralized statewide voter registration database. A waiver was submitted for an extension to January 2006. We expect the system to be HAVA compliant by that time. We have coordinated with the Department of Public Health and Department of Corrections for the transfer of deaths and felons via electronic means.

The revised voter registration form allows for the applicant's driver's license number or, if no driver's license, the last 4 digits of the applicant's social security number or their full Secretary of State ID number Measures will be provided for in determining the validity of the numbers provided once the statewide voter registration database is complete.

The HAVA requirement that every legally registered voter in the State be assigned a unique identifier will be provided for when the statewide voter registration database is complete.

The State Board of Elections and the Office of the Secretary of State have entered into an agreement for the sharing of information in the databases. The Secretary of State's office is required to enter into an agreement with the Social Security office.

Illinois law (10 ILCS 5/1A-16) now provides for all requirements for a person who has registered by mail. Although under the provisions of NVRA, Illinois does not permit first-time mail registrants to vote absentee by mail. Once the database is in place we will meet the requirement to match the information submitted on a mail registration with the existing identification number.

Section 402. Establishment of State-based Administrative Complaint Procedures to Remedy Grievances.

The State Board of Elections has adopted a state-based administrative complaint procedure with the adoption of Administrative Complaint Procedures and Remedy Grievance Rules and Regulations.

Section 3. Voter Education Programs

How the state will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.

I. Voter Education

Voter education is essential to any plan for election reform. The purpose of the voter education program must be to increase voter familiarity with the requirements to register to vote, the type of voting equipment utilized and to inform voters of their rights and responsibilities at the polling place. Voter education should also help to increase voter interest in the election, help attract poll workers, and decrease the voter error rate.

The voter education program will address all aspects of the voting public with specific emphasis in reaching senior citizens, young adults, minority voters, and voters with disabilities. It will include both pre-election and election day strategies including how to register to vote, how to locate polling places, how to cast a ballot, and voters rights in the polling place.

Pre-election strategies include public service announcements in television and radio format, electronic forms of voter education, community partnerships with outreach organizations, demonstrations of the voting equipment at venues throughout the election jurisdiction, and programs geared toward use in the classroom. The State Board of Elections has and will continue to seek participation from other state agencies. The State Board of Elections will seek assistance from the Department of Rehabilitation Services, Department of Aging and Department of Human Services in providing educational materials to clients of those departments.

Pre-election day strategies include demonstrations of the voting equipment. Election day strategies include having informational posters available in polling places, and printed information regarding voting equipment usage provided in the polling place. We encourage election authorities to request vendors to provide to each registered household in that jurisdiction a guide explaining operation of their particular voting equipment. The State Board of Elections will continue to enhance its voter education material already on its website and we encourage election authorities to do the same.

The State Board of Elections provided a booth at the Illinois State Fair in August 2004. Materials were provided to demonstrate how to vote a punch card ballot as well as an optical scan ballot and visitors were given information on which type of equipment their jurisdiction would be using. Mail registration forms were available and several election authorities sent staff to register voters at the booth. The mock election programs were displayed and the SBE website was promoted as an access for further election information. Activity books, pencils and magnets promoting the November 2, 2004 election were distributed to all visitors, as well as informative brochures regarding provisional voting, registering to vote, voter assistance on election day, election judges duties and responsibilities, Illinois deputy registrars, and absentee voting.

The State Board of Elections will develop voter education programs in partnership with all stakeholders, including local election authorities, community representatives, and advocacy organizations. As the Secretary of State, Division of Motor Vehicles, registers many voters, information should be provided at these sites educating voters as they register.

II. Election Administrator Training

The State Board of Elections has prepared a Guide for Election Authorities to ensure that there is adequate knowledge of the state election laws and the implementation of these laws at the local level.

The State Board of Elections will work in conjunction with both the County Clerks Association and the Association of Election Commission Officials to facilitate an education and training program for their members. This program should include a framework for providing practical learning experiences in the administration of elections. It must also include requirements of HAVA to ensure uniform implementation throughout the state.

III. Poll Worker Training

The State Board of Elections will establish uniform requirements for poll worker training throughout the state and will oversee the implementation of this training. The local election authority should be responsible for conducting most of the training programs to ensure the unique aspects of the election in each jurisdiction are clearly explained to the poll worker. The compensation for attending election day training should be increased to encourage poll workers to attend this important learning program.

Audio-visual aids will be used for the training program. As part of the training, the program will include a portion on sensitivity for voters with disabilities. In establishing a uniform training program for poll workers, the State Board of Elections will serve as the liaison among all election authorities within the state to ensure participation in the training development and coordination of the information. In implementing this training program, the State Board of Elections will provide a training plan to the local election authority and will assist, where necessary, in the execution of the training. Training manuals will include, but not be limited to, information about the nature of various disabilities, the rights of voters, access to and maneuverability within polling places and the use of machines and ballots.

Section 4. Voting Systems Guidelines and Processes

How the state will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

Illinois adopted procedures in 1978 that allows no voting system to be used in the state unless approved for use by the State Board of Elections in accordance with rules set forth. The requirements for approval are found in the Illinois Election Code, 10 ILCS 5/24A-16, 24B-16, and 24C-16 as well as in State Board of Elections Rules and Regulations, 26 Illinois Administrative Code, Chapter 1, Section 204.10 - 204.180.

Below is a summary of voting systems currently in use in Illinois.

System	# of Election Jurisdictions	Current # of Precincts	In-Precinct Counting
Punch Card	40	1,768	None
PBC 2100 (punch card)	2	5,129	2
Accu-vote Optical Scan	43	2,759	43
Optical Scan M100	20	1,788	20
Marksense Optech IV-C	3	155	None
Marksense Optech III-PE	2	146	2

To date, 54 of the 97 eligible jurisdictions have applied for their portion of the money allocated for the punch card buyout program. Illinois is becoming more compliant with this program. If a jurisdiction chooses to maintain a central count punch card system, the election authority must provide a strong voter education program.

As required in PA 93-0574 the State Board of Elections, in evaluating the feasibility of any new voting system, will accept public comment from persons in the disabled community.

Section 5. Illinois HAVA Fund

How the state will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.

With the passage of SB 428 in the spring 2003 legislative session, the Help Illinois Vote Fund to implement HAVA was established. Governor Blagojevich signed the bill on August 21, 2003 providing for a special fund within the State Treasury to receive federal funds under the Help America Vote Act of 2002. It authorized appropriation from the Fund solely to the State Board of Elections for use in accordance with the federal Act. Illinois plans to use interest generated from the Fund to help fund future needs in implementing HAVA.

As part of the SBE's FY05 appropriation, language is included which gives the State Board of Elections spending authority to use the funds in accordance with the Help America Vote Act of 2002.

The SBE Executive Director and Chief Fiscal Officer will work with the State Comptroller and State Treasurer to follow and enforce all mandated fiscal controls and policies.

DISBURSEMENTS OF SECTION 101 AND 102 MONIES

	Federal Appropriation To All States	Federal Appropriation To Illinois	Expended In Illinois (as of 8/31/04)
Section 101	$349,182,262	$11,129,030	$2,141,535
For discretionary use by jurisdictions to provide for election administration improvements			$0
Accessible polling places			$ 999,705
Computerized statewide voter registration database and related costs (does NOT include costs paid through State 'maintenance of effort' funds)			$ 689,353
Sub-Grants to Secretary of State			$ 423,080
Toll free telephone hotline			$ 314
Development of State Plan			$ 1,000
Misc expenses relating to HAVA implementation			$ 28,083
Section 102	$300,317,738	$33,805,617	$10,633,313
Punch card buyout - $3,192.22 per precinct			$10,633,313

SECTION 251 MONIES

Section 251 - Requirements Payments (not yet received) (federal fiscal years)					
FY03 Federal Authorized Funds	FY 03 Federal Appropriation Illinois share	FY04 Federal Authorized Funds	FY 04 Federal Appropriation Illinois share	FY 05 Federal Authorized Funds	FY 05 Federal Appropriation Illinois share
$1.4 billion	$830,000,000 ---------- $35,283,025	$1 billion	$1,489,360,620 ---------- $63,312,227	$600,000,000	$
FY03 expended funds	$	FY04 expended funds	$	FY05 expended funds	$

The State Board of Elections has received the required 5% state match in the FY05 budget request (to meet the requirement for both federal fiscal year FY03 and FY04). The amount received was $5 million.

SECTION 254(A)(7) - DISBURSEMENTS (STATE FUNDS)

Section 254(a)(7)- Maintenance of Effort Requirement (State funds)(state fiscal years)					
FY04 Appropriated Funds	FY 04 Expended	FY05 Appropriated Funds	FY 05 Expended (as of 8/31/04)	FY 06 Appropriated Funds	FY 06 Expended To Date
$550,000	$545,954	$550,000	$0	$	$

SECTION 261 - DISBURSEMENTS

Section 261 - Health & Human Services Payments - Access Disability Grants (federal fiscal years)					
FY03 Federal Authorized Funds	FY 03 Federal Appropriation Illinois share	FY04 Federal Authorized Funds	FY 04 Federal Appropriation Illinois share	FY 05 Federal Authorized Funds	FY 05 Federal Appropriation Illinois share
$50,000,000	$13,000,000 ---------- $511,102	$25,000,000	$9,941,000 ---------- $359,062	$25,000,000	$
FY03 expended funds	$511,102	FY04 expended funds (as of 8/31/04)	$319,545	FY05 expended funds	$

The State Board of Elections is in the process of distributing the HHS grant money through an application process. It is being distributed using a voting age population formula for each jurisdiction. Should a jurisdiction not request any of the money, it will then be redistributed to the jurisdictions.

Section 7. Maintenance of Effort

How the State, in using the requirements payment, will maintain the expenditures of the state for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

In FY00, Illinois had an appropriation of $550,000 for the uniform registration formatting project (now called the statewide voter registration system project). This amount was appropriated in the FY04 budget, and has again been appropriated in the FY05 budget.

We intend to use the money to continue development of the Statewide Voter Registration Database along with other qualifying expenses as dictated by the mandates of HAVA.

Section 8. Performance Goals and Measures

How the state will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

A review of applicable State Laws and Administrative Codes will be undertaken to determine any changes necessary to accomplish the goals of the Help America Vote Act and to ensure compliance through reporting by Election Authorities. The State Board of Elections will revise any existing reporting procedures to include measures of performance for requirements under the Act.

Requirement	Time Frame	Goal	Measures
Punch Card Buyout	Jan 1, 2006 (waiver approved)	Replace systems in 10,590 eligible precincts	SBE maintains a database of voting systems used by each county, which will be expanded to include critical elements.
Accessible voting machine	Jan 1, 2006	Equipment which allows a blind voter to vote unassisted in each polling place	Criteria for accessibility certification will be developed to track compliance.
Polling place accessibility	Nov 2006	Provide accessible polling places for each precinct	Election Authorities report polling place accessibility to SBE through surveys. Survey will be revised to insure compliance.
Provisional ballot (Procedures provided for by PA 93-0574)	Jan 2004	Develop procedures for voting and processing ballots Develop system to inform voter of outcome	Provisional ballots must be tracked for the purposes of adding to final canvass and reporting to provisional voter.
Definition of vote (Complete - SB428)	Jan 2004	Provide standards for recount procedures	A means of reporting election contests will be developed.

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Definition of vote (Complete - SB428)	Jan 2004	Provide standards for recount procedures	A means of reporting election contests will be developed.

Requirement	Time Frame	Goal	Measures
State-wide voter registration system	Jan 1, 2006 (waiver requested)	Provide means for uploading voter information from counties to state-wide database	Ratio of counties with equipment and procedures in place to upload information
Grievance procedure	Admin. Complaint Procedure adopted	Provide a means of receiving, reporting and resolving complaints from voters	Track complaints and resolutions through an annual report.
Education and Training	Jan 2004	Provide voter education and enhanced election judges training.	Report voter education through election authority surveys. Election Authorities currently report the # of Election Judges who have tested for each election.

The State Board of Elections will assist election authorities to develop standard reports and procedures to measure critical areas of each requirement: scope, schedule, and resources. Reporting requirements will assist SBE in collecting data to report on performance.

- SCOPE: Measure size of project (# of precincts, registered voters, polling places, etc)
- SCHEDULE: Target start and stop dates, actual start stop dates, periodic review of progress (% completed)
- RESOURCES: Measure personnel and existing resources committed to each project as well as financial resources needed to complete the project.

Section 9. State-Based Administrative Complaint Procedures

A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

Section 402 of HAVA requires the State to create a state-based administrative complaint procedure to assure compliance with Title III of HAVA. The offices of the Illinois State Board of Elections through consultation with the Office of the Illinois Attorney General will develop administrative rules that will allow any person who believes there is, has been, or is about to be a violation of Title III of HAVA to file a complaint.

The complaint must be in writing, sworn and notarized. At the complainant's request, there will be a hearing on the record. If the State finds a violation, it will provide an appropriate remedy. If the State determines a violation has not occurred, the complaint will be dismissed and the results will be published. The State will make a final determination on a complaint within 90 days, unless the complainant consents to a longer period for making such a determination.

The 90-day period begins on the date the complaint is filed. If the State cannot meet this 90-day deadline, the complaint will be resolved within 60 days under an alternative dispute resolution procedure. This 60-day period for resolving a complaint under an alternative dispute resolution process begins after the 90-day period expires. The record and other materials from any proceedings conducted under the complaint procedures shall be made available for use under the alternative dispute resolution procedures. All procedures will be administered in a uniform and nondiscriminatory manner.

The State Board of Elections has adopted a state-based administrative complaint procedure with the adoption of Administrative Complaint Procedures and Remedy Grievance Rules and Regulations.

Section 13. State Planning Committee

A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The first state plan was developed through a committee of appropriate individuals, including the chief election officials of the two most populous jurisdictions, other election officials, stakeholders (such as representatives of groups of individuals with disabilities) and other citizens, as well as the Chief State Election Official. This year's state plan was updated by SBE staff and distributed to all member of the State Planning Committee as formed in 2003.

Comments from the Committee will be taken into account before the Plan is submitted to the Board for approval on October 25. The draft State plan will be available on the Board's website and published for public comment for 30 days. If, following the public comment period, it is necessary, an amended state plan will be submitted to the Board on October 25 for final approval and then eventual submission to the Election Assistance Commission for posting in the Federal Register. The full committee may meet again as necessary.

Daniel W. White, Executive Director, Illinois State Board of Elections,

Members of the State Planning Committee are:

Matt Abrahamson, Dept. of Rehabilitation Services
Paul Anderson, Kendall County Clerk
Steve Bean, Macon County Clerk
Tom Benzinger, Access Living
Derek Blaida, City of Chicago
Bill Blessman, Mason County Clerk
Bernice Bloom, Citizen
Tonia Bogener, Office of the Attorney General
Hollister Bundy, Inclusion Solutions, Inc.
Alison Burnett, Office of Republican House Leader
Ray Campbell, Illinois Council of the Blind
Cynthia Canary, Illinois Campaign for Political Reform
David Carlin, Illinois Republican Party
Rance Carpenter, Department of Aging
Bruce Clark, Kankakee County Clerk
Linda Crotchett, Jersey County Clerk
Dan Curry, Office of U.S. Senator Peter Fitzgerald
Laurie Dittman, Chicago Mayor's Office for People with Disabilities
Bill Dunn, Citizen
Dave Eldridge, Office of the House Speaker Michael Madigan
Krista Erickson, Lake County Center for Independent Living
Alan Gitelson, Professor of Political Science, Loyola University - Chicago
Lance Gough, Chicago Board of Election Commissioners
Debbie Grant, Springfield Branch NAACP
Barb Gross, Morgan County Clerk
Harvey Grossman, ACLU
Steve Handschu, National Federation of the Blind of Illinois
Tom Hanson, Mercer County Clerk
Carol Anne Harwell, NAACP
Jan Holcomb, Mental Health Assoc. IL
Sharon Holmes, DeKalb County Clerk
Jo Holzer, Council for Disability Rights
Bill Houlihan, Office of Senator Richard Durbin
Roger Huebner, General Counsel, IL Municipal League
Pat Hughes, Inclusion Solutions, Inc.
Becky Huntley, Ogle County Clerk
John Jackson, Public Policy Institute, Southern Illinois University - Carbondale
Robin Jones, Great Lakes DPTAC
Jan Kralovec, Office of Cook County Clerk
James Lewis, East St. Louis Board of Election Commissioners
Barb Lippai, League of Women Voters
Bill Looby, AFL/CIO
Bill Luking, Attorney
Rene Luna, Access Living
Todd Maisch, IL Chamber of Commerce
Peggy Ann Milton, McLean County Clerk
Saul Morse, Illinois State Medical Society
Peg Mosgers, Office of Senate Republican Leader Frank Watson
Zena Naiditch, Equip for Equality, Inc.
Doreen Nelson, DuPage County Election Commission
Sara Nelson, Office of U.S. Senator Richard Durbin
David Orr, Cook County Clerk
Pat Plotner, former SBE employee
Gail Poundstone, Illinois Coalition on Aging
Kent Redfield, Department of Political Science, University of Illinois - Springfield
Larry Reinhardt, Jackson County Clerk
Randy Reitz, Bond County Clerk
Hugo Rojas, Illinois Executive Director & Midwest Program Rep., Common Cause
Steve Rotello, Office of the Attorney General
Bob Saar, Executive Director, DuPage County Election Commission
Cynthia Saputo, Office of Republican House Leader Representative
Mary Ann Scanlan, Office of the Secretary of State
Kathie Schultz, McHenry County Clerk
Nancy Strain, Executive Director, Rockford Board of Election Commissioners
Jeff Trigg, Executive Director - Libertarian Party of Illinois
Maria Valdez, MALDEF
Mark Von Nida, Madison County Clerk
Karen Ward, Equip for Equality
Vickie Wilson, Coalition of Citizens with Disabilities
Ralph Yaniz, American Association of Retired Persons
Karen Zaiz, IL Network of Centers for Independent Living
Al Zimmer, former State Board of Elections employee
Jill Zwick, Office of Secretary of State

STATE OF NEBRASKA

JOHN A. GALE
SECRETARY OF STATE

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September 21,2004

Peggy Simms
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

Dear Ms. Simms:

Please find enclosed a copy of the material changes to the Nebraska State Plan for the implementation of the Help America Vote Act. This document represents the material changes to the original State Plan that was submitted in August of 2003. I would ask that these changes be published in the Federal Register according to the requirements in the Help America Vote Act.

I do not believe there are any diagrams, tables or the state seal that will cause publication problems. In addition to this hard copy, an electronic version in a Word format will be e-mailed to you. Should you have any comments or concerns on this matter, please don't hesitate to contact my office.

Sincerely,

John Gale
Secretary of State

the general public related to elections, and any other costs related to elections or to implementation of the Help America Vote Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Section 6

(6) The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on -

(A) the costs of the activities required to be carried out to meet the requirements of title III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.

*Anticipated Revenue

*These numbers are based on actual receipts (FY'03 Title I and State Match), appropriated amounts (FY'03 &'04 Title II) and estimates based on currently proposed funding levels (FY'04 &'05 State Match and FY'05 &'06 Title II). **Fiscal years are based on state fiscal years that run from July 1 to June 30.** While proposed funding levels are below authorization levels in HAVA, this budget is based on conservative estimates.

	Fiscal Year 2003	Fiscal Year 2004	Fiscal Year 2005	Fiscal Year 2006
Title I Funding	$5,000,000	$0	$0	$0
Title II		$4,920,000	$8,829,000	$0
State Match	$260,000	$465,000	$0	$0
Subtotal	$5,260,000	$6,385,000	$8,829,000	$0
***Other State Funding**	$241,000	$240,000	$238,000	$238,000
Total	**$5,501,000**	**$6,625,376**	**$9,067,173**	**$238,000**

*This amount is similar to previous appropriations for election administration. FY'99-'00 expenditures for election administration totaled $138,905. Maintenance of effort requirements in section 7 require a state

to maintain the level of expenditures made for the purposes of the requirements payments. As the bulk of the requirements were not addressed or met by the state prior to HAVA, it is believed that no state funds were expended in FY'99-'00 that meet the requirements of section 7. The "Other State Funding" category is included to show that the state has maintained the historical level of election administration funding. See Section 7 of this plan for further information.

Expenditures				
Title III Requirements	**Fiscal Year 2003 (actual)**	**Fiscal Year 2004 (est.)**	**Fiscal Year 2005 (est.)**	**Fiscal Year 2006 (est.)**
Disability Equipment (Section 301)	$0	$2,000	$3,000,000	$3,000,000
Central VR (Section 303)	$30,000	$300,000	$2,000,000	$2,400,000
Training and Ed.(Sec. 302, 303)	$4,000	$103,000	$250,000	$350,000
Administration (State Plan Committee, staffing, overhead)	$40,000	$194,000	$230,000	$230,000
Total	**$74,000**	**$599,000**	**$5,480,000**	**$5,980,000**

Section 7

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

For Fiscal Year '99-'00, total state expenditures for elections were $138,905. While none of these funds were used for activities specifically mandated by Title III of the Act, it should be noted that appropriations for Fiscal Years '03-'04 and '04-'05 (LB 407, 2003) for elections (Agency 09, Program 45) were approximately $240,000 for each of the two fiscal years. This amount is an increase over total election expenditures for FY '99-'00.

Section 12

(12) In the case of a State with a State Plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State Plan for the previous fiscal year and of how the State succeeded in carrying out the State Plan for such previous fiscal year.

This Plan includes amendments from the plan submitted in fiscal year 2003. Material changes include updating budget figures (Section 6) to reflect additional appropriated funds, both federal and matching, and corresponding planned expenditures. The budget section also includes actual figures (rather than estimates) for fiscal year 2003. Other references to additional appropriated funds are included in Sections 1

Other changes include amending references from "DRE's" to take into account other types of equipment that may be accessible to the disabled community. Also included are changes where the original plan provided for actions to be taken that have since been accomplished. Among these changes are provisional balloting, voter ID, voter information and updates in Section 8 regarding performance goals and measures. References to specific dates regarding the State Plan Commission process in FY 2003 and the description of the Commision (Section 13) procedures have also been amended.

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

December 1, 2004

DeForest B Soaries, Jr.
Chairman
Election Assistance Commission
1225 New York Avenue NW Suite 1100
Washington DC 20005

Dear Chairman Soaries,

In accordance with section 255 of the Help America Vote Act of 2002 (HAVA), I am pleased to file with the Election Assistance Commission (EAC), for publication in the *Federal Register*, this letter and the following sectional changes to the HAVA State Plan for the State of North Dakota.

As with the initial state plan submitted in 2003, this revised plan represents the collaborative and good faith efforts of the North Dakota Secretary of State's office, the state's county election officials, the North Dakota Association of Counties, diverse voter interest groups, and interested citizens who provided comments concerning the plan.

I have submitted only those sections of the State Plan that have been changed. After consulting with EAC staff, North Dakota has elected not to forward unchanged portions of its State Plan to be published in the *Federal Register*. Instead, the EAC and members of the public are invited to visit the North Dakota HAVA website at www.state.nd.us/hava/documents to view and copy the complete North Dakota HAVA State Plan as it has been amended.

The 2004 Amendments to the North Dakota HAVA State Plan were developed in accordance with section 255 of HAVA and the requirements for public notice and comment prescribed by section 256. A public review and comment period was held between the dates of September 22 and October 22, 2004. No comments were received.

As required under section 254 (a)(12) of HAVA, I am also pleased to report how North Dakota has succeeded in carrying out its initial 2003 State Plan. Through the cooperative efforts by state and local officials, voter interest groups and private citizens, the following achievements were accomplished:

1. Development and implementation of certification standards for election voting equipment used in North Dakota;
2. The procurement and continuing implementation of a statewide voting system capable of providing both private and independent voting opportunities for persons with disabilities and providing second-chance voting for all voters;
3. Removal of all punch-card voting systems in the state;
4. Development and implementation of a statewide election management system;
5. Statewide assessment of all polling sites for accessibility;
6. Development and implementation of a uniform, nondiscriminatory administrative complaint procedure;
7. Continued development and implementation of a uniform statewide election official education program;
8. Development and implementation of standardized military and overseas voting procedures;

9. Development, distribution, and posting of standardized voter information posters at all polling sites in the state; and
10. Development and continued implementation of a statewide voter education program designed to educate voters on the process of voting, where to vote, and voter rights, which also provides special emphasis for specific voter groups, including the disabilities community and tribal populations within the state.

As my staff and I reflect back on the past two years, we have found the continuing process related to the state planning effort to have been, and continues to be, rewarding and worthwhile, marked by positive and meaningful discussions about ways to improve the election process in North Dakota. Based on our experiences this past election cycle, the state has benefited greatly from the State Plan and the thought and contributions from the various individuals that has gone into its development. It has provided essential guidance for the continuing and successful implementation of HAVA in North Dakota.

Please let me know if you have any questions or concerns.

Sincerely,

Alvin A. Jaeger
Secretary of State

Enclosures

2. Section 254(a)(2): How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1) including a description of:

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payments; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

The Office of the Secretary of State will manage all expenditures funded by HAVA. The state will be responsible for accounting for all expenditures, program controls, and outcomes in accordance with state and federal laws.

Based on a target number of precincts established for each county, the state has calculated an allowable expense for voting equipment upgrades in each county. The target number of precincts for each county has been determined by a formula established by the county election officials appointed to the Steering Committee, as defined in Section 12. The formula takes into account a number of variables including the number of existing precincts, the number of votes cast per county in the last gubernatorial election, the number of eligible voters per county that are over age seventeen, and the size of each county in square miles. The formula provides funding incentives for the counties to reduce the number of precincts from the total number of precincts operated in 2002. A county may submit an informal written appeal of the formula or the county's target number of precincts to the Secretary of State. The Secretary of State shall consider appeals of the formula or target number of precincts in a county based on a review of the written record and determine if the formula or target number of precincts is fair and reasonable. The decision of the Secretary of State is final. The voting system upgrades for the targeted number of precincts within each county are paid for at the following rate:

- 95% HAVA Contribution
- 2.5% State of North Dakota Contribution
- 2.5% County Contribution

Counties choosing to operate a total number of precincts or polling locations at a rate less than the targeted number of precincts calculated according to the formula outlined in this plan will only be responsible for providing matching funds for upgrading the voting systems in those precincts or polling locations that are operated by the county. Counties choosing to operate precincts in addition to the targeted number of precincts calculated according to the formula outlined in this plan will be responsible for the full cost of upgrading the voting systems in those precincts to match the voting system used in the other precincts in the county.

The state, on behalf of the counties and upon the recommendation of the Voting System Procurement Committee, contracted with Election Systems and Software (ES&S) for a

uniform voting system for each polling location in the state, consisting of a precinct level optical scanner and a voting device capable of allowing persons with disabilities and others to vote privately and without assistance.

Any revenue or interest generated by the state from any HAVA funds will be returned to the state's Election Fund to pay all or portions of the expenses incurred by the state and or counties for technical service support and programming; for equipment maintenance and replacement, as necessary; and for future election related technology upgrades.

In order to meet state standards to receive funding for new election equipment counties must continue to:

1. Address minimum physical accessibility needs of polling places within the county as deemed necessary by the state. Accessibility needs in counties will be based on the results of an independent inspection arranged by the Secretary of State and the county, in coordination with Centers for Independent Living and the North Dakota Protection and Advocacy Project;
2. Provide storage and security for voting systems;
3. Comply with state-based grievance procedures;
4. Post the required voter information at the polling place, as provided by the state;
5. Provide the 2.5% match toward the initial purchase of voting systems authorized for the county based upon the target number of precincts; and
6. Meet any deadlines established by HAVA and this plan for the replacement of non-qualifying voting systems, voter education and election official training requirements, and any other requirements of HAVA or this plan.

4. Section 254(a)(4): How the State will adopt voting system guidelines and processes which are consistent with Section 301.

The revisions to state law, approved by North Dakota's Fifty-eighth Legislative Assembly, provide a process to certify and decertify voting systems in the state. The Secretary of State adopted rules that take into account standards created by and results of testing conducted by the Federal Election Commission and/or the Election Assistance Commission, for certifying and decertifying electronic voting systems authorized by law, including any software, hardware and firmware components used as a part of an electronic voting system or electronic counting machine for use in the state. Electronic voting systems; any single device of an electronic voting system; and any update or enhancement made to them; in use by a county prior to August 1, 2003, were reviewed by the Secretary of State and grandfathered as meeting the requirements of the rules until January 1, 2006. [*NDAC § 72-06-01*]

North Dakota will implement a voter education plan with the counties for second-chance voting, including statewide and local efforts to promote voting accuracy.

5. Section 254(a)(5): How the State will establish a fund described in subsection (b) for the purpose of administering the State's activities under this part, including information on fund management.

As required by HAVA, the Secretary of State has established and is maintaining an Election Fund for the exclusive purpose of carrying out activities of HAVA. Following the receipt of HAVA payments, any subsequent deposits consisting of interest or revenue generated from HAVA money will be returned to the state's Election Fund to pay all or portions of the expenses incurred by the state and or counties for the technical service support and programming; for equipment maintenance and replacement, as necessary; and future election related technology upgrades.

6. Section 254(a)(6): The State's proposed budget for activities under this part, based on the State's best estimates of the costs for such activities and the amount of funds to be made available, including specific information on:

(A) The costs of the activities required to be carried out to meet the requirements of Title III;

(B) The portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) The portion of the requirements payment which will be used to carry out other activities.

Funding estimates are based on the assumption the state will receive a minimum of an additional $7.45 Million, beyond the $9.15 Million received by August of 2004, for the purpose of election reform.

No.	Activity	Funding Estimates*	Description
1.	Voting System Upgrades and Improvements • Punch-card replacement (Williams County) • Second-Chance Voting and Disability Access	$6,000,000	• Replace punch-card equipment in Williams County • Placement of at least one voting system in each precinct consisting of equipment capable of offering second-chance voting and unassisted voting access for persons with disabilities
2.	Statewide Voter Registration Database	NA	• North Dakota is exempt
3.	Voter Education for Second-Chance Voting Requirement	$100,000	• Develop and execute a publicity campaign and system specific voter education materials
4.	Voting Information Posting Requirements	$100,000	• Develop and distribute posters containing required information and other instructional materials
5.	Provisional Voting	NA	• North Dakota is exempt from certain portions of provisional voting as required by HAVA
6.	State-Based Grievance Procedure	$50,000	• Adopt, train, and administer a state-based grievance procedure
7.	Requirements for first time voters who register by mail	NA	• North Dakota is exempt
8.	Voter Education	$200,000	• Develop and execute programs to provide quality voter education in harmony with Activity No. 3, 4 and 6
9.	Election Official Education and Training and Poll Worker Training	$120,000	• Develop and execute programs to provide quality election official training and poll worker training
10.	Central Voter File	$1,000,000	• Develop and implement a centralized database of voters for purposes of preventing and detecting fraud, and creating Election Day poll books
11.	Adopt and Develop Voting System Standards and a Voting System Test Process	$30,000	• Adopt and develop voting system standards and test processes in accordance with Federal Election Commission or Election Assistance Commission standards and testing results
12.	Monitoring Performance Goals and Production of Report	$100,000	• Ensure compliance with HAVA
13.	Development of State Plan and On-going Management of the State Plan	$270,000	• Ensure the continued management of the HAVA activities in cooperation with local election officials
14.	On-going Election Expenses	Remainder + Interest	• To assist counties with programming expenses, maintenance, equipment replacement and/or other election related projects or technology upgrades.

**Activity Funding Estimates are 'best estimates,' and are likely to increase and/or decrease in the process of actual implementation. All funding estimates are based on the calculated amount of federal election reform funding being allocated to North Dakota.*

9. Section 254(a)(9): A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under Section 402.

A complaint filed under Title III of the Help America Vote Act must be in writing, notarized, and be signed and sworn by the person filing the complaint and state the alleged violation of federal or state law. A standard form is available from the Secretary of State. At the request of a complainant, the Secretary of State shall establish a procedure for providing a review on the record. If the Secretary of State determines there is a violation of a provision of Title III of HAVA *[Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15481-15502]*, the Secretary of State shall determine and provide an appropriate remedy. If the Secretary of State determines that a violation of Title III of HAVA has not occurred, the Secretary of State shall dismiss the complaint and publish the results of the review. The Secretary of State shall make a final determination with respect to a complaint within ninety days of the date the complaint is filed with the Secretary of State, unless the complainant consents to a longer period of time for the Secretary of State to make a determination. If the Secretary of State fails to meet the ninety-day deadline for determining a complaint, the complaint must be resolved within sixty days under an alternative dispute resolution procedure, which may include mediation, binding arbitration or a court order, depending on the complaint filed. The Secretary of State is authorized to consolidate complaints. [*NDCC § 16.1-01-16*]

10. Section 254(a)(10): If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

Through the course of implementing HAVA in North Dakota, it is the goal of the Secretary of State and county election officials to bring uniformity to the voting process in the state and to ensure all individuals have access to the election process. To ensure uniformity, each polling location in North Dakota will be equipped with an accessible voting system capable of notifying the voter if corrections are necessary to his or her ballot (known as second-chance voting) and allowing persons with disabilities, and others, to vote unassisted. All counties will be required to be in full compliance by January 1, 2006. These requirements are subject to voting system availability.

North Dakota is exempt from the National Voter Registration Act of 1993, along with the voter registration and certain provisional voting requirements contained in the Help America Vote Act of 2002.

Revised state law authorizes the creation of a centralized electronic voter database that will link the Secretary of State's office with county election officials' offices. The centralized database will provide a post Election Day tool for preventing and detecting voter fraud and generating accurate, up-to-date Election Day poll books.

12. Section 254(a)(13): A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

Two separate committees were organized to complete drafting, advocate voter interest, and review the State Plan. Both committees were staffed and facilitated by the Secretary of State and the North Dakota Association of Counties.

◆ STEERING COMMITTEE

The Steering Committee researched and drafted the State Plan. Membership includes county election official representation from two large, two medium and two small population counties, with a cross-section of punch-card, paper ballot and optical scan voting equipment representation. Future membership of the Steering Committee shall consist of representation from the North Dakota Association of Counties, to include the HAVA Coordinator, the Secretary of State's office, and county election officials, representing large, medium, and small population counties, who are appointed by the North Dakota Association of County Auditors.

Jim Silrum	Deputy Secretary of State
Danette Odenbach	HAVA Coordinator, North Dakota Association of Counties
Beth Innis	Williams County Auditor
Roy Steiner	Hettinger County Auditor
Valerie McCloud	Rolette County Auditor
Mike Montplaisir	Cass County Auditor
Sherry Hosford	Sargent County Auditor
Debbie Nelson	Grand Forks County Auditor
Terry Traynor	Assistant Executive Director, North Dakota Association of Counties
Bonnie Amble	Executive Assistant, North Dakota Association of Counties

◆ STATE HAVA PLANNING COMMITTEE

The State HAVA Planning Committee represents a broad cross-section of interests and consists of eighteen members, including county and local officials, representation from the disabilities community, the technology sector, voter interest groups, along with everyday citizens. Future membership of the State HAVA Planning Committee shall consist of representation from local government, voter interest groups, and general citizens.

Mike Montplaisir	Chairman, Cass County Auditor (most populous jurisdiction)
Kevin Glatt	Burleigh County Auditor (second most populous jurisdiction)
Ruth Graf	Kidder County Auditor
Edward McGough	Barnes County Auditor
Dennis Schlenker	League of Cities
David Blackstead	North Dakota School Board Association
Patty Carlblom	North Dakota County Commissioners
Corinne Hofmann	Protection and Advocacy
Jason Stverak	North Dakota Republican Party
Renee Pfenning	North Dakota Democratic NPL Party
Sue Tohm	League of Women Voters
Janelle Olson	People First of North Dakota
Phil Baird	North Dakota Indian Affairs Commission
Bruce Hagen	American Association of Retired People (AARP)
Steve Kelsch	North Dakota Association of Counties Information Technology
Dave Senger	Private Citizen
Betty Svihovec	Private Citizen
Roger Bailey	Private Citizen
FACILITATORS:	
Jim Silrum	Deputy Secretary of State
Danette Odenbach	HAVA Coordinator, North Dakota Association of Counties
Terry Traynor	Assistant Executive Director, North Dakota Association of Counties
Bonnie Amble	Executive Assistant, North Dakota Association of Counties

FOR MORE INFORMATION, CONTACT

Jim Silrum
Deputy Secretary of State
State of North Dakota
600 East Boulevard Avenue Dept 108
Bismarck ND 58505
(701) 328-3660
jsilrum@state.nd.us

Danette Odenbach
HAVA Coordinator
ND Association of Counties
1661 Capitol Way
Bismarck ND 58501
(701) 328-7318
dodenbac@ndaco.org

[FR Doc. 04–27838 Filed 12–21–04; 8:45 am]
BILLING CODE 6820–YN–C

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting for the Technical Guidelines Development Committee.

DATES AND TIME: Tuesday, January 18, 2005 9 a.m.–5 p.m. and Wednesday, January 19, 2005 9 a.m.–5 p.m.

PLACE: National Institute of Standards and Technology, 100 Bureau Drive, Building 101, Gaithersburg, Maryland 20899–8900.

STATUS: This meeting will be open to the public. Due to security requirements advance registration is required. Registration information is available at *http://vote.nist.gov.* Advance reservation is available until January 12, 2005. There is no fee to attend.

SUMMARY: The Technical Guidelines Development Committee (the ''Development Committee'') has scheduled a plenary meeting for January 18 & 19, 2005. The Committee was established pursuant to 42 U.S.C. 15361(b)(1), to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Committee held its first organizational meeting on July 9th, 2004. The purpose of this second meeting of the Committee will be to review and approve an outline plan to establish recommendations for voluntary voting system guidelines.

CONTACT INFORMATION: Allan Eustis 301–975–5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before and after the meeting, written comments should be addressed to the contact person indicated above, or to *Voting@nist.gov.*

DeForest B. Soaries, Jr.,

Chairman, U.S. Election Assistance Commission.

[FR Doc. 04–28054 Filed 12–17–04; 4:03 pm]
BILLING CODE 6820–YN–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0228]; FRL–7370–5]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP–2004–0228, must be received on or before January 21, 2005.

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0228. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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

access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

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

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at*http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0228. 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–2004–0228. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0228.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2,1801 South Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0228. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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

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

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject

line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 524–LLR. *Applicant*: Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. *Product Name*: MON 88017. Plant-incorporated protectant. *Active ingredient*: *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material for its production (Vector ZMIR39) in MON 88017 corn (OECD Unique Identifier: 88017–3). *Proposed classification/Use*: None.

2. *File Symbol*: 524–LLE. *Applicant*: Monsanto Company. *Product Name*: MON 88017 x MON 810. Plant-incorporated protectant. *Active ingredients*: *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material for its production (Vector ZMIR39) in MON 88017 corn and *Bacillus thuringiensis* Cry1Ab and the genetic material for its production in corn (OECD Unique Identifier: 88017–3). *Proposed classification/Use*: None.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 3, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–27671 Filed 12–21–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0390; FRL–7688–4]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency(EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by MycoLogic, Inc., to conditionally register the pesticide products Chontrol Paste and CP-PFC 2139 and an application submitted by Woodstream Corporation to conditionally register the pesticide product Animal Repellent Granular containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

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: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), listed in the table in this unit:

Regulatory Action Leader	Telephone number/e-mail address	Mailing address	EPA Reg. No.
Jim Downing	(703) 308–9071; *downing.jim@epa.gov*	Biopesticides and Pollution Prevention Division (7511C), Office of Pesticides Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001	74200–1 74200–2
Todd Peterson	(703) 308–7224; *peterson.todd@epa.gov*	Do.	50932–10

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0390. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, Arlington, VA ((703) 305–5805). Requests for data must be made in

accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

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

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

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of *Chondrostereum purpureum* strain PFC 2139, Oil of Black Pepper, Piperine, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Chondrostereum purpureum* strain PFC 2139, Oil of Black Pepper, and Piperine, during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

1. EPA issued a notice, published in the **Federal Register** of December 31, 2001 (66 FR 67520) (FRL–6813–7), which announced that MycoLogic Inc., Department of Biology, University of Victoria, P.O. Box 3020, Victoria, BC, Canada V8W 3N5, submitted applications to register the pesticide products, CP-PFC 2139, a manufacturing use product, for the formulation of an end-use product (EPA File Symbol 74200–R) and Chontrol Paste (a biological herbicide) (EPA File Symbol 74200–E), containing the active ingredient *Chondrostereum purpureum* isolate PFC 2139, at 1.68% and 0.67%, respectively. These products have not previously been registered.

The applications were conditionally approved on September 23, 2004, containing the active ingredient *Chondrostereum purpureum* strain PFC 2139 for the manufacturing use product CP-PFC 2139 (EPA Registration Number 74200–1) and for the end-use product Chontrol Paste (EPA Registration Number 74200–2), for control of alders, aspen, and other hardwoods in rights-of-way and forests.

2. EPA issued a notice, published in the **Federal Register** of December 24, 2003 (68 FR 74576) (FRL–7338–2), which announced that Woodstream Corporation, 69 N. Locust Street, Lititz, PA 17543, had submitted an application to conditionally register the pesticide product, Animal Repellent Granular, animal repellent (EPA File Symbol 50932–RN), containing the active ingredients Oil of Black Pepper at 0.48% and Piperine at 0.185% as active ingredients not included in any previously registered product.

The application was conditionally approved on March 18, 2004 for the end-use product as Animal Repellent Granular (EPA Registration Number 50932–10) for use as an animal repellent.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 10, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–27888 Filed 12–21–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0399; FRL–7689–4]

Buprofezin; Notice of Filing an Amended Pesticide Petition to Increase Tolerances for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the 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–2004–0399, must be received on or before January 21, 2005.

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

FOR FURTHER INFORMATION CONTACT: Richard J. Gebken, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6701; e-mail address:*gebken.richard@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–2004–0399. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

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–2004–0399. 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–2004–0399. 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–2004–0399.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0399. 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: December 9, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

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

Nichino America, Inc.

PP 4F6873

EPA has received a petition (PP 4F6873) from Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808 (the registrant) by revising a previous pesticide petition (PP 0F6087) that was submitted by Aventis Crop Science (formerly AgrEVO USA Co, that published in the **Federal Register** of June 21, 2000 (65 FR 38543) (FRL–6557–3). Nichino America, Inc. is proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.511 by establishing increased tolerances for residues of buprofezin (2-tert-butylimino-3-isopropyl-5-phenyl-1,3,5-thiadiazinan-4-one) in or on the following raw agricultural commodities: Fruit, citrus, Group 10 at 2.5 parts per million (ppm), citrus, dried pulp at 7.5 ppm, and citrus, oil at 80 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA. However, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolic profile of buprofezin has been elucidated in a wide range of crops, including tomatoes, lettuce, cotton, and citrus. In citrus, although buprofezin was a major component of the residue, a chromatographically well-defined region of radioactivity, clearly associated with polar conjugates, was observed. Mass spectrometry identified the principal polar residue as a hexose conjugate of BF4 (buprofezin hydroxylated in the t-butyl group). Although the conjugate was resistant to enzyme hydrolysis, acid hydrolysis of the polar fraction released predominantly BF26 with minor amounts of BF9 and BF12. The same compounds were observed following acid hydrolysis of a standard of BF4 clearly indicating that BF4 is the conjugated metabolite existing in citrus. Although only limited metabolism was observed in lettuce and cotton, trace levels of similar metabolites, including the conjugate BF4 were observed indicating that the metabolic pathway does not differ with plant species.

2. *Analytical method*. The proposed analytical method involves extraction, partition, clean-up and detection of residues by gas chromatography using nitrogen phosphorous detection.

3. *Magnitude of residues*. Nineteen field trials were conducted on oranges with buprofezin, the principal residue of concern, in Regions 3, 6, and 10 at the maximum rate and minimum application and the minimum preharvest interval (PHI) of 3 days. In addition, decline data were generated that confirmed that residues of buprofezin decreased as the PHI

increased from 1 to 30 days. The highest average residue value for oranges treated with buprofezin (HAFT) at a 3–day PHI was 1.80 ppm. Results from a previous processing study indicate that the concentration in citrus oil was 42.7X and in citrus dried pulp 2.5X. The requested tolerances are adequately supported.

B. Toxicological Profile

An extensive battery of toxicology studies has been conducted with buprofezin. 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 The nature of the toxic effects caused by buprofezin is discussed in Unit III.A. of the final rule on Buprofezin Pesticide Tolerance published in the **Federal Register** on September 5, 2001 (66 FR 46381) (FRL–6796–6). An assessment of toxic effects caused by buprofezin, including the toxicological endpoints of concern, is also discussed in Unit III.A. and Unit III.B. of the June 25, 2003 **Federal Register** (68 FR 37765) (FRL–7310–7).

1. *Animal metabolism*. The metabolism of buprofezin has been extensively studied in various species of animals and fish. Buprofezin has several groups that can metabolize in a variety of ways thus potentially producing a very large number of metabolites. Extensive metabolism to many minor metabolites was observed in all the animal species. Metabolism in fish was, however, much more limited and clearly defined. Although not all metabolic intermediates have been detected in all the species, the major routes of metabolism have been identified in animals and fish and a consistent pattern is observed throughout these species. The proposed metabolic pathway was provided in the tolerance petition, PP 0F6087. For convenience, degradates are referred to by an internal code: BF1 through 13. Corresponding chemical structures were provided in the tolerance petition, PP 0F6087.

i. *Metabolism in rats*. The major metabolite found in rat excreta was parent buprofezin in addition to several compounds formed after extensive metabolism. Whereas plant metabolism appeared restricted mainly to oxidation of the tertiary butyl group, oxidation of the butyl group and hydroxylation of the phenyl ring were both observed in rats. Oxidation of the t-butyl group proceeded beyond an alcohol to an acid and was accompanied by ring opening. The most extensively metabolized compound identified in rats was BF23 (acetylated p-aminophenol).

ii. *Metabolism in ruminants and hens*. Residue levels were low (0.05 ppm) in all ruminant and poultry tissues and commodities, following treatment at exaggerated rates (approximately 20X and 7,500X the anticipated dietary burden, respectively). The only exceptions were cow liver (1.21 ppm), cow kidney (0.41 ppm), hen liver (0.15 ppm), and egg yolk (0.11 ppm). Extensive metabolism was observed in both species with a large number of minor metabolites being produced. The principal metabolites identified in the cow were BF2 and BF23, indicating that the major pathway of degradation in ruminants is hydroxylation of the phenyl ring followed by opening and degradation of the heterocyclic ring. The identification of trace levels of BF13 confirms this pathway. As in rats, BF23 was the most extensively metabolized compound identified. Trace levels of BF12 were also detected. This indicates that the parallel pathway of heterocyclic ring opening without hydroxylation of the phenyl ring is also in operation. Similarly in hens, the identified metabolites were derived from degradation of the heterocyclic ring either with (BF13) or without (BF9 and BF12) phenyl ring hydroxylation. No single unidentified compound accounted for more than 6% of the total residue in any animal tissue or commodity, with the exception of a component comprising 8.7% of egg white. The total residue in egg white was, however, only 0.02 ppm even at this highly exaggerated dose rate.

iii. *Metabolism in fish*. Analysis of fish tissues, following a bioaccumulation study, found a much simpler metabolic profile. Buprofezin was present in both edible and non-edible tissues, but the principle metabolites were polar conjugates of BF4. Trace levels of BF12 were also detected.

2. *Endocrine disruption*. No special studies have been conducted to investigate the potential of buprofezin to induce estrogenic or other endocrine effects. The standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects. The only effect noted on endocrine organs was an increased incidence of follicular cell hypertrophy and C-cell hyperplasia of the thyroid gland in rats administered buprofezin. Buprofezin also caused mild to moderate hepatotoxic effects at this dietary concentration. The effect on the thyroid is consistent with an increased turnover of T3/T4 in the liver with a resultant rise in TSH secretion (due to the hepatotoxicity). The rat is known to be much more susceptible than humans to these effects due to the very rapid turnover of thyroxine in the blood in rats (12 hours vs. about 5 to 9 days in humans). Therefore, the thyroid pathological changes which have been noted following administration of high doses of buprofezin are considered to be of minimal relevance to human risk assessment, particularly considering the low levels of buprofezin to which humans are likely to be exposed.

C. Aggregate Exposure

1. *Dietary exposure*. Acute and chronic dietary risk analyses were conducted to estimate the potential buprofezin residues in/on the following crops: Avocado, banana, canistel, cotton, grape, grape raisin, longan, lychee, mango, papaya, mamey sapote, Spanish lime, head lettuce, leaf lettuce, snap bean, tomato, curcurbit vegetables, citrus oil, citrus orange, citrus grapefruit, citrus lemon, pome fruit, apples, pome fruit pear, peach, almond, and pistachio using the Dietary Exposure Evaluation Model (DEEM-FCID, ver. 1.30) software. Exposure estimates to water were based on modeling and on percent crop treated.

2. *Food*. The acute dietary exposure was based on the following assumptions: Residues at tolerance levels, 100% crop treated, and DEEM (ver. 7.76) default processing factors for all registered/proposed commodities (Tier 1). The Hazard Identification Assessment Review Committee (HIARC) met on February 15, 2000, and determined the endpoint selection for buprofezin (HED Doc. No. 014093) and subsequently on October 22, 2002, to evaluate the potential for increased susceptibility of infants and children from exposure to buprofezin. Based on toxicological considerations, the special FQPA safety factor was set at 1X when assessing acute and chronic dietary exposures. The acute dietary aPAD (acute Population Adjusted Dose) was set at 2.0 milligrams/kilogram/day (mg/kg/day) for females aged 13–50 years old based on a developmental toxicity study in rats that had an oral no observed adverse effect level (NOAEL) of 200 mg/kg/day. The chronic dietary cPAD (chronic Population Adjusted Dose) was determined to be 0.01 mg/kg/day for the general population based on a oral NOAEL of 1.0 mg/kg/day in the 2–year rat chronic/oncogenicity study. The

uncertainty factor of 100 was used to account for interspecies and intraspecies variations. Since the only evidence of carcinogenicity was ''suggestive,'' this endpoint was not deemed relevant to this assessment.

The resulting food exposure estimate for females 13–49 years old was less than 5.4% of the Population Adjusted Dose (aPAD). No acute endpoint was identified for the remaining population subgroups. The chronic dietary exposure was based on the following assumptions: Percent crop treated, average field trial residues at maximum label rates, and minimum PHIs with no reduction factors for common washing, cooking, or preparation practices. The food exposure estimates from residues of buprofezin for the U.S. population was 38% of the cPAD. The subpopulation with the highest exposure was children 1–2 years old with < 81% of the cPAD used. These are considered conservative values.

3. *Drinking water*. The residue of concern in drinking water was determined to be buprofezin. There are no established maximum contaminant levels or health advisory levels for residues of buprofezin in drinking water.

In the absence of comprehensive water monitoring data, 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 resevoir. The Screen Concentrations in Groundwater (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.

The estimated drinking water concentrations (EDWCs) in surface water were determined using the Tier II PRZM (Pesticide Root Zone Model) and EXAMS (Exposure Analysis Modeling Stystem (PE4-PL, version 01). PRZM is used to simulate pesticide transport as a result of runoff and erosion and spray drift from an agricultural field and EXAMS estimates environmental fate and transport of pesticides in surface water. The long-term average-estimated environmental concentrations (EEC) was 3.5 parts per billion (ppb). The acute EDWCs are 19.2 ppb, and for chronic 4.5 ppb. In ground water, using Tier I SCI-GROW, the acute level is 0.1 ppb and chronic is 0.1 ppb.

4. *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). Buprofezin is not registered for use on any sites that would result in residential exposure.

D. Cumulative Effects

A determination has not been made that buprofezin has a common mechanism of toxicity with other substances. Buprofezin does not appear to produce a common toxic metabolite with other substances. A cumulative risk assessment was, therefore, not performed for this analysis. 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 buprofezin and any other substances and buprofezin 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 buprofezin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/ pesticides/ cumulative/*.

E. Safety Determination

1. U.S. population—i. *Acute risk*. Using the conservative assumptions discussed above, based on the completeness and reliability of the toxicity data, it is concluded that aggregate exposure to the proposed uses of buprofezin will utilize at most 5.4% of the acute reference dose of females (13–49 years) and is likely to be much less, as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the aPAD Drinking Water Levels of Comparison (DWLOC) were calculated based on an aPAD of 2.0 mg/kg/day. 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.

ii. *Chronic risk*. Based on the toxicology data base and available information on anticipated residues, the chronic dietary exposure to the U.S. population (total) was estimated as 0.003769 mg/kg/day and was 38% of the estimated cPAD. Exposure to potential residues in drinking water are expected to be negligible. Based on these assessments, it can be concluded that there is reasonably certainty of no harm to the U.S. population or any population subgroup from exposure to buprofezin.

2. *Infants and children*. Chronic exposure to children ages 1–2, the highest exposed population subgroup, was 0.008116 mg/kg/day (81% of the cPAD). Exposure to potential residues in drinking water is expected to be negligible. EPA has determined that reliable data support using the standard margin of exposure (MOE) and uncertainty factor (100 for combined interspecies and intraspecies variability) for buprofezin and that an additional safety factor of 10 is not necessary to be protective of infants and children. EPA generally has no concern for exposures below 100% of the cPAD. The acute EEC of 19 ppb is considerably less than the DWLOC of 59,076 ppb. For the chronic assessment, the children 1–2 years old subpopulation generated the lowest chronic DWLOC of approximately 46 ppb. Thus, the chronic DWLOC of 46 ppb is higher than the chronic EEC of 4.5 ppb. The Agency has considered the potential aggregate exposure from food, water and non-occupational exposure routes and has concluded aggregate exposure is not expected to exceed 100% of the chronic reference dose, and consequently, has determined there is a reasonable

certainty that no harm will occur to infants and children from aggregate exposure to residues of buprofezin.

F. International Tolerances

Canada, Codex, and Mexico do not have maximum residue limits for residues of buprofezin in/on the proposed crops. Therefore, harmonization is not an issue.

[FR Doc. 04–27772 Filed 12–21–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0403; FRL–7689–6]

Pyriproxyfen: 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–2004–0403, must be received on or before January 21, 2005.

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

FOR FURTHER INFORMATION CONTACT: Joseph Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6411; e-mail address: *tavano.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you 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–2004–0403. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

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–2004–0403. 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–2004–0403. 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–2004–0403.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0403. 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 as signed 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: December 9, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

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

Valent U.S.A. Corporation

PP 4F6847

EPA has received a pesticide petition 4F6847 from Valent U.S.A. Corporation, 1600 Riviera Ave., Suite 200, Walnut

Creek, California 94596–8025 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine (CA), in or on the raw agricultural commodities (RAC) grass forage and hay (crop group 17). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Metabolism of ^{14}C-pyriproxyfen labeled in the phenoxyphenyl ring and in the pyridyl ring has been studied in cotton, apples, tomatoes, lactating goats, and laying hens (and rats). The major metabolic pathways in plants is aryl hydroxylation and cleavage of the ether linkage, followed by further metabolism into more polar products by further oxidation and/or conjugation reactions. However, the bulk of the radio-chemical residue on RAC samples remained as parent. Comparing metabolites detected and quantified from cotton, apple, tomato, goat and hen (and rat) shows that there are no significant metabolites in plants which are not also present in the excreta or tissues of animals. Therefore, the residue of concern is best defined as the parent, pyriproxyfen.

Ruminant and poultry metabolism studies demonstrated that transfer of administered ^{14}C-residues to tissues was low. Total ^{14}C-residues in goat milk, muscle and tissues accounted for less than 2% of the administered dose, and were less than 1 part per million (ppm) in all cases. In poultry, total ^{14}C-residues in eggs, muscle and tissues accounted for about 2.7% of the administered dose, and were less than 1 ppm in all cases except for gizzard.

2. *Analytical method*. Practical analytical methods for detecting and measuring levels of pyriproxyfen (and relevant metabolites) have been developed and validated in/on all appropriate agricultural commodities, respective processing fractions, milk, animal tissues, and environmental samples. The extraction methodology has been validated using aged radio-chemical residue samples from metabolism studies. The methods have been validated in cotton seed, apples, soil, and oranges at independent laboratories. EPA has successfully validated the analytical methods for analysis of cotton seed, pome fruit, nutmeats, almond hulls, and fruiting vegetables. The limit of detection of pyriproxyfen in the methods is 0.01 ppm which will allow monitoring of food with residues at the levels proposed for the tolerances.

3. *Magnitude of residues*—i. *Grass, forage, fodder, and hay*. Twelve field trials in grass were conducted in 2002 and 2003. The analytical data show that the average measured residue in/on grass forage samples was 0.05 ppm (n = 24, σn-1 = 0.10 ppm) pyriproxyfen. Similarly, the analytical data show that the average measured residue in/on grass hay samples was 0.10 ppm (n = 24, σn-1 = 0.19 ppm). These data support a proposed tolerance for pyriproxyfen in/on grass forage of 0.5 ppm and grass hay of 1.0 ppm.

ii. *Secondary residues*. The proposed new use on grass represents an additional feed commodity. Using established and proposed tolerances to calculate the maximum feed exposure to feed animals, and using the very low potential for residue transfer demonstrated in the milk cow feeding residue study, detectable secondary residues in animal tissues, milk, and eggs are not expected. Therefore, no tolerances are required for these commodities.

iii. *Rotational crops*. The results of a confined rotational crops accumulation study indicate that no rotational crop planting restrictions or rotational crop tolerances are required.

B. Toxicological Profile

1. *Acute toxicity*. The acute toxicity of technical grade pyriproxyfen is low by all routes. The compound is classified as Category III for acute dermal and inhalation toxicity, and Category IV for acute oral toxicity, and skin/eye irritation. Pyriproxyfen is not a skin sensitizing agent.

2. *Genotoxicity*. Pyriproxyfen does not present a genetic hazard. Pyriproxyfen was negative in the following tests for mutagenicity: Ames assay with and without S9, *in vitro* unscheduled DNA synthesis in HeLa S3 cells, *in vitro* gene mutation in V79 Chinese hamster cells, and *in vitro* chromosomal aberration with and without S9 in Chinese hamster ovary cells.

3. *Reproductive and developmental toxicity*. Pyriproxyfen is not a developmental or reproductive toxicant. Developmental toxicity studies have been performed in rats and rabbits, and multigenerational effects on reproduction were tested in rats. These studies have been reviewed and found to be acceptable to the Agency.

In the developmental toxicity study conducted with rats, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 milligrams/kilogram/bodyweight day (mg/kg/bwt day) during gestation days 7–17. Maternal toxicity (mortality, decreased bwt gain and food consumption, and clinical signs of toxicity) was observed at doses of 300 mg/kg/bwt day and greater. The maternal no observed adverse effect level (NOAEL) was 100 mg/kg/bwt day. A transient increase in skeletal variations was observed in rat fetuses from females exposed to 300 mg/kg/bwt day and greater. These effects were not present in animals examined at the end of the postnatal period, therefore, the NOAEL for prenatal developmental toxicity was 100 mg/kg/bwt day. An increased incidence of visceral and skeletal variations was observed postnatally at 1,000 mg/kg/bwt day. The NOAEL for postnatal developmental toxicity was 300 mg/kg/bwt day.

In the developmental toxicity study conducted with rabbits, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 mg/kg/bwt day during gestation days 6–18. Maternal toxicity (clinical signs of toxicity including one death, decreased bwt gain and food consumption, and abortions or premature deliveries) was observed at oral doses of 300 mg/kg/bwt day or higher. The maternal NOAEL was 100 mg/kg/bwt day. No developmental effects were observed in the rabbit fetuses. The NOAEL for developmental toxicity in rabbits was 1,000 mg/kg/bwt day.

In the rat reproduction study, pyriproxyfen was administered in the diet at levels of 0, 200, 1,000, and 5,000 ppm through two generations of rats. Adult systemic toxicity (reduced bwts, liver and kidney histopathology, and increased liver weight) was produced at the 5,000 ppm dose (453 mg/kg/bwt day in males, 498 mg/kg/bwt day in females) during the pre-mating period. The systemic NOAEL was 1,000 ppm (87 mg/kg/bwt day in males, 96 mg/kg/bwt day in females). No effects on reproduction were produced at 5,000 ppm, the higest dose tested (HDT).

4. *Subchronic toxicity*. Subchronic oral toxicity studies conducted with pyriproxyfen technical in the rat, mouse, and dog indicate a low level of toxicity. Effects observed at high dose levels consisted primarily of decreased bwt gain; increased liver weights; histopathological changes in the liver and kidney; decreased red blood cell counts, hemoglobin and hematocrit;

altered blood chemistry parameters; and, at 5,000 and 10,000 ppm in mice, adecrease in survival rates. The NOAELs from these studies were 400 ppm (23.5 mg/kg/bwt day for males, 27.7 mg/kg/bwt day for females) in rats, 1,000 ppm (149.4 mg/kg/bwt day for males, 196.5 mg/kg/bwt day for females) in mice, and 100 mg/kg/bwt day in dogs. In a four week inhalation study of pyriproxyfen technical in rats, decreased bwt and increased water consumption were observed at 1,000 mg/m^3. The NOAEL in this study was 482 mg/m^3.

A 21-day dermal toxicity study in rats with pyriproxyfen technical did not produce any signs of dermal or systemic toxicity at 1,000 mg/kg/bwt day, the HDT. In a 21-day dermal study conducted with KNACK®. Insect Growth Regulator, the test material produced a NOAEL of 1,000 mg/kg/bwt day HDT for systemic effects, and a NOAEL for skin irritation of 100 mg/kg/bwt day.

5. *Chronic toxicity*. Pyriproxyfen technical has been tested in chronic studies with dogs, rats, and mice. EPA has established a reference dose (RfD) for pyriproxyfen of 0.35 mg/kg/bwt day, based on the NOAEL in female rats from the 2-year chronic/oncogenicity study. Effects cited by EPA in the RfD Tracking Report include negative trend in mean red blood cell volume, increased hepatocyte cytoplasm and cytoplasm: Nucleus ratios, and decreased sinusoidal spaces.

Pyriproxyfen is not a carcinogen. Studies with pyriproxyfen have shown that repeated high dose exposures produced changes in the liver, kidney, and red blood cells, but did not produce cancerin test animals. No oncogenic response was observed in a rat 2-year chronic feeding/oncogenicity study or in a seventy-eight week study on mice. The oncogenicity classification of pyriproxyfen is ''E'' (no evidence of carcinogenicity for humans).

Pyriproxyfen technical was administered to dogs in capsules at doses of 0, 30, 100, 300, and 1,000 mg/kg/bwt day for 1-year. Dogs exposed to dose levels of 300 mg/kg/bwt day or higher showed overt clinical signs of toxicity, elevated levels of blood enzymes and liver damage. The NOAEL in this study was 100 mg/kg/bwt day.

Pyriproxyfen technical was administered to mice at doses of 0, 120, 600, and 3,000 ppm in diet for 78–weeks. The NOAEL for systemic effects in this study was 600 ppm (84 mg/kg/bwt day in males, 109.5 mg/kg/bwt day in females), and a LOAEL of 3,000 ppm (420 mg/kg/bwt day in males, 547 mg/kg/bwt day in females) was established based on an increase in kidney lesions.

In a 2-year study in rats, pyriproxyfen technical was administered in the diet at levels of 0, 120, 600, and 3,000 ppm. The NOAEL for systemic effects in this study was 600 ppm (27.31 mg/kg/bwt day in males, 35.1 mg/kg/bwt day in females). A lowest observed adverse effect level (LOAEL) of 3,000 ppm (138 mg/kg/bwt day inmales, 182.7 mg/kg/bwt day in females) was established based on a depression in bwt gain in females.

6. *Animal metabolism*. The absorption, tissue distribution, metabolism and excretion of ^{14}C-labeled pyriproxyfen were studied in rats after single oral doses of 2 or 1,000 mg/kg/bwt (phenoxyphenyl and pyridyl label), and after a single oral dose of 2 mg/kg/bwt (phenoxyphenyl label only) following 14 daily oral doses at 2 mg/kg/bwt of unlabelled material. For all dose groups, most (88–96%) of the administered radio-label was excreted in the urine and feces within 2–days after radio- labeled test material dosing, and 92–98% of the administered dose was excreted within 7–days. Seven–days after dosing, tissue residues were generally low, accounting for no more than 0.3% of the dosed ^{14}C. Radio-carbon concentrations in fat were the higher than in other tissues analyzed. Recovery in tissues over time indicates that the potential for bioaccumulation is minimal. There were no significant sex or dose-related differences in excretion or metabolism.

7. *Metabolite toxicology*. Metabolism studies of pyriproxyfen in rats, goats, and hens, as well as the fish bioaccumulation study demonstrate that the parent is very rapidly metabolized and eliminated. In the rat, most (88–96%) of the administered radiolabel was excreted in the urine and feces within 2–days of dosing, and 92–98% of the administered dose was excreted within 7–days. Tissue residues were low 7–days after dosing, accounting for no more than 0.3% of the dosed ^{14}C. Because parent and metabolites are not retained in the body, the potentil for acute toxicity from *in situ* formed metabolites is low. The potential for chronic toxicity is adequately tested by chronic exposure to the parent at the maximum tolerance dose and consequent chronic exposure to the internally formed metabolites.

Seven metabolites of pyriproxyfen, 4'-OH-pyriproxyfen, 5'3'-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, PYPAC, 2-OH-pyridine and 2,5-diOH-pyridine, have been tested for mutagenicity (Ames) and acute oral toxicity to mice. All seven metabolites were tested in the Ames assay with and without S9 at doses up to 5,000 micro-grams per plate or up to the growth inhibitory dose. The metabolites did not induce any significant increases in revertant colonies in any of the test strains. Positive control chemicals showed marked increases in revertant colonies. The acute toxicity to mice of 4'-OH-pyriproxyfen, 5'3'-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, and PYPAC did not appear to markedly differ from pyriproxyfen, with all metabolites having acute oral LD_{50} values greater than 2,000 mg/kg/bwt. The two pyridines, 2-OH-pyridine and 2,5-diOH-pyridine, gave acute oral LD_{50} values of 124 (male), and 166 (female) mg/kg/bwt, and 1,105 (male) and 1,000 (female) mg/kg/bwt, respectively.

8. *Endocrine disruption*. Pyriproxyfen is specifically designed to be an insect growth regulator and is known to produce juvenoid effects on arthropod development. However, this mechanism-of-action in target insects and other some arthropods has no relevance to any mammalian endocrine system. While specific tests, uniquely designed to evaluate the potential effects of pyriproxyfen on mammalian endocrine systems have not been conducted, the toxicology of pyriproxyfen has been extensively evaluated in acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histopathology of numerous tissues. The results of these studies show no evidence of any endocrine-mediated effects and no pathology of the endocrine organs. Consequently, it is concluded that pyriproxyfen does not possess estrogenic or endocrine disrupting properties applicable to mammals.

C. Aggregate Exposure

1. *Dietary exposure*. An evaluation of chronic dietary exposure to including both food and drinking water has been performed for the U.S. population and various sub-populations including infants and children. No acute dietary endpoint and dose was identified in the toxicology data base for pyriproxyfen, therefore, the Agency has concluded that there is a reasonable certainty of no harm from acute dietary exposure.

i. *Food*. Chronic dietary exposure to pyriproxyfen residues was calculated for the U.S.population and 16 population subgroups assuming tolerance level residues, processing factors from residue studies, and 100 percent of the crop treated (PCT). The analyses included residue data for all existing uses, pending uses, and proposed new uses. The results from

several representative subgroups are listed below. Chronic exposure to the overall U.S. population is estimated to be 0.0008 mg/kg/bwt day, representing 0.24% of the RfD. For the most highly exposed sub-population, children 1 to 2 years of age, exposure is calculated to be 0.0009 mg/kg/bwt day, or 0.26% of the RfD in the following Table 1. Generally speaking, the Agency has no cause for concern if total residue contribution for established and proposed tolerances is less than 100% of the RfD.

TABLE 1.—CALCULATED CHRONIC DIETARY EXPOSURES TO THE TOTAL U.S. POPULATION AND SELECTED SUB-POPULATIONS TO PYRIPROXYFEN RESIDUES IN FOOD

Population Subgroup	Exposure (mg/kg/bwt day)	Percent of RfD
Total U.S. population	0.00083	0.24
Children (1–2 years)	0.00091	0.26
Non-nursing infants(<1 year old)	0.00049	0.14
All infants (<1 year old)	0.00051	0.15
Children (6–12 years)	0.00044	0.13
Females (13–49 years)	0.00042	0.12
Nursing Infants (<1 year old)	0.00023	0.07

ii. *Drinking water*. Since pyriproxyfen is applied outdoors to growing agricultural crops, the potential exists for pyriproxyfen or its metabolites to reach ground surface or surface water that may be used for drinking water. Because of the physical properties of pyriproxyfen, it is unlikely that pyriproxyfen or its metabolites can leach to potable ground water. To quantify potential exposure from drinking water, surface water concentrations for pyriproxyfen were estimated using generic expected environmental concentration (GENEEC). The peak predicted concentration in drinking water was 0.86 part per billion (ppb). Using standard assumptions about bwt and water consumption, the chronic exposure to pyriproxyfen from this drinking water would be 0.00009 mg/kg/day for infants, the most sensitive subpopulation. This represents 0.025% of the RfD (0.35 mg/kg/day) for infants. Based on this worse case analysis, the contribution of water to the dietary risk is negligible.

2. *Non-dietary exposure*. Pyriproxyfen is currently registered for use on residential non-food sites. Pyriproxyfen is the active ingredient (a.i.) in numerous registered products for flea and tick control. Formulations include foggers, aerosol sprays, emulsifiable concentrates, and impregnated materials (pet collars). With the exception of the pet collar uses, consumer use of pyriproxyfen typically results in acute and short-term intermittent exposures. No acute dermal, or inhalation dose or endpoint was identified in the toxicity data for pyriproxyfen. Similarly, doses and endpoints were not identified for short and intermediate term dermal or inhalation exposure to pyriproxyfen. The Agency has concluded that there are reasonable certainties of no harm from acute, short term, and intermediate term dermal and inhalation occupational and residential exposures due to the lack of significant toxicological effects observed.

Chronic residential post-application exposure and risk assessments were conducted to estimate the potential risks from pet collar uses. The risk assessment was conducted using the following assumptions: Application rate of 0.58 mg/a.i. day (product label), average bwt for a 1-6 year old child of 10 kg, the a.i. dissipates uniformly through 365 days (the label instruct to change collar once a year), 1% of the a.i. is available for dermal and inhalation exposure per day (assumption from Draft EPA Standard Operating Procedures (SOPs) for Residential Exposure Assessments, December 18, 1997). The assessment also assumes an absorption rate of 100%. This is a conservative assumption since the dermal absorption was estimated to be 10%. The estimated chronic term margin of exposure (MOE) was 61,000 for children, and 430,000 for adults. The risk estimates indicate that potential risks from pet collar uses do not exceed the Agency's level of concern.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Available information in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way.

There are no other pesticidal compounds that are structurally related

to pyriproxyfen and have similar effects on animals. In consideration of potential cumulative effects of pyriproxyfen and other substances that may have a common mechanism of toxicity, there are currently no available data or other reliable information indicating that any toxic effects produced by pyriproxyfen would be cumulative with those of other chemical compounds. Thus, only the potential risks of pyriproxyfen have been considered in this assessment of aggregate exposure and effects.

Valent will submit information for EPA to consider concerning potential cumulative effects of pyriproxyfen consistent with the schedule established by EPA **Federal Register** of August 4, 1997 (62 FR 42020) (FRL–5734–6) and other subsequent EPA publications pursuant to the Food Quality Protection Act(FQPA).

E. Safety Determination

1. *U.S. population*—i. *Chronic dietary exposure and risk s adult sub-populations*. The results of the chronic dietary exposure assessment described above demonstrate that estimates of chronic dietary exposure for all existing, pending and proposed uses of pyriproxyfen are well below the chronic RfD of 0.35 mg/kg/bwt day. The estimated chronic dietary exposure from food for the overall U.S. population and many non-child/infant subgroups is from 0.00014 to 0.00042 mg/kg/bwt day, 0.04 to 0.12% of the RfD. Addition of the small but worse case potential chronic exposure from drinking water (calculated above) increases exposure by only 0.00002 mg/kg/bwt day and does not change the maximum occupancy of the RfD significantly. Generally, the Agency has no cause for concern if total residue contribution is less than 100% of the RfD. It can be concluded that there is a reasonable certainty that no harm will result to the overall U.S. population or any non-child/infant subgroups from aggregate, chronic dietary exposure to pyriproxyfen residues.

ii. *Acute dietary exposure and risk s adult sub-populations*. No acute dietary endpoint and dose were identified in the toxicology data base for pyriproxyfen; therefore, it can be concluded that there is a reasonable certainty that no harm will result to the overall U.S. Population or any non-child/infant subgroups from aggregate, acute dietary exposure to pyriproxyfen residues.

iii. *Non-dietary exposure and aggregate risk s adult sub-populations.* Acute, short term,and intermediate term dermal and inhalation risk assessments for residential exposure are not required due to the lack of significant toxicological effects observed. The results of a chronic residential post-application exposure and risk assessment for pet collar uses demonstrate that potential risks from pet collar uses do not exceed the Agency's level of concern. The estimated chronic term MOE for adults was 430,000.

2. *Infants and children*—i. *Safety factor for infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of pyriproxyfen, FFDCA section 408 provides that EPA shall apply an additional margin of safety, up to ten-fold, for added protection for infants and children in the case of threshold effects unless EPA determines that a different margin of safety will be safe for infants and children.

The toxicological data base for evaluating prenatal and postnatal toxicity for pyriproxyfen is complete with respect to current data requirements. There are no special prenatal or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the 2-generation reproductive toxicity study in rats. Valent concludes that reliable data support use of the standard 100-fold uncertainty factor and that an additional uncertainty factor is not needed for pyriproxyfen to be further protective of infants and children.

ii. *Chronic dietary exposure and risks infants and children*. Using the conservative exposure assumptions described above, the percentage of the RfD that will be utilized by chronic dietary (food only) exposure to residues of pyriproxyfen ranges from 0.00023 mg/kg/bwt day for nursing infants, up to 0.00091 mg/kg/bwt day for children (1 to 2 years of age), 0.07 to 0.26% of the RfD, respectively. Adding the worse case potential incremental exposure to infants and children from pyriproxyfen in drinking water (0.00009 mg/kg/bwt day) does not materially increase the aggregate, chronic dietary exposure and only increases the occupancy of the RfD by 0.009% to 0.010% for children (1 to 2 years of age). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. It can be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate, chronic dietary exposure to pyriproxyfen residues.

iii. *Acute dietary exposure and risk s infants and children*.No acute dietary endpoint and dose were identified in the toxicology data base for pyriproxyfen; therefore, it can be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate, acute dietary exposure to pyriproxyfen residues.

iv. *Non-dietary exposure and aggregate risk s infants and children*. Acute, short term, and intermediate term dermal and inhalation risk assessments for residential exposure are not required due to the lack of significant toxicological effects observed. The results of a chronic residential post-application exposure and risk assessment for pet collar uses demonstrate that potential risks from pet collar uses do not exceed the Agency's level of concern. The estimated chronic term MOE for children was 61,000.

F. International Tolerances

There are no presently existing Codex MRLs for pyriproxyfen.

[FR Doc. 04–27769 Filed 12–21–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0350; FRL–7684–8]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials were granted during the period July 1, 2004 to September 30, 2004 to control unforseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Branch Chief, Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following

form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

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 number OPP–2004–0350. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

A. U. S. States and Territories

Arkansas

State Plant Board
Crisis: On July 6, 2004, for the use of sodium chlorate on wheat as a harvest aid. This program ended on July 10, 2004. Contact: (Libby Pemberton)
On September 3, 2004, for the use of acephate on soybeans to control stink bugs. This program ended on September 18, 2004. Contact: (Libby Pemberton)
Quarantine: EPA authorized the use of propiconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)

California

Environmental Protection Agency, Department of Pesticide Regulation
Specific: EPA authorized the use of myclobutanil on peppers to control powdery mildew; August 5, 2004 to October 15, 2004. Contact: (Stacey Groce)

Colorado

Department of Agriculture
Specific: EPA authorized the use of acibenzolar-S-methyl on onions to control iris yellow spot virus; July 27, 2004 to September 1, 2004. Contact: (Libby Pemberton)

Florida

Department of Agriculture and Consumer Services
Crisis: On July 21, 2004, for the use of thiophanate-methyl on cotton to control fusarium. This program ended on August 5, 2004. Contact: (Stacey Groce)
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)

Idaho

Department of Agriculture
Specific: EPA authorized the use of diflubenzuron on alfalfa to control Mormon crickets and grasshoppers; September 7, 2004 to October 31, 2004. Contact: (Libby Pemberton)

Kansas

Department of Agriculture
Quarantine: EPA authorized the use of myclobutanil on soybeans to control

soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)

Kentucky

Department of Agriculture
Crisis: On June 25, 2004, to allow reduced plant back interval to soybeans in flooded corn fields previously treated with mesotrione or atrazine. This program ended on July 9, 2004. Contact: (Libby Pemberton)
On July 27, 2004, for the use of azoxystrobin on tobacco to control blue mold. This program ended on October 15, 2004. Contact: (Libby Pemberton)

Louisiana

Department of Agriculture and Forestry
Crisis: On September 3, 2004, for the use of acephate on soybeans to control stink bugs. This program ended on September 18, 2004. Contact: (Libby Pemberton)
Specific: EPA authorized the use of methoxyfenozide on soybeans to control soybean loopers and saltmarsh catepillar; July 14, 2004 to September 30, 2004. Contact: (Stacey Groce)

Massachusetts

Department of Food and Agriculture
Specific: EPA authorized the use of thiamethoxam on cranberries to control cranberry weevil; August 12, 2004 to October 1, 2004. Contact: (Stacey Groce)

Minnesota

Department of Agriculture
Quarantine: EPA authorized the use of tebuconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)

Mississippi

Department of Agriculture and Commerce
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)

Missouri

Department of Agriculture
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)

Montana

Department of Agriculture
Specific: EPA authorized the use of diflubenzuron on alfalfa to control Mormon crickets and grasshoppers; September 7, 2004 to October 31, 2004. Contact: (Libby Pemberton)

New York

Department of Environmental Conservation
Crisis: On July 21, 2004, for the use of quinoxyfen on cucurbits to control powdery mildew. This program ended on September 30, 2004. Contact: (Stacey Groce)
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)

North Carolina

Department of Agriculture
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of tebufenozide on sweet potatoes to control armyworms; July 23, 2004 to December 31, 2004. Contact: (Andrew Ertman)
EPA authorized the use of bifenthrin on sweet potatoes to control beetle complex; August 12, 2004 to September 30, 2004. Contact: (Libby Pemberton)

North Dakota

Department of Agriculture
Specific: EPA authorized the use of zeta-cypermethrin on flax to control grasshoppers; July 28, 2004 to September 30, 2004. Contact: (Libby Pemberton)

Ohio

Department of Agriculture
Quarantine: EPA authorized the use of propiconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of dimethenamid-p on green onions to control common purslane and prostrate pigweed; August 31, 2004 to November 15, 2004. Contact: (Stacey Groce)

Oklahoma

Department of Agriculture
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)

Oregon

Department of Agriculture
Specific: EPA authorized the use of bifenazate on potatoes to control spider mites; August 1, 2004 to September 15, 2004. Contact: (Andrew Ertman)

Pennsylvania

Department of Agriculture
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)

South Carolina

Clemson University
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of tebuconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)

South Dakota

Department of Agriculture
Quarantine: EPA authorized the use of tebuconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)

Texas

Department of Agriculture
Crisis: On June 25, 2004, for the use of hexythiazox on corn to control the Banks grass mite and the two-spotted spider mite. This program ended on August 31, 2004. Contact: (Andrew Ertman)
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of hexythiazox on corn to control the Banks grass mite and the two-spotted spider mite; June 25, 2004 to August 31, 2004. Contact: (Andrew Ertman)

Washington

Department of Agriculture
Specific: EPA authorized the use of bifenazate on potatoes to control spider mites; August 1, 2004 to September 15, 2004. Contact: (Andrew Ertman)

B. Federal Departments and Agencies

Agriculture Department
Animal and Plant Health Inspector Service
Quarantine: EPA authorized the use of paraformaldehyde to decontaminate high security animal laboratories, biological safety cabinets, equipment, and holding rooms at the following USDA facilities: (1) National Animal Disease Center (NADC), Ames, Iowa; (2) National Veterinary Services Laboratories (NVSL): Diagnostic Virology and Diagnostic Bacteriology Laboratories, Ames, Iowa; (3) Center for Biologics Laboratories (CVBL), Ames, Iowa; (4) NVSL Foreign Animal Disease Diagnostic Laboratory (FADDL), Plum Island, New York; (5) the Plum Island Animal Disease Center (PIADC), Plum Island, N.Y., and (6) the National Wildlife Research Center (NWRC) in Fort Collins, Colorado; July 30, 2004, to July 30, 2007. Contact: (Libby Pemberton)

Defense Department

Quarantine: EPA authorized the use of paraformaldehyde on biological safety cabinets, glove boxes, ductwork and unique items to prevent the release of infectious microorganisms from containment areas at ECBC facilities at Aberdeen Proving Ground, MD; July 30, 2004, to July 30, 2007. Contact: (Libby Pemberton)

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 9, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 04–27771 Filed 12–21–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0199; FRL–7688–7]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0199. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

Information on the EUPs cited in this notice are also available on the ''Current Plant Incorporated Protectant (PIP) Experimental Use Permits'' web page on the EPA Internet. This page provides a consolidated list of active PIP EUPs with direct edocket links at *http://www.epa.gov/pesticides/biopesticides/pips/current_pip_eups.htm*.

II. EUPs

EPA has issued the following EUPs:

524–EUP–96. Extension/Amendment. Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. This EUP allows the use of 2.8 pounds of the plant-incorporated protectant *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (vector ZMIR39) in corn on 2,530 acres of field corn for breeding and observation nursery, inbred seed increase production, line per se and hybrid yield, insect efficacy, product characterization and performance/labeling, insect resistance management, non-target organism and benefit, seed treatment, swine growth and feed efficiency, dairy cattle feed efficiency,

beef cattle growth and feed efficiency, and cattle grazing feed efficiency trials. The program is authorized only in the States of Alabama, California, Colorado, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The EUP is effective from April 27, 2004 to February 28, 2005. A tolerance has been established for residues of the active ingredient in or on corn.

Two comments were submitted in response to the notice of receipt for this permit application, which was published in the **Federal Register** on March 3, 2004 (69 FR 10040) (FRL–7344–5). Comments were received from private citizens who objected to EUP issuance. They expressed doubt regarding Monsanto's truthfulness, were concerned about unspecified environmental and human health effects, as well as the purity of food. The Agency understands the commenter's concerns and recognizes that some individuals believe that genetically modified crops and food should be banned completely. Pursuant to its authority under the Federal Food, Drug, and Cosmetic Act (FFDCA), EPA has conducted a comprehensive assessment of the Cry1Ab and Cry3Bb1 delta endotoxins and the genetic material necessary for their production in corn. EPA has concluded that there is a reasonable certainty that no harm will result from dietary exposure to these endotoxins as expressed in genetically modified corn. The Cry1Ab and Cry3Bb1 corn tested under this permit are covered by tolerance exemptions under 40 CFR 180.1173 and 40 CFR 180.1214. No adverse effects are anticipated as a result of Cry3Bb1 and/or Cry1Ab expression in transgenic corn.

68467–EUP–7. Extension/Amendment. Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. This EUP allows the use of 0.94 pounds of the plant-incorporated protectant *Bacillus thuringiensis* Cry34/35Ab1 proteins and the genetic material necessary for their production (from the insert of plasmid PHP17662) in corn on 1,177 acres of field corn for maize breeding and observation nursery, maize agronomic observation, herbicide tolerance, maize efficacy, insect resistance management, and maize demonstration trials. The program is authorized only in the States of Arizona, Colorado, Delaware, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Pennyslvania, Puerto Rico, South Dakota, Tennessee, Texas, Wisconsin, and Vermont. The EUP is effective from April 29, 2004 to April 30, 2005. A tolerance has been established for residues of the active ingredient in or on corn.

29964–EUP–5. Extension/Amendment. Pioneer Hi-Bred International, P.O. Box 552, Johnston, IA 50131–0552. This EUP allows the use of 3.97 pounds of the plant-incorporated protectant *Bacillus thuringiensis* Cry34/35Ab1 proteins and the genetic material necessary for their production (from the insert of plasmid PHP17662) in corn on 4,690 acres of field corn for insect resistance management, maize agronomic observation, maize breeding and observation, maize demonstration, maize efficacy, maize research seed production, maize inbred seed increase, maize regulatory studies, non-target organism, and herbicide tolerance trials. The program is authorized only in the States of Alabama, Arkansas, California, Colorado, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Washington, and Wisconsin. The EUP is effective from April 29, 2004 to April 30, 2005. A tolerance has been established for residues of the active ingredient in or on corn.

One comment was submitted in response to the notice of receipt for this permit application, which was published in the **Federal Register** on March 10, 2004 (69 FR 11431) (FRL–7346–6). The commenter objected to EUP issuance. The commenter indicated denial should be based on their view of chemical companies' record, unspecified environmental and human health effects, and food purity. The Agency understands the commenter's concerns and recognizes that some individuals believe that genetically modified crops and food should be banned completely. Pursuant to its authority under the FFDCA, EPA has conducted a comprehensive assessment of the Cry34Ab1/Cry35Ab1 delta endotoxins and the genetic material necessary for their production in corn. EPA has concluded that there is a reasonable certainty that no harm will result from dietary exposure to these endotoxins as expressed in genetically modified corn. The Cry34Ab1/Cry35Ab1 tested under these permits are covered by the tolerance exemption under 40 CFR 180.1242. No adverse effects are anticipated as a result of Cry34Ab1/Cry35Ab1 expression in transgenic corn.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 8, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–27773 Filed 12–21–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7849–3]

Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2005; Request for Grant Proposals for Watershed Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is publishing, in this notice, guidelines for awarding Clean Water Act section 319 nonpoint source grants to Indian Tribes in FY 2005. Once again Congress has authorized EPA to award nonpoint source pollution control grants to Indian Tribes under section 319 of the Clean Water Act in FY 2005 in an amount that exceeds the statutory cap (in section 518(f) of the Clean Water Act) of ⅓ of 1% of the total 319 appropriation. These guidelines are intended to assist all Tribes that have approved nonpoint source assessments and management programs and ''treatment-as-a-state'' status to receive section 319 funding to help implement those programs. The guidelines describe the process for awarding base funding to Tribes in FY 2005, including submissions of proposed work plans. The guidelines also describe the process and schedule to award additional FY 2005 funds for selected watershed projects, including submissions of watershed project proposals and the selection criteria for funding watershed-based projects.

DATES: The guidelines are effective December 22, 2004.

ADDRESSES: Persons requesting additional information or a complete copy of the document should contact Stacie Craddock (202) 566–1204; by e-mail at *craddock.stacie@epa.gov;* or by mail at U.S. Environmental Protection

Agency (4503T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The full text of the Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2005 is also available on the Internet at: *http://www.epa.gov/owow/nps/tribal.html.*

FOR FURTHER INFORMATION CONTACT: Stacie Craddock at (202) 566–1204.

Dated: November 19, 2004.

Diane C. Regas,

Director, Office of Wetlands, Oceans, and Watersheds.

SUPPLEMENTARY INFORMATION: Once again Congress has, for the sixth year in a row, authorized EPA to award nonpoint source pollution control grants to Indian Tribes under section 319 of the Clean Water Act (CWA) in FY 2005 in an amount that exceeds the statutory cap (in section 518(f) of the CWA) of ⅓ of 1% of the total 319 appropriation. This will enable all of the Tribes that have approved nonpoint source assessments and management programs and ''treatment-as-a-state'' (TAS) status (hereinafter referred to as ''approved Tribes'') by January 7, 2005, to be eligible to receive section 319 funding to help implement those programs.

The repeated allowance of increased funding for Tribal nonpoint source (NPS) programs reflects Congress' continuing recognition that Indian Tribes need and deserve increased financial support to implement nonpoint source programs that address critical water quality concerns on Tribal lands. EPA shares this view and will continue to work closely with the Tribes to assist them in developing and implementing effective Tribal nonpoint source pollution programs. To date, EPA has already approved ninety-four (94) Tribal nonpoint source management programs, covering more than 40 million acres of land (representing approximately 75% of all Indian country), and we expect to approve additional programs in FY 2005.

As was the case last year, any new authorization to exceed 1/3 of 1% applies only to the current year (FY 2005). As in the past, EPA will work with the Tribes to continue to demonstrate that increased 319 funds for Tribes can be used effectively to achieve water quality improvement. We were pleased by the quality of the Tribes' work plans that formed the basis of the grants awarded to Tribes in FY 2004, which included base grants awarded to seventy-eight (78) Tribes as well as grants for specific watershed projects awarded to thirty-two (32) Tribes through a competitive process. We believe that the Tribes and EPA succeeded in directing the FY 2004 grants towards high-priority activities that will produce on-the-ground results that provide improved water quality. We believe that this success warrants continued substantial investment of 319 grant dollars in FY 2005 to address the extensive NPS control needs throughout Indian country, as discussed below. In recognition of this fact, we intend to award (pending Congressional authorization) a total of $7,000,000 to Tribes for FY 2005.

Summary of Process for FY 2005 Grants to Tribes

In FY 2005, we will set aside $7,000,000 for Tribal nonpoint source grants. This amount is based on the same three factors as were used last year:

1. We will continue to support all eligible Tribes with base grants.
2. We will award base funding to eligible Tribes as follows:
   a. $30,000 in base funding will be awarded to eligible Tribes whose land area is less than 1,000 square miles (640,000 acres).
   b. $50,000 in base funding will be awarded to eligible Tribes whose land area is equal to or greater than 1,000 square miles (640,000 acres).
3. We will award the remaining funds to eligible Tribes through a competitive process to support the implementation of on-the-ground NPS watershed projects.

Detailed Discussion of Process for FY 2005 Grants to Tribes

1. Base Funding

Each Tribe that has an approved nonpoint source assessment and management program (and TAS status) as of January 7, 2005, will receive base funding based on the following land area scale:

Square miles (acres)	Base amount
Less than 1,000 sq. mi. (less than 640,000 acres)	$30,000
Over 1,000 sq. mi. (over 640,000 acres)	$50,000

The land area scale is the same as used last year. EPA is continuing to rely upon land area as the deciding factor for a cutoff because nonpoint source pollution is strongly related to land use; thus land area is a reasonable criterion that generally is highly relevant to identifying Tribes with the greatest needs (recognizing that many Tribes have needs that significantly exceed available resources).

The base funding may be used for a range of activities that implement the Tribe's approved NPS management program, including: hiring a program coordinator; conducting nonpoint source education programs; providing training and authorized travel to attend training; updating the nonpoint source management program; and implementing, alone or in conjunction with other agencies or other funding sources, watershed-based plans and on-the-ground watershed projects. In general, this base funding should not be used for general assessment activities.

Each Tribe that requests base funding must submit to the appropriate EPA Regional office by February 18, 2005, a proposed work plan that is consistent with the Tribe's approved nonpoint source management program and conforms to applicable legal requirements (see immediately below for contents of work plans for base funding). The Region should review the proposed work plan and, where appropriate, recommend improvements to the plan. If a Tribe has not submitted an approvable work plan by February 25, 2005, its allocated amount will be added to the competitive pool, discussed below, which will be used to fund Tribal NPS program and on-the-ground watershed projects.

Regions should work with the Tribes to expeditiously award the base grants. However, if a Tribe will be awarded additional funds to implement a watershed project, as discussed below, the Tribe may prefer combining the formal process for submission of the final application for both the base and competitive funds. Regions should confer with their Tribes and endeavor to proceed in a manner and on a schedule that is most compatible with the Tribes' needs and preferences.

2. Work Plans for Base Funding

A work plan for base funding must be consistent with the Tribe's approved nonpoint source management program and conform to legal requirements that are applicable to all environmental program grants awarded to Tribes (*see* 40 CFR 35.505 and 35.507) as well as the legal requirements that specifically apply to nonpoint source management grants (*see* 40 CFR 35.638). These guidelines summarize particularly applicable components of these legal requirements. However, EPA recommends that Tribes review the applicable regulations as well.

An approvable work plan must specify:

a. The work plan components that will be funded under the grant, briefly describing each significant category of nonpoint source activity;

b. The work plan commitments for each work plan component, and a time frame for their accomplishment;

c. The estimated work years and estimated funding amounts for each work plan component;

d. A performance evaluation process and reporting schedule in accordance with 40 CFR 35.515 (*see* discussion below on the evaluation process under the ''Management and Oversight'' heading);

e. The roles and responsibilities of the recipient and any project partners in carrying out the work plan commitments.

3. Competitive Funding: Request for Proposals to Select Watershed Projects for FY 2005 Funding (Process and Schedule)

The remaining funds will be awarded to Tribes that have approved nonpoint source management programs as of January 7, 2005, on a competitive basis to provide funding for on-the-ground nonpoint source watershed projects that are designed to achieve additional water quality improvement. Each selected project will be eligible to receive up to $150,000, depending on the demonstrated need. An individual Tribe (or intertribal consortium) may not be awarded competitive funding for more than one watershed project in a given year. The funds will be awarded using the process described below.

a. Watershed Project Review Committee

As we did for the FY 2004 grants, EPA will establish a Watershed Project Review Committee comprised of nine EPA staff, including three EPA Regional Nonpoint Source Coordinators, three EPA Regional Tribal Coordinators, two staff members of the Nonpoint Source Control Branch, and one staff member of the American Indian Environmental Office. The committee will then make funding decisions in accordance with the process described below.

b. Watershed Project Proposals

Tribes that have approved nonpoint source assessments and management programs as well as TAS status as of January 7, 2005, may apply for competitive funding by submitting a proposed work plan for the watershed project up to a maximum budget of $150,000. This funding is in addition to the base funding that each approved Tribe will receive, as described above.

Whereas base funding may be used to implement the full range of activities in approved nonpoint source management programs (*e.g.*, protection activities, education and training, etc.), competitive funding will be awarded to implement on-the-ground water quality improvement projects that are expected to achieve actual water quality benefits in waters impaired by nonpoint source pollution. Tribes are encouraged to submit on-the-ground projects that implement watershed-based plans. Competitive funds can be used for more detailed development of the watershed-based plan, such as additional monitoring or modeling that will assist Tribes in targeting implementation activities and enable Tribes to develop more detailed information or improved assessments relating to the specific components of the watershed-based plan to be implemented. Competitive funding should generally be limited to 20% for development of the watershed-based plans to assure that these funds are primarily focused on implementation of the plan. Tribes should refer to EPA's FY 2004 *Nonpoint Source Program and Grants Guidelines for States and Territories* (available at EPA's Nonpoint Source Web site at: *http://www.epa.gov/owow/nps/cwact.html*) which outline the specific information to be included in watershed-based plans to restore waters impaired by nonpoint source pollution. In such cases, the watershed project can be designed to reduce nonpoint source pollutant loadings that are contributing to non-attainment of water quality standards.

Where relevant, the watershed project may be designed to implement measures and practices that are intended to achieve load reductions or to help restore an impaired waterbody for which an approved nonpoint source total maximum daily load (NPS TMDL) has been developed (or the NPS components of mixed-source TMDLs). NPS TMDLs, together with watershed-based plans designed to implement the NPS TMDLs, provide the necessary analytic link between actions on the ground and the water quality results to be achieved. Where an NPS TMDL has not yet been developed and approved or is not yet being developed for the waters, the Tribe may use these funds to implement a watershed-based plan in the absence of a TMDL.

Tribes that apply for competitive funding for watershed projects should submit a proposed work plan for the watershed project by February 18, 2005, to the appropriate EPA Regional office for initial screening for compliance with criteria in this notice. The Regional office will, by February 25, 2005, forward the work plans that meet the required criteria to EPA Headquarters for distribution to the Watershed Project Review Committee. (E-mail versions sent as an attachment to the e-mail are appreciated where possible because they can be shared among the reviewers most rapidly and easily.)

Watershed projects that are awarded competitive funding must be consistent with the Tribe's approved nonpoint source management program and conform to legal requirements that are applicable to all environmental program grants awarded to Tribes (*see* 40 CFR 35.505 and 35.507) and the legal requirements applicable to nonpoint source management grants (*see* 40 CFR 35.638). These guidelines summarize particularly applicable components of these legal requirements, also incorporating the specific objectives for which watershed project grants are awarded.

c. Work Plan Elements for a Watershed Project Proposal

The following five elements must be included in the work plan for a proposed watershed project. These elements reflect specific regulatory requirements, as mentioned above, without which a work plan cannot be approved. Tribes may refer to the ''Competitive Proposal Review Sheet'' in Appendix A for a model of the checklist that EPA's Watershed Project Review Committee will use to rank proposed work plans for watershed projects.

The work plan for competitive funding must include all five of the following elements in order to be considered for ranking and potential funding:

1. The work plan components to be funded under the grant, briefly describing each significant category and subcategory of nonpoint source pollution that will be addressed and the causes and sources of that pollution, targeting the on-the-ground improvements to be addressed;

2. The work plan commitments for each work plan component, focusing on the types of best management practices or measures that will be implemented to address the identified causes and sources of nonpoint source pollution for each significant source of nonpoint source pollution, the expected pollutant load reduction and/or water quality benefits to the receiving waterbody, and a time frame for their accomplishment;

3. The estimated work years and estimated funding amounts for each work plan component;

4. A performance evaluation process and reporting schedule in accordance with 40 CFR 35.515 (*see* discussion below on the evaluation process under the ''Management and Oversight'' heading); and

5. The roles and responsibilities of the recipient and any project partners in carrying out the work plan commitments.

d. Selection Criteria for Funding Watershed Projects

As discussed above, watershed project proposals must include all of the work plan elements listed above in section 3.c in order to be considered for approval. After a determination is made that the project includes these minimum elements, EPA's Watershed Project Review Committee will consider the extent to which other criteria, listed below, are represented in each project. The extent to which each criteria is present will increase the total score for which the project receives. Tribes may refer to the ''Competitive Proposal Review Sheet'' in Appendix A for a model of the checklist that EPA's Watershed Project Review Committee will use to rank proposed work plans for watershed projects.

1. The project is listed as a priority implementation project or is located in a priority watershed identified in the Tribal NPS management program.

2. The project includes cooperation and/or a combination of resources with other programs, parties, and agencies to provide additional technical and/or financial assistance to the project (*e.g.*, using section 106 funding for water quality monitoring, Farm Bill Environmental Quality Incentives Program funds, or funds from state agency sources).

3. The project is designed to achieve load allocations for which an approved NPS TMDL has been developed (or the NPS components of mixed-source TMDLs).

4. The project is designed to implement a watershed-based plan that is designed to restore nonpoint source-impaired waters (including components identified in EPA's FY 2004 Nonpoint Source Program and Grants Guidelines for States and Territories, available at EPA's Nonpoint Source Web site at: *http://www.epa.gov/owow/nps/cwact.html*).

e. Award of Grants for Tribal Watershed Projects

(1) Award Decisions

The Watershed Project Review Committee will hold a conference call by March 10, 2005, to ensure that all Committee members fully understand and agree on how to objectively apply the criteria discussed above. Rankings will be developed by considering all of the factors as a whole, in accordance with a weighting system as indicated in the ''Competitive Proposal Review Sheet'' in Appendix A.

By April 7, 2005, the Committee will compile the rankings of the proposed watershed projects based on the selection criteria and then forward their rankings to the Nonpoint Source Control Branch at EPA Headquarters. Headquarters will tally the Committee's rankings and then hold a conference call by April 12, 2005, to provide a final opportunity for members of the Review Committee to discuss the rankings. By April 14, 2005, EPA will select the highest ranked proposals and announce to the Regions which Tribes' watershed projects have been selected for funding. These Tribes will be notified immediately by phone or e-mail, with a written letter to follow.

(2) Final Work Plans/Full Grant Applications

Once a Region and Tribe have been notified of the amount that will be awarded to the Tribe, they will negotiate a final work plan consistent with 40 CFR 35.507. Final work plans may include minor changes or clarifications agreed upon by the Region and Tribe, but shall not vary significantly in substance from the initial watershed project proposal. After making appropriate changes, the Tribe must submit a final work plan to the Region by May 6, 2005. If a Tribe fails to or is unable to submit an approvable work plan by May 6, 2005, the 319 grant will instead be awarded to the next highest ranking unfunded application. Regions should endeavor to finalize the grant awards no later than 60 days after receipt of a complete grant application with an approvable work plan.

(3) Match Requirements

The match requirement for section 319 base grants is 40 percent unless included as part of an approved Performance Partnership Grant (PPG) which sets the match requirement at 5 percent of the allowable cost of the work plan budget for base funding only. The match requirement for section 319 competitive grants is 40 percent of the approved work plan costs. Any competitive grant awarded under this solicitation will not be included in a PPG. In general, consistent with 40 CFR 31.24, the match requirement may be satisfied by allowable costs borne by non-federal grants, by cash donations from non-federal third parties, or by the value of third party in-kind contributions.

EPA's regulations also provide that EPA may decrease the match requirement to as low as 10% if the Tribe can demonstrate in writing to the Regional Administrator that fiscal circumstances within the Tribe or within each Tribe that is a member of the intertribal consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship. (*See* 40 CFR 35.635.)

In making grant awards to Tribes that provide for a reduced match requirement, Regions should include a brief finding that the Tribe has demonstrated that it does not have adequate funds to meet the required match.

4. Grant Eligibility and Criteria

Intertribal Consortia

Some Tribes have formed intertribal consortia to promote cooperative work. An intertribal consortium is a partnership between two or more Tribes that is authorized by the governing bodies of those Tribes to apply for and receive assistance under this program. (*See* 40 CFR 35.502.) Individual Tribes who are a part of an intertribal consortia that is awarded a section 319 grant may not also be awarded a section 319 grant to the individual Tribe. The intertribal consortium is eligible only if the consortium demonstrates that all its members meet the eligibility requirements for the section 319 program and authorize the consortium to apply for and receive assistance in accordance with 40 CFR 35.504. An intertribal consortium must submit to EPA adequate documentation of the existence of the partnership and the authorization of the consortium by its members to apply for and receive the grant. (*See* 40 CFR 35.504.)

Technical Assistance to Tribes

In addition to providing nonpoint source funding to Tribes, EPA remains committed to providing continued technical assistance to Tribes in their efforts to control nonpoint source pollution. During the past eight years, EPA has presented many workshops to Tribes throughout the United States to assist them in developing: (1) nonpoint source assessments to further their understanding of nonpoint source pollution and its impact on water quality; (2) nonpoint source management programs to apply solutions to address their nonpoint source problems; and (3) specific projects to effect on-the-ground solutions. The workshops also have provided information on related EPA and other programs that can help Tribes address nonpoint source pollution, including the provision of technical and funding assistance. Other areas of

technical assistance include watershed-based planning, water quality monitoring, section 305(b) reports on water quality, and section 303(d) lists of impaired waters. EPA intends to continue providing nonpoint source workshops to interested Tribes around the United States in FY 2005 and to provide other appropriate technical assistance as needed.

Non-Tribal Lands

The following discussion explains the extent to which section 319 grants may be awarded to Tribes for use outside the reservation. We discuss two types of off-reservation activities: (1) Activities that are related to waters within a reservation, such as those relating to sources upstream of a waterway entering the reservation; and (2) activities that are unrelated to waters of a reservation. As discussed below, the first type of these activities may be eligible; the second is not.

1. Activities That Are Related to Waters Within a Reservation

Section 518(e) of the CWA provides that EPA may treat an Indian Tribe as a state for purposes of section 319 of the CWA if, among other things, ''the functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are * * * within the borders of an Indian reservation'' (*see* 33 U.S.C. 1377(e)(2)). EPA already awards grants to Tribes under section 106 of the CWA for activities performed outside of a reservation (on condition that the Tribe obtains any necessary access agreements and coordinates with the State, as appropriate) that pertain to reservation waters, such as evaluating impacts of upstream waters on water resources within a reservation. Similarly, EPA has awarded section 106 grants to States to conduct monitoring outside of State borders. EPA has concluded that grants awarded to an Indian Tribe pursuant to section 319 may similarly be used to perform eligible section 319 activities outside of a reservation if: (1) The activity pertains to the management and protection of waters within a reservation; and (2) just as for on-reservation activities, the Tribe meets all other applicable requirements.

2. Activities That Are Unrelated to Waters of a Reservation

As discussed above, EPA is authorized to award section 319 grants to Tribes to perform eligible section 319 activities if the activities pertain to the management and protection of waters within a reservation and the Tribe meets all other applicable requirements. In contrast, EPA is not authorized to award section 319 grants for activities that do not pertain to waters of a reservation. For off-reservation areas, including ''usual and accustomed'' hunting, fishing, and gathering places, EPA must determine whether the activities pertain to waters of a reservation prior to awarding a grant.

Milestones Summary for FY 2005

Date for Tribes to be Eligible for 319 Grants.	January 7, 2005.
Tribes Submit Base Grant Work Plans to Region.	February 18, 2005.
Tribes Submit Competitive Grant Work Plans to Region.	February 18, 2005.
Region Comments on Tribe's Base Grant Work Plan.	February 25, 2005.
Region Forwards Competitive Work Plans to Headquarters.	February 25, 2005.
Review Committee Discusses Competitive Work Plans	March 10, 2005.
Review Committee Forwards Ranking Scores to HQ.	April 7, 2005.
Review Committee Discusses Rankings.	April 12, 2005.
Headquarters Notifies Regions/Tribes of Selections.	April 14, 2005.
Tribes Submit Final Grant Application to Region.	May 6, 2005.

Management and Oversight

The Clean Water Act and EPA regulations require that all section 319 grants to States, Territories, and Tribes include a set of reporting requirements for all section 319 grants. In addition, the Clean Water Act includes a special provision for section 319 grants that specifically requires that ''no grant may be made'' under section 319 unless EPA's Administrator determines that the grant recipient (in this case the Tribe) made ''satisfactory progress'' during the preceding year in meeting the schedule of activities specified in its approved nonpoint source management program. In previous Tribal 319 guidelines, EPA has not included any discussion to supplement the law and regulations regarding Tribal reporting and EPA review of Tribal progress. Given the fact that Tribes have now been receiving significant section 319 funds for several years, and have had some time to develop more mature programs, EPA believes that it is important to take note of the significant mechanisms in the Clean Water Act and regulations that are designed to assure that the funds are used wisely and effectively.

The work plan components required for section 319 funding, specifically those relating to work plan commitments and timeframes for their accomplishment, facilitate the management and oversight of Tribal grants by providing specific activities and outputs by which progress can be monitored. The performance evaluation process and reporting schedule (both work plan components) also establish a formal process by which accomplishments can be measured. Additionally, the satisfactory progress determination (for Tribes that received section 319 funding in the preceding fiscal year) helps ensure that Tribes are making progress in achieving the goals in their nonpoint source management programs.

1. Evaluation Process

A description of the evaluation process and reporting schedule must be included in the work plan that is required for Tribes receiving section 319 funding. (*See* 40 CFR 35.507). To fulfill this requirement, the Tribe and the Region will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan. (*See* 40 CFR 35.515).

The evaluation process must provide for:

a. A discussion of accomplishments as measured against work plan commitments;

b. A discussion of the cumulative effectiveness of the work performed under all work plan components;

c. A discussion of existing and potential problem areas; and

d. Suggestions for improvement, including, where feasible, schedules for making improvements.

Regions will ensure that the required evaluations are performed according to the negotiated schedule (at least annually) and that copies of evaluation reports are placed in the official files and provided to the recipient.

2. Satisfactory Progress

For a Tribe (or intertribal consortium) that received section 319 funds in the preceding fiscal year, section 319(h)(8) of the Clean Water Act requires that the

Region determine whether the Tribe's progress for the previous fiscal year in meeting the schedule set forth in its nonpoint source management program was satisfactory. (*See* Clean Water Act section 319(h)(8) and 40 CFR 35.638(d)(3)). The Region will base this determination on an examination of Tribal activities, reports, reviews, and other documents and discussions with the Tribe in the previous year.

Regions must include in each section 319 grant (or in a separate document, such as the grant-issuance cover letter, that is signed by the same EPA official who signs the grant), a written determination that the Tribe has made satisfactory progress during the previous fiscal year in meeting the schedule of milestones specified in its nonpoint source management program. The Regions must include brief explanations that support their determinations.

Statutory and Regulatory Requirements

All section 319 grants will be awarded and administered consistent with the statutory requirements in sections 319(h) and 518(e) of the Clean Water Act and applicable regulations in 40 CFR parts 31 and 35.

Revised Schedule for FY 2006

Beginning in FY 2006, the schedule for submitting work plans and awarding section 319 grants to Tribes will be modified to expedite the grant awards process. The revised schedule also impacts the date for determining eligibility for Tribes' participation in the section 319 grants process. These modifications are necessary to ensure that award decisions are made earlier in the fiscal year to provide adequate time for Tribes to implement projects within the applicable fiscal year.

Milestones Summary for FY 2006

Date for Tribes to be Eligible for 319 Grants.	October 14, 2005
Tribes Submit Base Grant Work Plans to Region.	December 2, 2005
Tribes Submit Competitive Grant Work Plans to Region.	December 2, 2005
Region Comments on Tribe's Base Grant Work Plan.	December 9, 2005
Region Forwards Competitive Work Plans to Headquarters.	December 9, 2005
Review Committee Discusses Competitive Work Plans	January 11, 2006
Review Committee Forwards Ranking Scores to HQ.	February 8, 2006
Review Committee Discusses Rankings.	February 14, 2006
Headquarters Notifies Regions/Tribes of Selections.	February 16, 2006
Tribes Submit Final Grant Application to Region.	March 9, 2006

Conclusion

By once again lifting the 1/3 of 1% statutory cap in FY 2005, Congress continues to provide the Tribes and EPA with an excellent opportunity to further Tribal efforts to reduce nonpoint source pollution and enhance water quality on Tribal lands. EPA looks forward to working closely with the Tribes to assist them in implementing effective nonpoint source programs in FY 2005 and creating a sound basis to assure that adequate funds will continue to be provided in the future.

Appendix A

Tribal 319 Competitive Proposal Review Sheet

The following review sheet will be used by EPA's Watershed Project Review Committee to rank proposed work plans for watershed projects.

Tribe Name _____Reviewer_____

(Weight × Value = Score) (Value: 1 is Lowest; 5 is Highest) (Maximum Score is 700)

Weight	Elements 1–5 (Maximum Score for Elements 1–5 = 500)	Value	Score
25	(1) *Provides work plan components to be funded under the grant.* FACTORS: —Identifies goals and objectives of the project, targeting on-the-ground improvements. —Identifies each significant category and subcategory of NPS pollution and water quality problem to be addressed. —Identifies causes and sources of NPS pollution. —Identifies where the NPS project will take place and the waterbody affected by the NPS pollutants—provides map. COMMENTS:		
25	(2) *Describes work plan commitments for each work plan component.* FACTORS: —Describes the on-the-ground project to be constructed or installed. —Identifies BMPs to be implemented. —Identifies expected water quality benefits to receiving water. COMMENTS:		
20	(3) *Provides estimated work years and estimated funding amounts for each work plan component.* FACTORS: —Identifies a specific "Start" and "End" date for each work plan component. —Provides interim milestone dates for achieving each work plan component. —Identifies specific budget for each work plan component—outlines total operational and construction cost of the project (including match). —Indicates readiness to proceed. COMMENTS:		

Weight	Elements 1–5 (Maximum Score for Elements 1–5 = 500)	Value	Score
15	(4) *Describes a performance evaluation process and reporting schedule.* FACTORS: —Includes specific factors by which performance can be evaluated. —Includes submission of a final report. COMMENTS:		
15	(5) *Identifies roles and responsibilities of the recipient and any project partners in carrying out work plan commitments.* FACTORS: —Identifies specific level of effort for responsible parties for each work plan component. —Identifies parties who will take the lead in carrying out the work plan commitments for each work plan component. COMMENTS:		
	Criteria 6–9 (Maximum Score for Criteria 6–9 = 200)		
20	(6) The project is listed as a priority implementation project or is located in a priority watershed identified in the Tribal NPS management program. If Yes, Value = 5 If No, Value = 0		
10	(7) The project includes cooperation and/or a combination of resources with other programs, parties, and agencies to provide additional technical and/or financial assistance. If Yes, Value = 5 If No, Value = 0		
5	(8) The project is designed to achieve load allocations for which an approved NPS TMDL has been developed (or the NPS components of mixed-source TMDLs). If Yes, Value = 5 If No, Value = 0		
5	(9) The project is designed to implement a watershed-based plan that is designed to restore NPS-impaired waters. FACTORS: —The extent to which the plan includes each component of a watershed-based plan as identified in EPA's FY 2004 Nonpoint Source Program and Grants Guidelines for States and Territories. COMMENTS:		
	TOTAL SCORE		

Any Additional Comments:

[FR Doc. 04–27986 Filed 12–21–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7851–7]

Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of revised guidance document.

SUMMARY: Section 106(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9606(b)(2), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), allows any person who has complied with an administrative order issued under section 106(a) of CERCLA to petition for reimbursement of the reasonable costs incurred in complying with the order, plus interest. To establish a claim for reimbursement, a petitioner must demonstrate that it was not liable for response costs under CERCLA section 107(a), or that EPA's selection of the ordered response action was arbitrary and capricious or was otherwise not in accordance with law. The authority to decide whether to grant such petitions has been delegated by the President to the EPA Administrator, and redelegated to EPA's Environmental Appeals Board (EAB) under EPA Delegation of Authority CERCLA 14–27 (June 1994).

The EAB issued procedural guidance (CERCLA Guidance) regarding the procedures for submission and review of petitions for reimbursement in June 1994. Based on its experience with reimbursement petitions after June 1994, the EAB issued revised CERCLA Guidance on October 9, 1996. The EAB issued a further revised version of its CERCLA Guidance on November 10, 2004. This Notice informs the general public of the availability of the November 10, 2004 revised CERCLA Guidance. The full text of the revised CERCLA Guidance is available on the EAB's Web site, *http://www.epa.gov/eab,* by clicking on ''EAB Guidance Documents.'' Copies of the document can also be obtained by calling Eurika Durr, Clerk of the Board, at the telephone number and e-mail address noted below.

FOR FURTHER INFORMATION CONTACT: For further information or for copies of the November 10, 2004 revised CERCLA Guidance, contact Eurika Durr, Clerk of the Board. Telephone number: (202) 233–0122. E-mail: *Durr.Eurika@epa.gov.*

Dated: December 14, 2004.

Kathie A. Stein,

Environmental Appeals Judge.

[FR Doc. 04–27996 Filed 12–21–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7851–2]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category for Operations Located in the Eastern Portion of Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG460000) and Record of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Issuance of NPDES General Permit.

SUMMARY: On December 9, 2004, the Regional Administrator of EPA Region 4 (the ''Region'') reissued the National Pollutant Discharge Elimination System (NPDES) general permit for operators located in the Outer Continental Shelf (OCS) of the eastern portion of the Gulf of Mexico, General Permit No. GMG460000, (formerly NPDES Permit no. GMG280000) for discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category cited at 40 Code of Federal Regulations (CFR) Part 435, subpart A, which includes guidelines for the discharges of non-aqueous drilling fluids (*i.e.*, synthetic-based drilling fluids) promulgated on January 22, 2001. This permit, which shall become effective on January 1, 2005, and will expire on December 31, 2009, authorizes discharges from exploration, development, and production facilities located in, and discharging to, all Federal waters of the eastern portion of the Gulf of Mexico seaward 200 meter contour depth outer boundary of the territorial seas offshore Florida and Alabama in the Eastern Planning Area and facilities in Mobile and Visoca Knoll lease blocks located seaward of the outer boundary of the territorial seas offshore Alabama and Mississippi in the Central Planning Area. Individual NPDES permits will be issued for operating facilities on lease blocks traversed by and shoreward of the 200 meter depth in the Eastern Planning area. The previous Region 4 general permit for Offshore Oil and Gas activities was published at 63 **Federal Register** (FR) 55718 on October 16, 1998, revised on March 14, 2001, at 63 FR 14988, and expired on October 31, 2003.

The proposed NPDES general permit was published at 69 FR 1743 on January 12, 2004. Three public hearings pertaining to the proposed permit, draft Supplemental Environmental Impact Statement (SEIS), and draft Ocean Discharge Criteria Evaluation (ODCE) document [*i.e.*, Clean Water Act (CWA) Section 403 Determination] were held in the Gulf Coast area during March 16–18, 2004, and the public comment period for these documents ended on April 20, 2004.

This notice constitutes the Agency's Record of Decision in accordance with the Council on Environmental Quality regulations at 40 CFR 1505.2 and EPA regulations at 40 CFR 6.606. Draft and Final SEISs were issued February 13, 2004 and August 27, 2004, respectively, that considered three permitting options available to EPA. Alternative A was the issuance of a general permit to include limits and permit conditions addressing the use of non-aqueous-based drilling fluids [which include synthetic-based drilling fluids (SBFs)] for existing and new sources in areas in general permitting coverage area. Alternative B was the issuance of a general permit that is unchanged from the previous general permit (1998), which did not include permit limits and/or conditions pertaining to the use of SBFs, and Alternative C was no issuance of any general permit. The SEIS process updated information contained in the Final EIS associated with the previous NPDES general permit for Offshore Oil and Gas activities in Region 4.

The final SEIS (EPA 904–9–04–004, dated July 2004) addressed the potential impacts to the environment from the use of SBFs, supplementing the final EIS completed in 1998. Alternative A, EPA's preferred alternative, has been found to be adequately protective of the offshore marine environment. In the process of reaching this finding, the SEIS considered available mitigation for avoiding and minimizing the adverse impacts to federal OCS waters and the coastal waters of the adjoining states. The proposed general permit contains numerous protective specifications which have been evaluated in the SEIS. The effluent discharge limitations, the SBF toxicity and biodegradation rate testing requirements, and the permit conditions requiring seabed surveys and agency coordination, are all deemed necessary mitigation to ensure the protection of the environment.

The general permit is also protective of state coastal waters. To comply with the federal consistency provisions of the Coastal Zone Management Act (CZMA), the permit includes a condition whereby an applicant for permit coverage must provide evidence that the proposed oil and gas extraction project has received the applicable state determination of consistency prior to EPA granting coverage.

EPA also considered in the SEIS the various applicable laws and regulations administered by EPA or other agencies which provide additional direct or indirect environmental mitigation. The Minerals Management Service (MMS) has the broadest regulatory mandate for OCS oil and gas extraction activities. The environmental mitigation provided by the general permit, as issued, will strengthen the mitigation administered by MMS and other federal environmental agencies.

The public review of the SEIS and proposed general permit did not reveal any additional significant adverse impacts not addressed in the SEIS. While the present knowledge of the fate and effects of SBF is considered adequate for regulatory purposes, understanding of the long term impacts of the use of SBF will come from ongoing study. Should new, pertinent technical information become available from these studies, that data would be fully evaluated by EPA relative to the present limitations and conditions of the general permit. To accomplish this, a re-opener condition'' is included in the permit.

General permit coverage for all permittees under the previous general permit (NPDES Permit No. GMG280000) will cease 30 days from the effective date of this permit. In order to obtain coverage under the reissued general permit, all permittees with existing general coverages must submit to EPA a new Notice of Intent (NOI) no later than 30 days after the effective date. All facility owners of newly acquired leases, on which a discharge will take place before the expiration date of the reissued general permit (operating facilities) within the area covered by the general permit, must file a written NOI for existing and for new sources prior to discharge. Non-operational facilities, *i.e.*, those on which no production and no discharges have taken place in the two (2) years prior to the effective date of the reissued general permit, are only eligible for coverage once a new MMS-approved Exploration Plan (EP), Development Production Plan (DPP) or Development Operational Coordination Document (DOCD) (or proof that MMS previously approved an EP, DPP or DOCD) is submitted to EPA. Otherwise, coverage under the previous general permit will terminate on the effective date of the reissued general permit. For all applicants, the NOI must contain the information set forth in 40 CFR 122.28(b)(2)(ii) and Part I.A.4 of the reissued NPDES general permit.

In accordance with Oil and Gas Extraction Point Source Category, Offshore Subcategory Effluent

Guidelines and New Source Performance Standards (NSPS) published at 58 FR 12454 on March 4, 1993, and amended at 66 FR 6850 on January 22, 2001, EPA Region 4 made a draft SEIS available concurrently with the draft general permit for review during the public comment period that addressed potential impacts from facilities that may be defined as new sources in the context of a comprehensive offshore permitting strategy. As set forth in Section 4.1 of the final SEIS (EPA 904/9–04–004), the Regional Administrator has determined that the discharges authorized under the reissued general permit would not pose environmental harm within the general permit coverage area.

The final NPDES general permit includes, best conventional pollutant control technology (BCT), and best available technology economically achievable (BAT) limitations for existing sources and NSPS limitations for new sources as promulgated in the effluent guidelines for the offshore subcategory at 58 FR 12454 and amended at 66 FR 6850 (March 4, 1993 and January 22, 2001, respectively). Other permit conditions are included based on the Best Professional Judgement of the permit writer.

DATES: The NPDES General Permit shall become effective on January 1, 2005, and shall expire at midnight on December 1, 2009. The final permit, the amendment to the fact sheet (which includes responses to comments on the proposed general permit), an electronic version of the EPA-Region 4 approved, optional Discharge Monitoring Report, and the final ODCE document can be downloaded from the following Internet Web site: *http://www.epa.gov/region4/water/permits/.*

For Administrative Record and Further Information: Contact Ms. Karrie-Jo Robinson-Shell, Environmental Engineer by phone at (404) 562–9308, by e-mail at *shell.karrie-jo@epa.gov,* or at the following mail address: Water Management Division, NPDES and Biosolids Permits Section, U.S. EPA-Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, Attention: Ms. Karrie-Jo Robinson-Shell.

SUPPLEMENTARY INFORMATION:

I. Procedures for Reaching a Final Permit Decision

EPA prepared draft and final SEISs that evaluated the potential impacts of the proposed Federal license (issuance of the general permit) within the context of a comprehensive NPDES permitting strategy for the Region 4 jurisdictional area of the Gulf of Mexico. The process was conducted in accordance with the regulations implementing the National Environmental Policy Act (NEPA). The findings of the final SEIS, the ODCE (*i.e.*, CWA Section 403(c) Evaluation) and public comments were used in reaching the decision to reissue the final NPDES general permit with the limitations and conditions, therein. Important interagency coordination occurred between the EPA, MMS, The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). A significant amount of information and assistance was obtained from MMS. Since EPA will be conducting individual permitting outside the general permit coverage area of new source development/production projects, it intends to coordinate its efforts with MMS on the environmental reviews required of each agency by National Environmental Policy Act (NEPA).

EPA has considered all written comments submitted on the proposed general permit, draft SEIS, draft ODCE document, as well as all comments received during the three public hearings. A summary of the comments on the proposed permit with EPA responses to these comments, the final general permit, the fact sheet, amendment to the fact sheet, and final ODCE document can be downloaded from the following Internet Web site: *http://www.epa.gov/region4/water/permits/.* Copies of these documents, which are made available to the public, state agencies and local governments as part of Region 4's administrative record, can also be obtained by contacting: Ms. Karrie-Jo Robinson-Shell, as directed above.

A formal hearing is available to challenge any NPDES permit issued according to the regulations at 40 CFR 124.15 except for a general permit as cited at 40 CFR 124.71. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21 as authorized at 40 CFR 122.28, and then request a formal hearing on the issuance or denial of an individual permit. Additional information regarding these procedures is available by contacting Mr. Kevin Smith, Associate Regional Counsel, Office of Environmental Accountability, at (404) 562–9525.

II. Procedures For Obtaining General Permit Coverage

Notice of Intent requirements for obtaining coverage for operating facilities are stated in Part I Section A.4 of the general permit. Coverage under the reissued general permit is effective as of the postmarked date of all NOIs deemed by EPA to be complete. EPA will notify applicants within 21 days of the postmarked date of the NOI letter to assign an NPDES general permit number or to identify any deficiencies with the NOI.

III. Exclusion of Non-Operational Leases

This permit does not apply to non-operational leases, *i.e.*, those on which no production and no discharge has taken place in the two (2) years prior to the effective date of the reissued general permit. EPA will not accept NOIs for such facilities, and the general permit will not cover such leases. Non-operational facilities will lose coverage under the previous general permit on the effective date of the reissued general permit. No subsequent exploration, development or production activities may take place on these facilities until and unless the permittee has obtained coverage under the new general permit or an individual permit. EPA will not process an NOI or individual permit application for non-operational until such time that documentation is submitted to EPA that MMS previously approved an EP, DPP or DOCD or a new EP, DPP or DOCD.

IV. State Water Quality Certification

Because state waters are not included in the area covered by the general permit, its effluent limitations and monitoring requirements are not subject to state water quality certification under CWA Section 401.

V. State Consistency Determination

Region 4 is required under CZMA to provide all necessary information for the States of Mississippi, Alabama and Florida to review this action for consistency with their approved Coastal Management Programs. A copy of the consistency determination on the proposed activities was sent to each affected State, along with copies of the proposed NPDES general permit, fact sheet, draft ODCE, and draft SEIS. Each state concurred with EPA's finding of consistency.

VI. Administrative Record

All relevant documents pertaining to this permit issuance are on file and may be inspected any time between 8:15 a.m. and 4:30 p.m., Monday through Friday

at: Water Management Division, NPDES and Biosolids Permits Section, U.S. EPA-Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, Attention: Ms. Karrie-Jo Robinson-Shell. Copies may also be obtained by written request to this same address. Electronic copies of the final NPDES general permit, the fact sheet, amendment to the fact sheet (which includes EPA's response to comments), and final ODCE may be downloaded at *http://www.epa.gov/region4/water/permits.*

VII. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is ''significant,'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has exempted review of NPDES general permits under the terms of Executive Order 12866.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule making requirements under the Administrative Procedures Act (APA) or any other statue, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Issuance of an NPDES general permit is not subject to rule making requirements, including the requirement for a general notice of proposed rule making, under APA Section 533 or any other law, and is thus not subject to the RFA requirements.

The APA defines two broad, mutually exclusive categories of agency action—''rules'' and ''orders.'' APA Section 551(4) defines rule as ''an agency statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or describing the organization, procedure, or practice or requirements of an agency * * *'' APA Section 551(6) defines orders as ''a final disposition * * * of an agency in a matter other than rule making but including licensing.'' APA Section 551(8) defines ''license'' to ''include * * * an agency permit * * *'' The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes ''rule making'' requirements. APA Section 551(5) defines ''rule making'' as ''the agency process for formulating, amending, or repealing a rule.'' By its terms, Section 553 applies only to rules and not to orders, exempting by definition permits.

IX. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1501, et seq, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (*See, e.g.*, UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 201 defines ''regulation'' by reference to section 658 of Title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law * * *''

NPDES general permits are not ''rules'' under APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

EPA has determined that the proposed permit reissuance would not contain a Federal requirement that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the permit would not significantly, nor uniquely, affect ''small governments''. For UMRA purposes, ''small governments'' is defined by reference to the definition of ''small governmental jurisdiction'' under RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the Agency establishes an alternative definition.

The permit also would not uniquely affect small governments because compliance with the permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit. Additionally, EPA does not expect small governments to operate facilities authorized to discharge by this permit.

X. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 [(NPDES Discharge Monitoring Reports (DMRs)].

Since this permit is very similar in reporting and application requirements and in discharges which are required to be monitored as the previous Eastern Gulf of Mexico OCS general permit (NPDES Permit No. GMG280000) the paperwork burdens are expected to be nearly identical. When it issued the previous OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare DMRs. It is estimated that the time required to prepare the request for coverage and DMRs for the reissued permit will be approximately the same.

XI. Other Legal Requirements

Oil Spill Requirements

Section 311 of the Clean Water Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges that are in compliance with NPDES permits are excluded from the provisions of section 311. However, the permits do not

preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials that are covered by section 311 of the Act.

Endangered Species Act

The Endangered Species Act (ESA) imposes important requirements upon, federal agencies regarding endangered species of fish, wildlife, or plants that have been designated as critical. Its implementing regulations (50 CFR Part 402) require the Regional Administrator to ensure, in consultation with the Secretaries of Interior and Commerce, that any action authorized, funded or carried out by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat [40 CFR 122.49(c)]. Implementing regulations for the ESA establish a process by which agencies consult with one another to ensure that issues and concerns of both the NMFS and the USFWS collectively are addressed. The NMFS and USFWS have responded to EPA's initiation of the coordination process under the regulations set forth by section 7 of the Endangered Species Act. The species identified by NMFS and USFWS as threatened or endangered species within the permit coverage area have been assessed for potential effects from the activities covered by the proposed permit in a biological assessment incorporated in the draft SEIS. This biological assessment was submitted to the NMFS and USFWS along with the proposed permit for consistency review and concurrence on the Region's finding of no adverse effect. This coordination is appended to the final EIS. Concurrence from the USFWS and the NMFS was received on October 10, 2004, and November 16, 2004, respectively. Both agencies stated that EPA's proposed action to reissue the general permit is not likely to affect resources protected under the ESA.

The NMFS, in association with the Gulf of Mexico Fishery Management Council, administers the Essential Fish Habitat (EFH) requirements established by the Magnuson-Stevens Fishery Conservation and Management Act. Federal agencies are required to consult with NMFS on any activity that may adversely effect fisheries. EFH coordination with NMFS occurred in conjunction with the SEIS which contains the EFH assessment information. EPA requested comments from NMFS on the EFH assessment and finding of minimal effects. The NMFS offered comments which included recommendations for minimizing potential adverse impacts of the discharges. Comments were fully considered and responded to by EPA in the FSEIS.

Ocean Discharge Criteria Evaluation

For discharges into waters located seaward of the inner boundary of the territorial seas, the CWA Section 403 requires that NPDES permits consider guidelines for determining the potential degradation of the marine environment. The guidelines, or Ocean Discharge Criteria (40 CFR Part 125, subpart M), are intended to ''prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal'' (45 FR 65942, October 3, 1980).

A final ODCE determination of no unreasonable degradation has been made by Region 4 based comments and information submitted during the public comment period for the proposed general permit. The potential effects of discharges under the proposed permit limitations and conditions are assessed in this document available from Region 4. The ODCE states that, based on the available information, the permit limitations are sufficient to determine that no unreasonable degradation should result from the permitted discharges.

Marine Protection, Research, and Sanctuaries Act

No marine sanctuaries as designated by the Marine Protection, Research, and Sanctuaries Act exist in the area to which the OCS permit applies.

Regulatory Flexibility Act

After review of the facts presented above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that these proposed general permits will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the vast majority of the parties regulated by this permit have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 *et seq.* (February 9, 1984). For those operators having fewer than 500 employees, this permit issuance will not have significant economic impact. These facilities are classified as Major Group 13—Oil and Gas Extraction SIC Crude Petroleum and Natural Gas.

James D. Giattina,

Director, Water Management Division.

[FR Doc. 04–27987 Filed 12–21–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7851–6]

Final Modification of National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities; Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of general permit modification.

SUMMARY: Today's action provides notice of modification of permit conditions specific to construction activities covered under EPA's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges from Construction Activities. The general permit is available for use where EPA is the NPDES permitting authority in EPA Regions 1–3 and 5–10. Coverage under the general permit authorizes the discharge of storm water from construction activities consistent with the terms of the permit. The revisions clarify that only sites covered by this permit can be subject to noncompliance with the permit. In addition, this modification includes correction of a typographical error in the permit and a corresponding error in the fact sheet.

DATES: This permit modification is effective on January 21, 2005. In accordance with 40 CFR 23.2, this action is considered issued for purposes of judicial review as of 1 p.m. eastern standard time (e.s.t.) on January 5, 2005. Under section 509(b)(1) of the Clean Water Act (CWA), judicial review of the Agency's actions relating to the issuance or denial of an NPDES permit is available in the United States Court of Appeals within 120 days after the decision is final for the purposes of judicial review. Under CWA section 509(b)(2), the modifications issued today may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

FOR FURTHER INFORMATION CONTACT: Jack Faulk: telephone 202–564–0768 or e-mail *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Materials?

1. *Docket.* EPA has established an official public docket for the Construction General Permit under Docket ID Number OW–2002–0055. The official public docket consists of the documents specifically referenced in the Construction General Permit, any public comments received, the proposed modification, and other information related to the permit. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B135, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.A.1. Once in the system, select ''search,'' then key in the appropriate docket identification number.

B. Who Are the EPA Regional Contacts for This Permit?

For EPA Region 1, contact Thelma Murphy: telephone number (617) 918–1615 or e-mail *murphy.thelma@epa.gov.*

For EPA Region 2, contact Stephen Venezia: telephone number (212) 637–3856 or e-mail *venezia.stephen@epa.gov* or, for Puerto Rico, Sergio Bosques: telephone number (787) 977–5838 or e-mail *bosques.sergio@epa.gov.*

For EPA Region 3, contact Paula Estornell: telephone number (215) 814–5632 or e-mail *estornell.paula@epa.gov.*

For EPA Region 5, contact Brian Bell: telephone (312) 886–0981 or e-mail *bell.brianc@epa.gov.*

For EPA Region 6, contact Brent Larsen: telephone (214) 665–7523 or e-mail *larsen.brent@epa.gov.*

For EPA Region 7, contact Mark Matthews: telephone (913) 551–7635 or e-mail *matthews.mark@epa.gov.*

For EPA Region 8, contact Greg Davis: telephone (303) 312–6082 or e-mail *davis.gregory@epa.gov.*

For EPA Region 9, contact Eugene Bromley: telephone (415) 972–3510 or e-mail *bromley.eugene@epa.gov.*

For EPA Region 10, contact Misha Vakoc: telephone (206) 553–6650 or e-mail *vakoc.misha@epa.gov.*

II. Background

*A. Why Is This Information Being Published in the **Federal Register**?*

EPA issues NPDES permits under the authority of Clean Water Act (CWA) section 402, 33 U.S.C. section 1342. Consistent with that authority, EPA Regions 1–3 and 5–10 issued their final NPDES construction general permits (commonly referred to collectively as the CGP) for discharges from large (five acres or more) and small (one to five acres) construction activities on July 1, 2003 (68 FR 39087) and August 4, 2003 (68 FR 45817). The CGP and accompanying fact sheet are available on EPA's Internet Web site at: *http://www.epa.gov/npdes/cgp.* Operators of both large and small construction sites in areas where EPA is the NPDES permitting authority may be eligible to obtain coverage under the CGP for allowable storm water and non-storm water discharges. See Section II.B.

The NPDES regulations at 40 CFR 124.5(a) specify that permits may be modified at the request of any interested person (including the permittee) or upon the Director's (in this instance, EPA's) initiative. As discussed in more detail below, the modifications EPA is making through this notice are due in part to a settlement agreement with certain petitioners that filed suit in response to EPA's July 1, 2003 issuance of the CGP.

Where EPA decides to modify a permit under 40 CFR 122.62, a draft permit, incorporating the proposed changes, is generally prepared and subjected to public notice and an opportunity for public comment consistent with 40 CFR 124.10. During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing. Any request for public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments will be considered in making the final decision with responses documented in the administrative record and available to the public.

EPA provided public notice in the **Federal Register** of its proposed modifications to the CGP. (69 FR 55818, September 16, 2004). Comments on the proposed modifications were due to EPA no later than October 18, 2004. EPA did not receive a request for public hearing.

Pursuant to 40 CFR 124.5(c)(2), when a permit is modified, only those conditions subject to modification are reopened. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. As such, EPA reviewed and considered comments submitted in response to the modifications proposed in the September 16, 2004 **Federal Register** notice.

B. Who Is Covered Under This Modified Permit?

The CGP is available only in those areas where EPA is the NPDES permitting authority. Coverage is obtained by meeting all eligibility criteria and submission of a complete and accurate Notice of Intent (NOI) to EPA as detailed in the CGP. Specifically, operators of large and small construction activities within the areas listed below may be eligible to obtain coverage under this permit for allowable storm water and non-storm water discharges and as such may be affected by this notice:

EPA Region 1: The States of Massachusetts and New Hampshire; Indian Country in the States of Connecticut, Massachusetts, and Rhode Island; and Federal facilities in Vermont.

EPA Region 2: The Commonwealth of Puerto Rico and Indian Country in the State of New York.

EPA Region 3: District of Columbia; and Federal facilities in the State of Delaware.

EPA Region 5: Indian Country in the States of Michigan, Minnesota, and Wisconsin, except the Sokaogon Chippewa (Mole Lake) Community.

EPA Region 6: The State of New Mexico; Indian Country in the States of Louisiana, Oklahoma, Texas, and New Mexico (except Navajo Reservation Lands [see EPA Region 9] and Ute Mountain Reservation Lands (see EPA Region 8)); discharges in the State of Oklahoma that are not under the authority of the Oklahoma Department of Environmental Quality, including activities associated with oil and gas exploration, drilling, operations, and pipelines (includes SIC Groups 13 and 46, and SIC codes 492 and 5171), and point source discharges associated with

agricultural production, services, and silviculture (includes SIC Groups 01, 02, 07, 08, 09); and discharges in the State of Texas that are not under the authority of the Texas Commission on Environmental Quality (formerly the Texas Natural Resource Conservation Commission), including activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline.

EPA Region 7: Indian Country in the States of Iowa, Kansas, and Nebraska (except Pine Ridge Reservation Lands (see EPA Region 8)).

EPA Region 8: Federal facilities in Colorado; Indian Country in Colorado (as well as the portion of the Ute Mountain Reservation located in New Mexico), Montana, North Dakota (as well as that portion of the Standing Rock Reservation located in South Dakota and excluding the portion of the lands within the former boundaries of the Lake Traverse Reservation, which is covered under the permit for areas of South Dakota), South Dakota (as well as the portion of the Pine Ridge Reservation located in Nebraska and the portion of the lands within the former boundaries of the Lake Traverse Reservation located in North Dakota and excluding the Standing Rock Reservation which is covered under the permit for areas of North Dakota), Utah (except Goshute and Navajo Reservation lands (*see* EPA Region 9)), and Wyoming.

EPA Region 9: The Islands of American Samoa and Guam, Johnston Atoll, Midway/Wake Islands and Commonwealth of the Northern Mariana Islands; Indian Country in Arizona (as well as Navajo Reservation lands in New Mexico and Utah), California, and Nevada (as well as the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon, and the Goshute Reservation in Utah).

EPA Region 10: The States of Alaska and Idaho; Indian Country in Alaska, Idaho (except Duck Valley Reservation (*see* EPA Region 9)), Washington, and Oregon (except for Fort McDermitt Reservation (*see* EPA Region 9)); and Federal facilities in Washington.

III. Today's Action

A. What Are the Final Permit (and Fact Sheet) Modifications?

EPA has considered all comments received and is modifying the permit and fact sheet consistent with the changes proposed in the **Federal Register** at 69 FR 55818 (September 16, 2004). Modifications described in III.A.1, III.A.2, and III.A.3 are identical to those proposed. As originally issued on July 1, 2003, the CGP suggested that construction site operators could be said to be violating the permit even in those instances when the operator is not covered, or not yet covered, by that permit (*e.g.*, before the operator submits a Notice of Intent (NOI) to be covered). As discussed in III.B., EPA is modifying this permit language to be consistent with the Agency's intent and its goals regarding protection of water quality. Two technical corrections, identified in III.A.4. and III.A.5., are modified as proposed. EPA received no comments on those two corrections. Accordingly, EPA hereby notices the following modifications:

1. On page 7, in section 2.3.D of the CGP, Late Notifications, third sentence, strike the phrase ''or permit noncompliance'' so that section 2.3.D now reads: ''Late Notifications: Operators are not prohibited from submitting NOIs after initiating clearing, grading, excavation activities, or other construction activities. When a late NOI is submitted, authorization for discharges occurs consistent with Subpart 2.1. The Agency reserves the right to take enforcement action for any unpermitted discharges that occur between the commencement of construction and discharge authorization.''

2. On page D–3 in Appendix D of the CGP, section D.3, second sentence, strike the phrase ''or permit noncompliance'' so that section D.3 of Appendix D now reads: ''Late Notifications: Operators are not prohibited from submitting waiver certifications after initiating clearing, grading, excavation activities, or other construction activities. The Agency reserves the right to take enforcement for any unpermitted discharges that occur between the time construction commenced and waiver authorization is granted.''

3. On page D–3 in Appendix D of the CGP, in the paragraph following section D.3, third sentence, strike the phrase ''or permit noncompliance'' so that section D.3 of Appendix D now reads: ''Submittal of a waiver certification is an optional alternative to obtaining permit coverage for discharges of storm water associated with small construction activity, provided you qualify for the waiver. Any discharge of storm water associated with small construction activity not covered by either a permit or a waiver may be considered an unpermitted discharge under the Clean Water Act. As mentioned above, EPA reserves the right to take enforcement for any unpermitted discharges that occur between the time construction commenced and either discharge authorization is granted or a complete and accurate waiver certification is submitted. EPA may notify any operator covered by a waiver that they must apply for a permit. EPA may notify any operator who has been in non-compliance with a waiver that they may no longer use the waiver for future projects. Any member of the public may petition EPA to take action under this provision by submitting written notice along with supporting justification.''

4. On page 11, in section 3.11.B of the CGP, strike the phrase ''the discharges'' so that section 3.11.B now reads: ''The SWPPP must be amended if during inspections or investigations by site staff, or by local, state, tribal, or federal officials, it is determined that the SWPPP is ineffective in eliminating or significantly minimizing pollutants in storm water discharges from the construction site.''

5. In section 3.11 of the CGP fact sheet, strike the phrase ''discharges are'' and replace it with ''SWPPP is'' so that the sentence now reads: ''The plan must also be amended if inspections or investigations by site staff, or by local, state, tribal, or federal officials determine that the SWPPP is ineffective in eliminating or significantly minimizing pollutants in storm water discharges from the construction site.''

B. What Comments Were Received on the Proposed Modification and How Did EPA Respond to Those Comments?

In response to the modifications proposed in the **Federal Register** at 69 FR 55818 (September 16, 2004), EPA received comments from seven parties: The Associated General Contractors of America (AGC); Centex Homes; Lennar Corporation; National Association of Homebuilders (NAHB); Pulte Homes, Inc.; Richmond American Homes of Colorado; and a unified submission from the State of New York and the New York State Department of Environmental Conservation (hereinafter, ''New York'' or ''the State''). All commenters except New York supported the modifications as proposed although several of these parties did comment on EPA's rationale for the modification.

Details of comments on the proposed modification and EPA's responses follow.

1. One Commenter Believes EPA Failed To Provide a Sound and Reasoned Basis for the Proposed Modification

New York claims that EPA has failed to provide a sound and reasoned basis for the proposed modification to the

CGP. The State argues that by allowing the late filing of NOIs and by conditioning discharge authorization upon subjecting the operator to potential liability for past permit violations, EPA chose the ''less drastic alternative'' to prohibiting late NOIs and CGP coverage altogether for the late notifier. The State further asserts that EPA provided clear notice to late filing operators that coverage under the CGP would come at the price of being vulnerable to liability for past permit violations. According to the State, nothing would then prevent those operators from opting to apply for an individual permit if the CGP's liability conditions are considered unfair or onerous.

Against the backdrop of what the State views as EPA's valid interest in preserving its enforcement authority for past permit noncompliance, the State asserts that the Agency's proposed modification is not supported by a well-founded justification. The State appears to disagree with EPA's characterization of the SWPPP as an eligibility criterion, and the Agency's conclusion that ''permit requirements do not apply prior to the submission of an NOI and prior to the operator's obtaining authorization to discharge storm water.'' See 69 FR 55820 (September 16, 2004). They first allege that § 2.3.D of the CGP makes it clear that violations occurring between commencement of construction and discharge authorization constitute permit noncompliance. The State next cites the omission of the SWPPP preparation requirements from the CGP eligibility sections (§ 1.2, 1.3, Appendices A and B, Part 3) to support the view that the requirement to prepare a SWPPP is not an eligibility criterion, but rather a permit condition. Lastly, the State recalls one of EPA's specific responses to a comment that defended the importance of retaining enforcement authority against late notifiers: ''* * * significant discharges of sediment can occur during the initial days of a construction project, making the need to have a SWPPP in place an[d] operational critical for the protection of water resources.''

EPA does not disagree with the State that the Agency's choice in allowing late filers to seek coverage under the CGP constituted a less severe alternative than a complete ban for such operators, and that the permit served to alert late filers that they will not be relieved of prior Clean Water Act violations. However, EPA disagrees with the State's contention that the Agency does not have a sound and reasoned basis for today's modification. First, EPA disagrees with the State's implicit suggestion that retention of the widest possible enforcement discretion for late filers is advisable or even necessary. It was not EPA's original intent in retaining the availability of CGP coverage for late notifiers to retain the widest enforcement discretion possible. Rather, EPA has attempted to strike an appropriate balance between (a) encouraging late filers to adhere to the terms of the CGP despite their failure to file the NOI in a timely manner, and (b) the commands of the CWA and its implementing regulations, including the prohibition against certain discharges without a permit, and the requirement for certain potential dischargers to seek permit coverage. It is by this strategy that EPA hopes to provide helpful incentives for late filers to seek coverage under the permit and to initiate as soon as possible on-site storm water controls critical to minimizing construction-related runoff. It is EPA's opinion that the 2003 CGP, which suggested the possibility of retroactive enforcement of any permit noncompliance that occurred prior to filing the late NOI, had the potential to have the opposite effect and may have discouraged late filers from instituting important pollution prevention measures. In this sense, EPA acknowledges that it did not fully account for the potential negative effect of the CGP's original ''permit noncompliance'' language on encouraging after-the-fact compliance with the CGP.

In addition, it is EPA's expectation that the CGP will continue to be the primary tool for covering thousands of construction discharge sources with permits. Individual permits will of course continue to be an option for the permit authority and the operator. Considering the large number of sources that will need to be permitted in the coming years, however, EPA fully anticipates that the CGP will remain the primary permitting vehicle. Today's permit modifications represent an important step in reducing EPA's concern that retaining the current ''permit noncompliance'' language would potentially make the CGP option more unpalatable to late filing operators than necessary, thus, driving late filing operators towards either individual permits or attempts to evade regulation altogether by declining to notify EPA of their construction activities.

In addition, if EPA had decided to retain the ''permit noncompliance'' language, which the Agency views as pushing many late filers towards seeking coverage under individual permits, EPA is concerned that further delays in permit coverage and the environmental benefits associated with implementation of the best management practices would likely result. The NPDES regulations provide that individual permit applications for storm water discharges associated with construction activity be submitted 90 days or more in advance of commencement of construction activities. Among the challenges with late filers is the fact that construction at these sites has already commenced and discharges may already have occurred. As such, EPA believes it is generally in the best interest of protecting the receiving waters to encourage operators to conduct their activities in conformance with the CGP as expeditiously as practicable.

Second, EPA did not mean to suggest, through these modifications, that the Agency does not take recalcitrant operators seriously. Late notifiers, i.e., construction site operators that fail to obtain timely permit coverage, may be liable under CWA Sections 301 (*e.g.*, unpermitted discharges) and 308 (records and reporting, inspections). As EPA indicated in the September 16, 2004 **Federal Register** Notice, failure to make a timely submission for permit coverage may constitute a violation of 40 CFR 122.21(c)(1). Although EPA would exercise its discretion in deciding which situations warrant enforcement of this provision, the Agency does not view filing of a late NOI as a shield from the requirements of 40 CFR 122.21(c)(1). Moreover, the modifications EPA is making to the CGP do not limit operator liability to violations for discharging without a permit.

Third, EPA is not convinced by New York's arguments opposing EPA's rationale for making the modifications discussed herein. In the proposal, EPA explained that the Agency did not intend for operators who fail to meet the eligibility requirements of the CGP to be subject simultaneously to actions asserting improper failure to obtain necessary permit coverage and for violations of the CGP itself for the same period of time. Therefore, as EPA further clarified, the fact that an operator fails to make itself eligible for CGP coverage should not make it subject to potential enforcement action for noncompliance with a permit to which it was never subject. EPA disagrees with the State's characterization of several of the CGP's provisions and one of the Agency's quoted response to comment as offering any real substantive or convincing reasons to abandon today's permit modification. First, the State interprets § 2.3.D's reservation of enforcement authority for permit noncompliance as a statement

supporting its belief that any violation of the permit's requirements during this period constitute ''permit noncompliance.'' By relying on this statement, however, the State appears to have forgotten that this is one of the very provisions EPA proposed to modify. Regardless of the authority EPA may have reserved for itself in the previous CGP, EPA has decided that, for the reasons stated above, this language should be changed. The State offers no argument suggesting that the position it believes EPA should take is compelled by any legal authority.

EPA also disagrees with the State's characterization of the SWPPP preparation requirement as a permit condition, and not an eligibility criterion. The State references several sections which address permit eligibility (*i.e.*, CGP § 1.2, 1.3, Appendices A and B). It is true that most of these provisions do not specifically describe the preparation of a SWPPP as an eligibility condition for coverage under the CGP. However, the State appears to have overlooked sections 1.3.A.3.c, 1.3.C.5 and 1.3.C.6. Each of these provisions refer to eligibility requirements that must be satisfied through the SWPPP. Nor does the State reference § 3.1.A which specifies that ''[a] SWPPP must be prepared prior to submission of an NOI'', or Section IV of the NOI form which asks whether ''the SWPPP has been prepared in advance of filing this NOI.'' The failure to prepare a SWPPP prior to submission of an NOI makes the operator ineligible for permit coverage, in the same way that the operator's failure to abide by any of the other requirements in § 1.2, 1.3, and Appendix B prohibit coverage. Therefore, EPA considers § 3.1.A to act as an eligibility requirement for coverage under the CGP. This is not to say that EPA would not also treat the SWPPP provisions as permit requirements after authorization under the CGP has been obtained. The point here is that the State's reading of the CGP terms is more cramped than EPA's preferred reading, and the Agency declines to follow the State's suggestion on this matter.

In addition, EPA does not agree with the State's reading of EPA's response to comment concerning the critical importance of having a SWPPP ''in place an[d] operational.'' The original comment sought some ''reasonable'' grace period (*e.g.*, the commenter suggested 30 days) during which EPA would not seek enforcement action against late notifiers in order to avoid discouraging them from filing an NOI. EPA responded that enforcement actions are discretionary, not mandatory for each violation; that the Agency takes into account the ''reasonableness of the violator's action'' when determining its response; and that the SWPPP being in place and operational prior to discharge is critical to the protection of water resources since ''significant discharges of sediment can occur during the initial days of a construction project.'' CGP Comment Response Document at 42 (ID # 294). This response was intended to stand for the principle that the existence or absence of a SWPPP is an important indicator of the reasonableness of a late notifier's actions and will affect how and whether enforcement action is taken. For instance, the fact that a late notifier had not yet developed a SWPPP may result in EPA seeking a higher penalty level for a CWA violation for failure to obtain a permit prior to discharge, as compared to a situation where a SWPPP appears to have been developed in good faith. Again, EPA generally views the requirement to complete the development of a SWPPP prior to NOI submission as an eligibility criterion for coverage under the CGP, as opposed to a potential violation of the permit itself. The State appears to believe that this comment response as suggesting that EPA intended to retain authority to pursue enforcement against the failure to prepare a SWPPP as a permit violation in addition to the failure to obtain discharge authorization. The State has read too much into this response. Indeed, there is nothing in this comment response that is incompatible with the action EPA is taking today.

2. One Commenter Noted That the Proposed Modification Is the Product of a Settlement of Litigation

New York notes in its comments that the proposed modification is the product of a settlement between EPA and ''Construction Industry Petitioners'' in *Wisconsin Builders Ass'n* v. *EPA,* United States Court of Appeals for the Seventh Circuit, Case No. 03–2908 (and consolidated cases). The commenter is correct in stating that EPA modified its settlement agreement with these petitioners in response to objections by the State and the Natural Resources Defense Council (NRDC). In its original settlement agreement, EPA planned to modify the CGP consistent with procedures for minor permit modifications [40 CFR 122.63(a)]. That is, EPA believed that the use of the term ''permit noncompliance'' had been included in the CGP inadvertently and inappropriately and that a minor modification was appropriate to correct this sort of error. Consistent with 40 CFR 122.63, minor modifications do not require public notice.

Subsequent to the State and NRDC's objection to the settlement, EPA opted to prepare a draft permit and public notice that permit consistent with 40 CFR 122.62 rather than debate whether the proposed changes were minor, as defined in 122.63.

3. Concerns Regarding ''Double Jeopardy''

Several commenters suggested that as currently worded, the CGP puts dischargers in ''double jeopardy'' for failing to obtain a storm water permit before commencement of construction. Commenters argue that a facility could then be fined both for failure to obtain permit coverage and failure to comply with permit requirements. EPA generally agrees with the commenters' concern to the extent that the Agency did not (and does not) intend to enforce against an operator for failure to obtain permit coverage while at the same time asserting permit violations for the same period during which the operator is not covered by the CGP. EPA retains the discretion, however, to bring an enforcement action for failure to obtain permit coverage while simultaneously bringing an action against the same operator for any discharges that occur while the operator lacks such permit coverage.

4. Comments Suggesting That EPA's Rationale for Violations Associated With Failure To Obtain Permit Coverage Is Incomplete

Several commenters expressed their concern that the proposed modification suggests that operators who fail to submit a timely NOI under the CGP would be in violation of 40 CFR 122.21(c)(1) for failure to submit a permit application at least 90 days before the date on which construction is to commence.'' Commenters believe this rationale is incomplete in that the CGP provides an alternative permit option, one for which a notice of intent is due only seven days prior to commencement of construction activity, consistent with general permit regulations at 122.28(b)(2)(i). Commenters are generally correct in noting that the Federal regulations provide that a notice of intent offers an option to the individual permit application. However, an operator who fails to submit a general permit notice of intent should not assume that s/he will be treated as if s/he were going to be following terms of the general permit. In fact, failure to submit a timely notice of intent may imply instead that an operator has opted not to be covered by that general permit.

Regardless, it was not EPA's intent to define every aspect of future enforcement actions through today's permit modifications. The concerns raised by commenters described immediately above are outside the scope of today's action. Although EPA may provide guidance addressing these specific concerns in the future, EPA declines to provide further response through today's notice.

5. Comments Asserting That Entities Cannot Be in Violation of the CWA or 40 CFR 122.21(c)(1) if They Have No Discharge of Storm Water

Various commenters asserted that operators cannot be said to be in violation of the CWA or 40 CFR 122.21(c)(1) in the absence of an actual discharge of storm water. These assertions are outside the scope of today's action. Although EPA may provide guidance addressing these specific concerns in the future, EPA declines to respond to this issue through today's notice.

C. Can I Apply for an Individual Permit? Can I Appeal the Permit Decision?

Yes. Persons affected by this permit action may apply for an individual permit as specified at 40 CFR 122.21 (and authorized at 40 CFR 122.28), and then petition the Environmental Appeals Board to review any condition of the individual permit (40 CFR 124.19).

D. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this final rule is not a significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule-making requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. Issuance of an NPDES general permit is not a rulemaking and, accordingly, is not subject to rulemaking requirements, under APA section 553 or any other law. Therefore, it is thus not subject to the RFA requirements. The APA defines two broad, mutually exclusive categories of agency action—''rules'' and ''orders.'' Its definition of ''rule'' encompasses ''an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *'' APA section 551(4). Its definition of ''order'' is residual: ''a final disposition * * * of an agency in a matter other than rule making but including licensing.'' APA section 551(6) (emphasis added). The APA defines ''license'' to ''include * * * an agency permit * * *'' APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes ''rule making'' requirements. The APA defines ''rule making'' as ''the agency process for formulating, amending, or repealing a rule.'' APA section 551(5). By its terms, then, section 553 applies only to ''rules'' and not also to ''orders,'' which include permits.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (*See, e.g.*, UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to 2 U.S.C. 658 which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. * * *'' As discussed in the RFA section of this notice, NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits and modifications thereto are not ''rules'' for RFA or UMRA purposes.

G. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities resulting from the final modification of the construction general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The information collection requirements of the construction general permit for small and large construction activities have already been approved by the Office of Management and Budget (OMB) (OMB Control Nos. 2040–0211 and 2040–0188, respectively) in previous submissions made for the NPDES permit program under the provisions of the Clean Water Act.

Signed and issued this 15th day of December, 2004.

Linda M. Murphy,

Director, Office of Ecosystem Protection, Region I.

Signed and issued this 14th day of December, 2004.

Walter Mugdan,

Director, Division of Environmental Planning and Protection, Region II.

Signed and issued this 14th day of December, 2004.

Carl Soderberg,

Director, Caribbean Environmental Protection Division, Region II.

Signed and issued this 14th day of December, 2004.

Jon M. Capacasa,

Director, Water Protection Division, Region III.

Signed and issued this 13th day of December, 2004.

Timothy C. Henry,

Acting Director, Water Division, Region V.

Signed and issued this 14th day of December, 2004.

Jane B. Watson,

Acting Director, Water Quality Protection Division, Region VI.

Signed and issued this 15th day of December, 2004.

Leo J. Alderman,

Director, Water, Wetlands, and Pesticides Division, Region VII.

Signed and issued this 14th day of December, 2004.

Judy Wong,

Director, Water Program, Region VIII.

Signed and issued this 10th day of December, 2004.

Alexis Strauss,

Director, Water Division, Region IX.

Signed and issued this 13th day of December, 2004.

Michael J. Lidgard,

Acting Director, Office of Water and Watersheds, Region X.

[FR Doc. 04–27995 Filed 12–21–04; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance the export of approximately $27 million in U.S. equipment, technology and services to a facility in Greece that will fabricate photovoltaic modules. The U.S. exports will enable the Greek facility to fabricate modules that will generate a total of approximately 5 megawatts of electricity per year. Initial production is expected to commence in 2005. Available information indicates that this new production will be consumed primarily in Europe. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register.**

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 04–27931 Filed 12–21–04; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2004–N–12]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2004–05 fourth quarter review cycle under the Finance Board's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board on or before March 4, 2005.

ADDRESSES: Bank members selected for the 2004–05 fourth quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Federal Housing Finance Board, Office of Supervision, Community Investment and Affordable Housing, 1777 F Street, NW., Washington, DC 20006, or by electronic mail at *FITZGERALDE@FHFB.GOV*.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Supervision, Community Investment and Affordable Housing, by telephone at (202) 408–2874, by electronic mail at *FITZGERALDE@FHFB.GOV*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the March 4, 2005 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before January 31, 2005, each Bank will notify the members in its district that have been selected for the 2004–05 fourth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support

Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's Web site: *http://www.fhfb.gov.* Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2004–05 fourth quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

Union Savings Bank	Danbury	CT
Jewett City Savings Bank	Jewett City	CT
The First National Bank of Litchfield	Litchfield	CT
Naugatuck Valley Savings and Loan	Naugatuck	CT
New Alliance Bank	New Haven	CT
Newtown Savings Bank	Newtown	CT
Fairfield County Bank-Corp	Ridgefield	CT
First County Bank	Stamford	CT
Patriot National Bank	Stamford	CT
Cornerstone Bank	Stamford	CT
Dutch Point Credit Union	Wethersfield	CT
Windsor Locks Federal Credit Union	Windsor Locks	CT
Northeast Bank FSB	Auburn	ME
Bangor Federal Credit Union	Bangor	ME
Bangor Savings Bank	Bangor	ME
Bar Harbor Savings & Loan Association	Bar Harbor	ME
First Citizens Bank	Presque Isle	ME
York County Federal Credit Union	Sanford	ME
North Abington Co-operative Bank	Abington	MA
South Adams Savings Bank	Adams	MA
Athol Credit Union	Athol	MA
Barre Savings Bank	Barre	MA
Crescent Credit Union	Brockton	MA
Brookline Bank	Brookline	MA
Boston Federal Savings Bank	Burlington	MA
Cambridge Trust Company	Cambridge	MA
North Cambridge Co-operative Bank	Cambridge	MA
Canton Co-Operative Bank	Canton	MA
Meetinghouse Cooperative Bank	Dorchester	MA
Edgartown National Bank	Edgartown	MA
Fitchburg Savings Bank, FSB	Fitchburg	MA
Fidelity Cooperative Bank	Fitchburg	MA
Greenfield Co-operative Bank	Greenfield	MA
Haverhill Co-operative Bank	Haverhill	MA
Ipswich Co-operative Bank	Ipswich	MA
Leominster Credit Union	Leominster	MA
Lowell Co-operative Bank	Lowell	MA
Marlborough Savings Bank	Marlborough	MA
The Milford National Bank & Trust Co	Milford	MA
Natick Federal Savings Bank	Natick	MA
Inst. for Svgs in Newburyport & its Vicinity	Newburyport	MA
South Coastal Bank	Rockland	MA
Rockland Federal Credit Union	Rockland	MA
The Cooperative Bank	Roslindale	MA
Heritage Co-operative Bank	Salem	MA
Salem Five Cents Savings Bank	Salem	MA
Taupa Lithuanian Federal Credit Union	South Boston	MA
Southbridge Credit Union	Southbridge	MA
Stoneham Savings Bank	Stoneham	MA
Country Bank for Savings	Ware	MA
Wellesley Co-operative Bank	Wellesley	MA
South Shore Co-operative Bank	Weymouth	MA
Winchester Cooperative Bank	Winchester	MA
Bay State Savings Bank	Worcester	MA
Cape Cod Cooperative Bank	Yarmouth Port	MA
Centrix Bank & Trust	Bedford	NH
The Berlin City Bank	Berlin	NH
Village Bank & Trust Company	Gilford	NH
Granite Bank	Keene	NH
Lancaster National Bank	Lancaster	NH
Profile Bank	Rochester	NH
Holy Rosary Regional Credit Union	Rochester	NH
Bank of Newport	Middletown	RI
Citizens Bank of Rhode Island	Providence	RI
Greenwood Credit Union	Warwick	RI
Westerly Savings Bank	Westerly	RI
Brattleboro Savings & Loan Assn. FA	Brattleboro	VT
Lyndonville Savings Bank & Trust Co	Lyndonville	VT

First Community Bank	Woodstock	VT

Federal Home Loan Bank of New York—District 2

Cape Savings Bank	Cape May Court House	NJ
United Roosevelt Savings Bank	Carteret	NJ
Commerce Bank, N.A	Cherry Hill	NJ
Unity Bank	Clinton	NJ
1st Constitution Bank	Cranbury	NJ
Delanco Federal Savings Bank	Delanco	NJ
Pinnacle Federal Credit Union	Edison	NJ
Columbia Bank	Fair Lawn	NJ
Haven Savings Bank	Hoboken	NJ
Manasquan Savings Bank	Manasquan	NJ
Susquehanna Patriot Bank	Marlton	NJ
1st Bank of Sea Isle City	Sea Isle City	NJ
Somerset Valley Bank	Somerville	NJ
Union Center National Bank	Union	NJ
Wawel Savings Bank, SLA	Wallington	NJ
Crest Savings Bank	Wildwood	NJ
Bridgehampton National Bank	Bridgehampton	NY
Atlas Savings and Loan Association	Brooklyn	NY
Visions Federal Credit Union	Endicott	NY
Tompkins Trust Company	Ithaca	NY
The National Union Bank of Kinderhook	Kinderhook	NY
Mid-Hudson Valley Federal Credit Union	Kingston	NY
Medina Savings and Loan Association	Medina	NY
Emigrant Savings Bank	New York	NY
Isreal Discount Bank of New York	New York	NY
NBT Bank, N.A	Norwich	NY
The Oneida Savings Bank	Oneida	NY
Suffolk County National Bank	Riverhead	NY
Adirondack Bank, N.A	Saranac Lake	NY
Sawyer Savings Bank	Saugerties	NY
Bank of Smithtown	Smithtown	NY
Walden Federal Savings and Loan Assn	Walden	NY
Fourth Federal Savings Bank	White Plains	NY
First Central Savings Bank	Whitestone	NY
City and Suburban Federal Savings Bank	Yonkers	NY
Banco Bilbao Vizcaya Argentaria PR	Hato Rey	PR
Westernbank Puerto Rico	Mayaguez	PR

Federal Home Loan Bank of Pittsburgh—District 3

Christiana Bank & Trust Company	Greenville	DE
ING Bank, FSB	Wilmington	DE
First National Bank of Wyoming	Wyoming	DE
Commerce Bank/Pennsylvania, N.A	Cherry Hill	NJ
American Bank	Allentown	PA
Iron Workers Bank	Aston	PA
Brentwood Bank	Bethel Park	PA
National Penn Bank	Boyertown	PA
Union Building & Loan Savings Bank	Bridgewater	PA
Citizens National Bank of Evans City PA	Butler	PA
Community Bank & Trust Co.	Clarks Summit	PA
Clearfield Bank & Trust Company	Clearfield	PA
First Financial Bank	Downingtown	PA
Vartan National Bank	Harrisburg	PA
The Dime Bank	Honesdale	PA
Indiana First Savings Bank	Indiana	PA
The Jim Thorpe National Bank	Jim Thorpe	PA
Manor National Bank	Manor	PA
First Citizens National Bank	Mansfield	PA
Province Bank FSB	Marietta	PA
The First National Bank of Marysville	Marysville	PA
Standard Bank	Monroeville	PA
American Heritage Federal Credit Union	Philadelphia	PA
The Philadelphia Trust Company	Philadelphia	PA
SB1 Federal Credit Union	Philadelphia	PA
New Century Bank	Phoenixville	PA
Allegheny Valley Bank of Pittsburgh	Pittsburgh	PA
PNC Bank, National Association	Pittsburgh	PA
Mt. Troy Bank	Pittsburgh	PA
GUARD Security Bank	Plains	PA
Somerset Trust Company	Somerset	PA

Union National Bank and Trust Company	Souderton	PA
Omega Bank N/A	State College	PA
ESSA Bank & Trust	Stroudsburg	PA
Compass Federal Savings Bank	Wilmerding	PA
Sovereign Bank FSB	Wyomissing	PA
Capital State Bank	Charleston	WV
Hancock County Savings Bank FSB	Chester	WV
Citizens National Bank	Elkins	WV
The Monongahela Valley Bank, Inc.	Fairmont	WV
Fayette County Nat'l Bank of Fayetteville	Fayetteville	WV
Rock Branch Community Bank	Nitro	WV
The Bank of Romney	Romney	WV
Traders Bank	Spencer	WV
Progressive Bank, N.A.—Wheeling	Wheeling	WV

Federal Home Loan Bank of Atlanta—District 4

America's First Federal Credit Union	Birmingham	AL
First Educators Credit Union	Birmingham	AL
First Bank of Boaz	Boaz	AL
Town-Country National Bank	Camden	AL
Coosa Pines Federal Credit Union	Childersburg	AL
Heritage Bank	Decatur	AL
Escambia County Bank	Flomaton	AL
First Federal Bank	Fort Payne	AL
Traders & Farmers Bank	Haleyville	AL
City Bank of Hartford	Hartford	AL
First National Bank of Jasper	Jasper	AL
Pinnacle Bank	Jasper	AL
Marion Bank and Trust Company	Marion	AL
Bank of Pine Hill	Pine Hill	AL
Merchants & Farmers Bank	Tuscaloosa	AL
Alabama Credit Union	Tuscaloosa	AL
First Federal Bank, FSB	Tuscaloosa	AL
Alabama Exchange Bank	Tuskegee	AL
AmeriFirst Bank	Union Springs	AL
Small Town Bank	Wedowee	AL
Bank of York	York	AL
Department of Veterans Affairs FCU	Washington	DC
Independence Federal Savings Bank	Washington	DC
Community National Bank of Bartow	Bartow	FL
Platinum Bank	Brandon	FL
Citizens & Peoples Bank, N.A	Cantonmont	FL
R–G Crown Bank	Casselberry	FL
First National Bank of Nassau County	Fernandian Beach	FL
Harbor Federal Savings Bank	Fort Pierce	FL
Citizens Bank & Trust	Frostproof	FL
Homosassa Springs Bank	Homosassa Springs	FL
Columbia County Bank	Lake City	FL
First Federal Savings Bank of Lake County	Leesburg	FL
First Southern Bank	Lighthouse Point	FL
Intercredit Bank, NA	Miami	FL
Pacific National Bank	Miami	FL
City National Bank of FLorida	Miami	FL
Interamerican Bank, FSB	Miami	FL
Northern Trust Bank of FLorida, N.A	Miami	FL
Metro Bank of Dade County	Miami	FL
Farmers and Merchants Bank	Monticello	FL
The First National Bank of Mount Dora	Mount Dora	FL
First Commercial Bank of FLorida	Orlando	FL
Fairwinds Credit Union	Orlando	FL
GulfStream Community Bank	Port Richey	FL
First Peoples Bank	Port St. Lucie	FL
Community Educators CU of Brevard	Rockledge	FL
SunCoast Bank	Sarasota	FL
Public Bank	St. Cloud	FL
Cornerstone Community Bank	St. Petersburg	FL
First Community Bank of America	St. Petersburg	FL
Union Bank of FLorida	Sunrise	FL
Terrace Bank	Tampa	FL
Valrico State Bank	Valrico	FL
Fidelity Federal Bank & Trust	West Palm Beach	FL
Grand Bank & Trust of FLorida	West Palm Beach	FL
The Perkins State Bank	Williston	FL
Albany Bank and Trust	Albany	GA

North Atlanta National Bank	Alpharetta	GA
Bank of North Georgia	Alpharetta	GA
United Americas Bank, N.A	Atlanta	GA
SunTrust Bank	Atlanta	GA
First Port City Bank	Bainbridge	GA
Peoples State Bank and Trust	Baxley	GA
Bank of Early	Blakely	GA
The Coastal Bank of Georgia	Brunswick	GA
West Georgia National Bank	Carrollton	GA
Unity National Bank	Cartersville	GA
Tippins Bank and Trust Company	Claxton	GA
Liberty National Bank	Conyers	GA
The Citizens Bank of Forsyth County	Cumming	GA
First Bank of Dalton	Dalton	GA
Alliance National Bank	Dalton	GA
Decatur First Bank	Decatur	GA
The Peachtree Bank	Duluth	GA
The Bank of Edison	Edison	GA
Community Banking Co. of Fitzgerald	Fitzgerald	GA
Colony Bank of Fitzgerald	Fitzgerald	GA
Farmers State Bank	Lumpkin	GA
Southern National Bank	Marietta	GA
Riverside Bank	Marietta	GA
The Security State Bank	McRae	GA
First Bank of Coastal Georgia	Pembroke	GA
First Peoples Bank	Pine Mountain	GA
Colony Bank Quitman, FSB	Quitman	GA
Citizens Bank of Washington County	Sandersville	GA
Bank of Hancock County	Sparta	GA
Eagle National Bank	Stockbridge	GA
Thomas County Federal S&L Association	Thomasville	GA
Stephens Federal Bank	Toccoa	GA
Bank of Dade	Trenton	GA
Altamaha Bank and Trust Company	Uvalda	GA
Commercial Banking Company	Valdosta	GA
Darby Bank and Trust Company	Vidalia	GA
Vidalia Federal Savings and Loan Assn	Vidalia	GA
Bank of Dooly	Vienna	GA
The Peoples Bank of Willacoochee	Willacoohee	GA
The Peoples Bank	Winder	GA
Talbot State Bank	Woodland	GA
Harford Bank	Aberdeen	MD
Municipal Employees CU of Baltimore	Baltimore	MD
Golden Prague FS&LA	Baltimore	MD
Madison Square Federal Savings Bank	Baltimore	MD
Hopkins Federal Savings Bank	Baltimore	MD
Arundel Federal Savings Bank	Baltimore	MD
Chesapeake Bank of Maryland	Baltimore	MD
Rosedale Federal Savings & Loan Assn	Baltimore	MD
Fairmount Federal Savings Bank	Baltimore	MD
Bay Net, A Community Bank	Bel Air	MD
Chevy Chase Bank, F.S.B	Bethesda	MD
Marriott Employees Federal Credit Union	Bethesda	MD
U.S. Postal Service Federal Credit Union	Clinton	MD
Suburban Federal Savings Bank	Crofton	MD
The Bank of Delmarva, N.A	Delmar	MD
The Patapsco Bank	Dundalk	MD
Farmers and Mechanics Bank	Frederick	MD
OBA Federal Savings Bank	Germantown	MD
Library of Congress Federal Credit Union	Hyattsville	MD
Maryland Permanent Bank and Trust	Owings Mills	MD
Senator Bank	Timonium	MD
Community Bank of Tri-County	Waldorf	MD
Woodsboro Bank	Woodsboro	MD
The Bank of Asheville	Asheville	NC
Asheville Savings Bank	Asheville	NC
First State Bank	Burlington	NC
Crescent State Bank	Cary	NC
Charlotte Metro Credit Union	Charlotte	NC
First Trust Bank	Charlotte	NC
Sharonview Federal Credit Union	Charlotte	NC
Cherryville Federal S&L Association	Cherryville	NC
First Federal Bank	Dunn	NC
Mutual Community Savings Bank, SSB	Durham	NC
North Carolina Community FCU	Goldsboro	NC

First Federal Savings Bank	Lincolnton	NC
Progressive State Bank	Lumberton	NC
Mooresville Savings Bank, SSB	Mooresville	NC
Lumbee Guarantee Bank	Pembroke	NC
Paragon Commercial Bank	Raleigh	NC
North Carolina Local Govt Employees CU	Raleigh	NC
Roanoke Valley Savings Bank, SSB	Roanoke Rapids	NC
Roxboro Savings Bank, SSB	Roxboro	NC
First South Bank	Washington	NC
WNC Community Credit Union	Waynesville	NC
Truliant Federal Credit Union	Winston-Salem	NC
Abbeville Savings and Loan Association	Abbeville	SC
Sentry Bank and Trust	Cheraw	SC
The Conway National Bank	Conway	SC
First Piedmont F&SL Assn. of Gaffney	Gaffney	SC
New Commerce Bank, NA	Greenville	SC
First Savers Bank	Greenville	SC
S.C. Telco Federal Credit Union	Greenville	SC
Citizens Building and Loan Association	Greer	SC
Mutual Savings Bank	Hartsville	SC
The Commercial Bank	Honea Path	SC
Founders Federal Credit Union	Lancaster	SC
First Community Bank, N.A	Lexington	SC
Pee Dee Federal Savings Bank	Marion	SC
Coastal Federal Bank	Myrtle Beach	SC
South Carolina Federal Credit Union	North Charleston	SC
Family Trust Federal Credit Union	Rock Hill	SC
Seneca National Bank	Seneca	SC
Oconee Federal Savings and Loan Assn	Seneca	SC
Community First Bank	Walhalla	SC
First Federal of South Carolina, FSB	Walterboro	SC
Bank of Walterboro	Walterboro	SC
James Monroe Bank	Arlington	VA
Citizens Bank and Trust Company	Blackstone	VA
First Community Bank, N.A	Bluefield	VA
Alliance Bank Corporation	Chantilly	VA
Albemarle First Bank	Charlottesville	VA
Monarch Bank	Chesapeake	VA
Acacia Federal Savings Bank	Falls Church	VA
Virginia Savings Bank, F.S.B	Front Royal	VA
Virginia Community Bank	Louisa	VA
Community First Bank	Lynchburg	VA
First Federal Savings and Loan Association	Martinsville	VA
Capital One, F.S.B	McLean	VA
Cardinal Bank, N.A	McLean	VA
Community Bankers' Bank	Midlothian	VA
Shenandoah Valley National Bank	Moorefield	VA
TowneBank	Portsmouth	VA
Millennium Bank, N.A	Reston	VA
Richmond Federal Credit Union	Richmond	VA
Shenandoah Life Insurance Company	Roanoke	VA
Bank of Tazewell County	Tazewell	VA
Franklin Security Bank	Virginia Beach	VA
Fort Belvoir Federal Credit Union	Woodbridge	VA

Federal Home Loan Bank of Cincinnati—District 5

Home FS&LA of Ashland	Ashland	KY
Kentucky Federal Savings and Loan Assn	Covington	KY
Fort Campbell Federal Credit Union	Fort Campbell	KY
South Central Bank of Barren County, Inc	Glasgow	KY
Greensburg Deposit Bank and Trust Co	Greensburg	KY
First Security Bank of Lexington, Inc	Lexington	KY
The Casey County Bank	Liberty	KY
Independence Bank	Livermore	KY
Laurel National Bank	London	KY
Louisville Community Development Bank	Louisville	KY
Commonwealth Bank and Trust Company	Louisville	KY
Home Savings Bank, FSB	Ludlow	KY
Madisonville Building and Loan Assn	Madisonville	KY
First Guaranty Bank	Martin	KY
Bank of Maysville	Maysville	KY
Hart County Bank and Trust Company	Munfordville	KY
The Farmers Bank	Nicholasville	KY
First Security Bank of Owensboro	Owensboro	KY

Owingsville Banking Company	Owingsville	KY
Family Bank, FSB	Paintsville	KY
Community Trust Bank, Inc	Pikeville	KY
Madison Bank	Richmond	KY
Cumberland Security Bank, Inc	Somerset	KY
Citizens National Bank of Somerset	Somerset	KY
Commercial Bank West	Liberty	KY
The Antwerp Exchange Bank Company	Antwerp	OH
Hocking Valley Bank	Athens	OH
Rockhold, Brown & Company Bank	Bainbridge	OH
Citizens FS&LA of Bellefontaine	Bellefontaine	OH
The Citizens Bank Company	Beverly	OH
Mercer Savings Bank	Celina	OH
The Cheviot Building and Loan Company	Cheviot	OH
The North Side Bank and Trust Company	Cincinnati	OH
Cincinnati Federal Savings and Loan Assn.	Cincinnati	OH
Kemba Credit Union, Inc	Cincinnati	OH
Cincinnati Police Federal Credit Union	Cincinnati	OH
Ohio Savings Bank	Cleveland	OH
National City Bank	Cleveland	OH
The Home Loan Savings Bank	Coshocton	OH
The Covington Savings and Loan Assn	Covington	OH
The Citizens Bank of DeGraff	De Graff	OH
Employees Own Federal Credit Union	Defiance	OH
The Northern Savings and Loan Company	Elyria	OH
The Genoa Savings and Loan Company	Genoa	OH
First National Bank of Germantown	Germantown	OH
Indian Village Community Bank	Gnadenhutten	OH
Chaco Credit Union, Inc	Hamilton	OH
The Hicksville Bank	Hicksville	OH
The Citizens Bank of Higginsport	Higginsport	OH
Salt Creek Valley Bank	Laurelville	OH
The Delaware County Bank & Trust Co	Lewis Center	OH
The Home Builders Association	Lynchburg	OH
The Bank of Magnolia Company	Magnolia	OH
The Citizens Savings Bank	Martins Ferry	OH
Peoples Building, Loan and Savings Co	Mason	OH
Western Reserve Bank	Medina	OH
First Clermont Bank	Milford	OH
Bramble FS&LA of Cincinnati	Milford	OH
Commercial & Savings Bank of Millersburg	Millersburg	OH
The Nelsonville Home and Savings Assn	Nelsonville	OH
Peoples National Bank	New Lexington	OH
The First National Bank of Pandora	Pandora	OH
Century Bank	Parma	OH
Farmers Bank and Savings Company	Pomeroy	OH
The St. Henry Bank	St. Henry	OH
The Arlington Bank	Upper Arlington	OH
The First Citizens NB of Upper Sandusky	Upper Sandusky	OH
The Commercial Savings Bank	Upper Sandusky	OH
The Versailles Savings and Loan Co	Versailles	OH
First National Bank of Waverly	Waverly	OH
Commerce National Bank	Worthington	OH
Spring Valley Bank	Wyoming	OH
The Home S&LC of Youngstown, Ohio	Youngstown	OH
Century National Bank	Zanesville	OH
Athens Federal Community Bank	Athens	TN
Bells Banking Company	Bells	TN
Benton Banking Company	Benton	TN
The Bank of Bolivar	Bolivar	TN
Premier Bank of Brentwood	Brentwood	TN
People's Bank and TC of Picket County	Byrdstown	TN
Bank of Camden	Camden	TN
Legends Bank	Clarksville	TN
BankTennessee	Collierville	TN
Greenfield Banking Company	Greenfield	TN
First Peoples Bank of Tennessee	Jefferson City	TN
Lawrenceburg FS&LA	Lawrenceburg	TN
First Central Bank	Lenoir City	TN
Community National Bank	Lexington	TN
Union Bank & Trust Company	Livingston	TN
City of Memphis Credit Union	Memphis	TN
EFS National Bank	Memphis	TN
Farmers State Bank	Mountain City	TN
Citizens Savings Bank & Trust Company	Nashville	TN

Tennessee Teachers Credit Union	Nashville	TN
Community Bank	Nashville	TN
The First National Bank of Oneida	Oneida	TN
First Trust & Savings Bank	Oneida	TN
Citizens Bank and TC of Grainger County	Rutledge	TN
The Bank of Waynesboro	Waynesboro	TN

Federal Home Loan Bank of Indianapolis—District 6

Knisely Bank	Butler	IN
The Elberfeld State Bank	Elberfeld	IN
Mutual Savings Bank	Franklin	IN
First FS&LA of Hammond	Hammond	IN
Bank Calumet National Association	Hammond	IN
Citizens First State Bank	Hartford City	IN
FORUM Credit Union	Indianapolis	IN
Central Indiana School Educators CU	Indianapolis	IN
First Indiana Bank	Indianapolis	IN
The Lafayette Life Insurance Company	Lafayette	IN
Farmers State Bank	LaGrange	IN
Linden State Bank	Linden	IN
St. Joseph Capital Bank	Mishawaka	IN
MFB Financial	Mishawaka	IN
West End Savings Bank	Richmond	IN
Scott County State Bank	Scottsburg	IN
Communitywide Federal Credit Union	South Bend	IN
Indiana State University Federal CU	Terre Haute	IN
Steel Parts Federal Credit Union	Tipton	IN
Purdue Employees Federal Credit Union	West Lafayette	IN
The Randolph County Bank	Winchester	IN
TLC Community Credit Union	Adrian	MI
Sunrise Family Credit Union	Bay City	MI
Brighton Commerce Bank	Brighton	MI
Macomb Community Bank	Clinton Township	MI
Community Bank of Dearborn	Dearborn	MI
DFCU Financial	Dearborn	MI
Communicating Arts Credit Union	Detroit	MI
First Independence National Bank	Detroit	MI
Michigan State University FCU	East Lansing	MI
Northern Michigan Bank	Escanaba	MI
Metrobank	Farmington Hills	MI
Citizens Bank	Flint	MI
Grand Haven Bank	Grand Haven	MI
Fifth Third Bank	Grand Rapids	MI
Mercantile Bank of West Michigan	Grand Rapids	MI
Lake Michigan Credit Union	Grand Rapids	MI
Northpointe Bank	Grand Rapids	MI
Greenville Community Bank	Greenville	MI
Mainstreet Savings Bank, FSB	Hastings	MI
The Bank of Holland	Holland	MI
Honor State Bank	Honor	MI
Ionia County National Bank of Ionia	Ionia	MI
First National Bank of Iron Mountain	Iron Mountain	MI
Mayville State Bank	Mayville	MI
Wolverine Bank, FSB	Midland	MI
Dow Chemical Employee Credit Union	Midland	MI
Northland Area Federal Credit Union	Oscoda	MI
The Port Austin State Bank	Port Austin	MI
Portage Commerce Bank	Portage	MI
Central Savings Bank	Sault Ste. Marie	MI
Sturgis Bank & Trust Company	Sturgis	MI
First Savings Bank, FSB	Three Rivers	MI
Howmet Credit Union	Whitehall	MI

Federal Home Loan Bank of Chicago—District 7

Citizens National Bank of Albion	Albion	IL
GreatBank	Algonquin	IL
Farmers State Bank of Western Illinois	Alpha	IL
Anna National Bank	Anna	IL
Apple River State Bank	Apple River	IL
The First National Bank of Arcola	Arcola	IL
The First National Bank of Arenzville	Arenzville	IL
Ben Franklin Bank of Illinois	Arlington Heights	IL
First Northwest Bank	Arlington Heights	IL

State Bank of Ashland	Ashland	IL
Farmers State Bank Astoria	Astoria	IL
The Atlanta National Bank	Atlanta	IL
Scott State Bank	Bethany	IL
First State Bank of Bloomington	Bloomington	IL
Midland Federal Savings and Loan Asson	Bridgeview	IL
First National Bank of Brookfield	Brookfield	IL
Farmers and Merchants State Bank	Bushnell	IL
Byron Bank	Byron	IL
First State Bank of Campbell Hill	Campbell Hill	IL
The Egyptian State Bank	Carrier Mills	IL
Carrollton Bank	Carrollton	IL
BankIllinois	Champaign	IL
State Bank of Cherry	Cherry	IL
Bank of Chestnut	Chestnut	IL
Seaway National Bank	Chicago	IL
North Side FS&LA of Chicago	Chicago	IL
United Airlines Employees Credit Union	Chicago	IL
American Metro Bank	Chicago	IL
Second FS&LA of Chicago	Chicago	IL
1st Security Federal Savings Bank	Chicago	IL
Royal Savings Bank	Chicago	IL
Broadway Bank	Chicago	IL
Loomis Federal Savings & Loan Assn	Chicago	IL
Chicago Patrolmens Federal Credit Union	Chicago	IL
Associated Bank—Chicago	Chicago	IL
Chesterfield Federal Savings and Loan Assn	Chicago	IL
MB Financial Bank	Chicago	IL
Hoyne Savings Bank	Chicago	IL
Central Federal Savings and Loan Assn	Cicero	IL
Mid America Bank, FSB	Clarendon Hills	IL
Central State Bank	Clayton	IL
DeWitt Savings Bank	Clinton	IL
First Federal Bank	Colchester	IL
First Collinsville Bank	Collinsville	IL
First United Bank	Crete	IL
Crystal Lake Bank & Trust Company, N.A	Crystal Lake	IL
Soy Capital Bank & Trust Company	Decatur	IL
Castle Bank, N.A	DeKalb	IL
Downers Grove National Bank	Downers Grove	IL
Dunlap State Bank	Dunlap	IL
Erie State Bank	Erie	IL
Community First Bank	Fairview Heights	IL
Bank of Farmington	Farmington	IL
First State Bank of Forrest	Forrest	IL
Heritage Bank	Frankfort	IL
Galena State Bank & Trust Company	Galena	IL
Community State Bank	Galva	IL
Gifford State Bank	Gifford	IL
Security State Bank of Hamilton	Hamilton	IL
Harvard Savings Bank	Harvard	IL
Mutual Bank	Harvey	IL
Westbank	Hillside	IL
CIB Bank	Hillside	IL
Premier Bank of Jacksonville	Jacksonville	IL
Joy State Bank	Joy	IL
First Trust Bank of Illinois	Kankakee	IL
First National Bank of LaGrange	LaGrange	IL
Cambridge Bank	Lake Zurich	IL
Exchange State Bank	Lanark	IL
First National Bank of Illinois	Lansing	IL
Lemont National Bank	Lemont	IL
State Bank of Lincoln	Lincoln	IL
Bank & Trust Company	Litchfield	IL
West Suburban Bank	Lombard	IL
UnionBank/West	Macomb	IL
Prairie State Bank	Marengo	IL
A.J. Smith Federal Savings Bank	Midlothian	IL
Southeast National Bank	Moline	IL
Security Savings Bank	Monmouth	IL
Farmers State Bank and Trust Company	Mt. Sterling	IL
The First National Bank	Mulberry Grove	IL
First County Bank	New Baden	IL
Warren-Boynton State Bank	New Berlin	IL
Peoples State Bank of Newton	Newton	IL

Old Exchange National Bank	Okawville	IL
First Personal Bank	Orland Park	IL
Ottawa Savings Bank	Ottawa	IL
Peoples Bank & Trust	Pana	IL
State Bank of Paw Paw	Paw Paw	IL
Farmers-Merchants Natl Bank of Paxton	Paxton	IL
First Capital Bank	Peoria	IL
The Heights Bank	Peoria Heights	IL
Town & Country Bank of Quincy	Quincy	IL
Rantoul First Bank, S.B	Rantoul	IL
Lincoln State Bank	Rochelle	IL
Community State Bank of Rock Falls	Rock Falls	IL
Alpine Bank of Illinois	Rockford	IL
Rushville State Bank	Rushville	IL
AmericaUnited Bank and Trust Co. USA	Schaumburg	IL
American Chartered Bank	Schaumburg	IL
State Bank of Speer	Speer	IL
Illini Bank	Springfield	IL
Tuscola National Bank	Tuscola	IL
Baxter Credit Union	Vernon Hills	IL
Petefish, Skiles and Company	Virginia	IL
Bank of Warrensburg	Warrensburg	IL
Western Springs National Bank and Trust	Western Springs	IL
First DuPage Bank	Westmont	IL
Community Bank	Winslow	IL
State Bank	Wonder Lake	IL
Wyoming Bank and Trust	Wyoming	IL
Valley Bank	Ethridge	IA
Portage County Bank	Almond	WI
Bay Bank	Ashwaubenon	WI
Pioneer Bank	Auburndale	WI
The First National Bank of Baldwin	Baldwin	WI
Black River Country Bank	Black River Falls	WI
Bonduel State Bank	Bonduel	WI
Red Cedar Bank, National Association	Boyceville	WI
Bank of Cashton	Cashton	WI
Dairyman's State Bank	Clintonville	WI
Farmers & Merchants Union Bank	Columbus	WI
Wisconsin Community Bank	Cottage Grove	WI
Cumberland Federal Bank, FSB	Cumberland	WI
Delafield State Bank	Delafield	WI
Community Bank of Grafton	Grafton	WI
Highland State Bank	Highland	WI
The Park Bank	Holmen	WI
Security State Bank	Iron River	WI
East Wisconsin Savings Bank, S.A	Kaukauna	WI
Greenwood's State Bank	Lake Mills	WI
First Bank & Trust	Menomonie	WI
Bank of Milton	Milton	WI
Mutual Savings Bank	Milwaukee	WI
Universal Savings Bank	Milwaukee	WI
Milwaukee Western Bank	Milwaukee	WI
First National Bank—Fox Valley	Neenah	WI
First National Bank of Platteville	Platteville	WI
Clare Bank, N.A.	Platteville	WI
Mound City Bank	Platteville	WI
First National Bank of River Falls	River Falls	WI
Intercity State Bank	Schofield	WI
Community Bank & Trust	Sheboygan	WI
Bank of Sun Prairie	Sun Prairie	WI
Superior National Bank	Superior	WI
Shoreline Credit Union	Two Rivers	WI
The State Bank of Viroqua	Viroqua	WI
Walworth State Bank	Walworth	WI
First Federal Savings Bank of Wisconsin	Waukesha	WI
Sunset Bank and Savings	Waukesha	WI
Wood County National Bank	Wisconsin Rapids	WI
KeySavings Bank	Wisconsin Rapids	WI
River Cities Bank	Wisconsin Rapids	WI

Federal Home Loan Bank of Des Moines—District 8

Gateway Savings Bank	Ankeny	IA
Landmands National Bank	Audubon	IA
Community Bank of Boone	Boone	IA

Commercial Savings Bank	Carroll	IA
Iowa Savings Bank	Carroll	IA
Page County State Bank	Clarinda	IA
Linn County State Bank	Coggon	IA
Farmers Savings Bank	Colesburg	IA
Okey Vernon First National Bank	Corning	IA
Corydon State Bank	Corydon	IA
Fortress Bank of Cresco	Cresco	IA
Alliant Credit Union	Dubuque	IA
First National Bank in Fairfield	Fairfield	IA
Farmers Savings Bank	Fostoria	IA
Grinnell Mutual Reinsurance Company	Grinnell	IA
Security State Bank	Hubbard	IA
First State Bank of Mapleton	Mapleton	IA
Maxwell State Bank	Maxwell	IA
Bridge Community Bank	Mechanicsville	IA
State Bank and Trust Company	Nevada	IA
New Vienna Savings Bank	New Vienna	IA
First Newton National Bank	Newton	IA
First State Bank	Nora Springs	IA
Farmers State Bank	Northwood	IA
The First National Bank, Oelwein	Oelwein	IA
City State Bank	Ogden	IA
American State Bank	Osceola	IA
Panora State Bank	Panora	IA
Marion County State Bank	Pella	IA
Savings Bank	Primghar	IA
Readlyn Savings Bank	Readlyn	IA
Community Savings Bank	Robins	IA
Premier Bank	Rock Valley	IA
Home State Bank	Royal	IA
Iowa State Bank	Sac City	IA
Sanborn Savings Bank	Sanborn	IA
The State Bank	Spirit Lake	IA
The State Bank of Toledo	Toledo	IA
Farmers Savings Bank	Walford	IA
Iowa State Bank	Wapello	IA
Farmers State Bank	Waterloo	IA
Security State Bank	Waverly	IA
State Bank of Waverly	Waverly	IA
First State Bank	Webster City	IA
Freedom Financial Bank	West Des Moines	IA
Westside State Savings Bank	Westside	IA
Union State Bank	Winterset	IA
Farmers & Merchants State Bank	Winterset	IA
First State Bank of Alexandria	Alexandria	MN
Altura State Bank	Altura	MN
Lakewood Bank N.A	Baxter	MN
First State Bank and Trust	Bayport	MN
Frist National Bank Bemidji	Bemidji	MN
American National Bank of Minnesota	Brainerd	MN
State Bank of Bricelyn	Bricelyn	MN
State Bank of Chanhassen	Chanhassen	MN
Farmers and Merchants State Bank	Clarkfield	MN
First National Bank of Coleraine	Coleraine	MN
Farmers State Bank of Dent	Dent	MN
Northwestern Bank N.A	Dilworth	MN
Western National Bank	Duluth	MN
Fidelity Bank	Edina	MN
State Bank of Fairmont	Fairmont	MN
Franklin State Bank	Franklin	MN
Commerce Bank	Geneva	MN
First National Bank	Gilbert	MN
Eagle Bank	Glenwood	MN
Yellow Medicine County Bank	Granite Falls	MN
Marshall Bank National Association	Hallock	MN
Merchants Bank, N.A	Hampton	MN
1st American State Bank of Minnesota	Hancock	MN
First Southeast Bank	Harmony	MN
Farmers State Bank of Hartland	Hartland	MN
Exchange State Bank	Hills	MN
United Prairie Bank—Jackson	Jackson	MN
CornerStone State Bank	Le Sueur	MN
First Community Bank Lester Prairie	Lester Prairie	MN
Center National Bank	Litchfield	MN

Northern Star Bank	Mankato	MN
U.S. Bank, N.A	Minneapolis	MN
First National Bank of Montgomery	Montgomery	MN
United Farmers & Merchants State Bank	Morris	MN
Park Midway Bank North	St. Paul	MN
Northland Community Bank	Northome	MN
Citizens St, Bank Norwood Young America	Norwood Young America	MN
Washington County Bank, N.A	Oakdale	MN
Odin State Bank	Odin	MN
Prinsburg State Bank	Prinsburg	MN
Randall State Bank	Randall	MN
Woodland Bank	Remer	MN
Home Federal Savings Bank	Rochester	MN
North Star Bank	Roseville	MN
First State Bank of Rush City	Rush City	MN
First Community Bank	Savage	MN
First Community Bank Silver Lake	Silver Lake	MN
Heartland State Bank	Storden	MN
Victoria State Bank	Victoria	MN
Integrity Bank Plus	Wabasso	MN
Centennial National Bank	Walker	MN
Citizens State Bank of Waverly	Waverly	MN
Community Bank Minnesota Valley	Wayzata	MN
Wells Federal Bank, FSB	Wells	MN
St. Paul Postal Employees Credit Union	Woodbury	MN
Worthington Federal Savings Bank F.S.B	Worthington	MN
First State Bank Southwest	Worthington	MN
First Missouri National Bank	Brookfield	MO
BC National Banks	Butler	MO
Community First Bank	Butler	MO
Carroll County Trust Company	Carrollton	MO
Investors National Bank	Chillicothe	MO
Chillicothe State Bank	Chillicothe	MO
Boone National Savings and Loan	Columbia	MO
Concordia Bank	Concordia	MO
The Citizens Bank of Edinia	Edina	MO
Ozarks Federal Savings and Loan Assn	Farmington	MO
First State Community Bank	Farmington	MO
The Callaway Bank	Fulton	MO
Northland National Bank	Gladstone	MO
Bank Northwest	Hamilton	MO
HNB National Bank	Hannibal	MO
Bank of Hayti	Hayti	MO
Eagle Bank & Trust Company of Missouri	Hillsboro	MO
Bank of Iberia	Iberia	MO
Generations Bank	Kansas City	MO
Kennett National Bank	Kennett	MO
The First National Bank	Lamar	MO
Lamar Bank & Trust Company	Lamar	MO
Central Bank	Lebanon	MO
Linn State Bank	Linn	MO
First National Bank	Malden	MO
Pioneer Bank & Trust Company	Maplewood	MO
Community Bank of Marshall	Marshall	MO
Wood & Huston Bank	Marshall	MO
First National Bank of Audrain County	Mexico	MO
Peoples Bank of the Ozarks	Nixa	MO
First Midwest Bank of Piedmont	Piedmont	MO
Peoples Savings Bank of Rhineland	Rhineland	MO
The State Bank	Richmond	MO
Town & Country Bank	Salem	MO
Farmers State Bank, S/B	Schell City	MO
Third National Bank	Sedalia	MO
Senath State Bank	Senath	MO
The Community Bank of Shell Knob	Shell Knob	MO
Old Missouri National Bank	Springfield	MO
Citizens National Bank of Springfield	Springfield	MO
First State Bank of St. Charles	St. Charles	MO
Midwest BankCentre	St. Louis	MO
The PrivateBank	St. Louis	MO
Bank of Thayer	Thayer	MO
Quarry City Savings and Loan Association	Warrensburg	MO
First State Bank of Cando	Cando	ND
Citizens State Bank—Midwest	Cavalier	ND
Farmers State Bank	Elgin	ND

Union State Bank of Fargo	Fargo	ND
State Bank & Trust of Kenmare	Kenmare	ND
Farmers & Merchants State Bank	Langdon	ND
First Western Bank & Trust	Minot	ND
Lakeside State Bank	New Town	ND
McKenzie County Bank	Watford City	ND
BankStar Financial	Elkton	SD
Farmers State Bank	Flandreau	SD
First State Bank of Claremont	Groton	SD
Dakotaland Federal Credit Union	Huron	SD
Home Federal Bank	Sioux Falls	SD
BankFirst	Sioux Falls	SD
Great Western Bank	Watertown	SD
Wilmot State Bank	Wilmot	SD
First National Bank South Dakota	Yankton	SD

Federal Home Loan Bank of Dallas—District 9

First Community Bank	Batesville	AR
Farmers Bank and Trust Company	Blytheville	AR
First State Bank	Conway	AR
Bank of Dardanelle	Dardanelle	AR
First Financial Bank	El Dorado	AR
Fordyce Bank & Trust Company	Fordyce	AR
Forrest City Bank, NA	Forrest City	AR
Benefit Bank	Ft. Smith	AR
First State Bank	Huntsville	AR
Simmons First Bank of South Arkansas	Lake Village	AR
Bank of Lockesburg, N.A	Lockesburg	AR
Southern State Bank	Malvern	AR
Allied Bank	Mulberry	AR
The First National Bank at Paris	Paris	AR
Delta Trust & Bank	Parkdale	AR
Pine Bluff National Bank	Pine Bluff	AR
Simmons First Bank of Northwest Arkansas	Rogers	AR
River Valley Bank	Russellville	AR
The First National Bank of Springdale	Springdale	AR
Community State Bank	Spencer	IA
Red River Bank	Alexandria	LA
E Federal Credit Union	Baton Rouge	LA
Bank of Coushatta	Coushatta	LA
St. Tammany Homestead S&LA	Covington	LA
City Savings Bank & Trust Company	DeRidder	LA
Teche Federal Savings Bank	Franklin	LA
Florida Parishes Bank	Hammond	LA
Synergy Bank	Houma	LA
Coastal Commerce Bank	Houma	LA
LBA Savings Bank	Lafayette	LA
Guaranty Savings and Homestead Assn	Metairie	LA
Mutual Savings and Loan Association	Metairie	LA
Eureka Homestead	New Orleans	LA
Hibernia Homestead & Savings Association	New Orleans	LA
Peoples B&TC of Pointe Coupee Parish	New Roads	LA
Homestead Bank	Ponchatoula	LA
Bank of West Baton Rouge	Port Allen	LA
Richland State Bank	Rayville	LA
Bank of Ringgold	Ringgold	LA
Ruston Building & Loan Association	Ruston	LA
First Louisiana Bank	Shreveport	LA
Bank of St. Francisville	St. Francisville	LA
American Bank	Welsh	LA
The Bank of Commerce	White Castle	LA
Amory Federal Savings and Loan Assn	Amory	MS
Spirit Bank	Belmont	MS
The Peoples Bank	Biloxi	MS
Bank of Brookhaven	Brookhaven	MS
The Cleveland State Bank	Cleveland	MS
Commerce National Bank	Corinth	MS
Bank of Holly Springs	Holly Springs	MS
First National Bank of Pine Belt	Laurel	MS
Community Bank of Meridian	Meridian	MS
Britton & Koontz First National Bank	Natchez	MS
Senatobia Bank	Senatobia	MS
Mechanics Bank	Water Valley	MS
The Bank of Houston	Houston	MO

The Mercantile Bank of Louisiana, MO	Louisiana	MO
Wells Fargo Bank, New Mexico, N.A	Albuquerque	NM
International Bank	Raton	NM
First National Bank of Ruidoso	Ruidoso	NM
Tucumcari Federal Savings & Loan Assn	Tucumcari	NM
Reliance Standard Life Insurance Co. of TX	Philadelphia	PA
Alamo Bank of Texas	Alamo	TX
First State Bank	Athens	TX
The First National Bank of Athens	Athens	TX
Southwest Resource Credit Union	Baytown	TX
The First National Bank of Bridgeport	Bridgeport	TX
Citizens State Bank	Chandler	TX
Texas Heritage Bank	Cross Plains	TX
Zavala County Bank	Crystal City	TX
Credit Union of Texas	Dallas	TX
Dallas National Bank	Dallas	TX
Mercantile Bank & Trust, FSB	Dallas	TX
Landmark Bank N.A	Denison	TX
First United Bank	Dimmitt	TX
First National Bank	Dublin	TX
Union State Bank	Florence	TX
OmniAmerican Credit Union	Fort Worth	TX
Fort Worth National Bank	Fort Worth	TX
First State Bank	Frankston	TX
Security Bank NA	Garland	TX
Community Bank	Granbury	TX
First State Bank	Grapeland	TX
Hebbronville State Bank	Hebbronville	TX
Community National Bank	Hondo	TX
MetroBank, NA	Houston	TX
Southwestern National Bank	Houston	TX
Central Bank	Houston	TX
Austin Bank, Texas National Association	Jacksonville	TX
Texas State Bank	Joaquin	TX
First State Bank Keene	Keene	TX
First-Nichols National Bank	Kennedy	TX
First National Bank of Lake Jackson	Lake Jackson	TX
First Federal Savings & Loan	Littlefield	TX
PNB Financial	Lubbock	TX
Mason National Bank	Mason	TX
Inter National Bank	McAllen	TX
Mineola Community Bank S.S.B	Mineola	TX
City National Bank	Mineral Wells	TX
American National Bank of Mt. Pleasant	Mt. Pleasant	TX
Commercial Bank of Texas, N.A	Nacogdoches	TX
Western National Bank	Odessa	TX
Security State Bank	Odessa	TX
Orange Savings Bank	Orange	TX
Lone Star National Bank	Pharr	TX
Beal Bank, SSB	Plano	TX
The Security National Bank of Quanah	Quanah	TX
South Padre Bank, N.A	South Padre Island	TX
Woodforest National Bank N.A	Spring	TX
Town and Country Bank	Stephenville	TX
Heritage Bank, SSB	Terrell	TX
First National Bank of Trinity	Trinity	TX
First National Bank of Bosque County	Valley Mills	TX
FirstCapital Bank, SSB	Victoria	TX
First National Bank of Central Texas	Waco	TX
Extraco Banks, National Association	Waco	TX
Community Bank and Trust	Waco	TX
Fannin Bank	Windom	TX

Federal Home Loan Bank of Topeka—District 10

Citywide Banks	Aurora	CO
Commerce Bank	Aurora	CO
Premier Members Federal Credit Union	Boulder	CO
First National Bank, Cortez	Cortez	CO
Del Norte Federal Savings & Loan Assn	Del Norte	CO
Rocky Mountain Law Enforcement FCU	Denver	CO
Premier Bank	Denver	CO
Colorado United Credit Union	Denver	CO
Bank of the San Juans	Durango	CO
FirstBank of Evergreen	Evergreen	CO

Fort Morgan State Bank	Fort Morgan	CO
FirstBank of Greeley	Greeley	CO
First National Bank	Julesberg	CO
Kit Carson State Bank Kit	Carson	CO
The State Bank—La Junta	La Junta	CO
First National Bank of Lake City & Creede	Lake City	CO
Home State Bank	Loveland	CO
The First National Bank of Paonia	Paonia	CO
FirstBank of Parker	Parker	CO
The First National Bank of Stratton	Stratton	CO
First National Bank in Belleville	Belleville	KS
Home Savings Bank	Chanute	KS
Bank of Commerce	Chanute	KS
Farmers & Merchants Bank	Colby	KS
Legacy Bank	Colwich	KS
The State Bank of Conway Springs	Conway Springs	KS
Farmers & Drovers Bank	Council Grove	KS
Citizens State Bank & Trust Company	Ellsworth	KS
The State Bank of Kansas	Fredonia	KS
Gardner National Bank	Gardner	KS
Community Bank of the Midwest	Great Bend	KS
The Halstead Bank	Halstead	KS
First National Bank	Hoxie	KS
Security Bank of Kansas City	Kansas City	KS
Douglas County Bank	Lawrence	KS
First National Bank and TC of Leavenworth	Leavenworth	KS
National Bank of Kansas City	Leawood	KS
Western National Bank	Lenexa	KS
Lyons State Bank	Lyons	KS
Farmers State Bank	McPherson	KS
The Mission Bank	Mission	KS
Mulvane State Bank	Mulvane	KS
Farmers State Bank	Oakley	KS
First National Bank of Olathe	Olathe	KS
Valley View State Bank	Overland Park	KS
Citizens State Bank	Paola	KS
University National Bank	Pittsburg	KS
Alliant Bank	Sedgwick	KS
TriCentury Bank	Simpson	KS
First Bank	Sterling	KS
Valley State Bank	Syracuse	KS
The Tampa State Bank	Tampa	KS
Community National Bank	Topeka	KS
The Kaw Valley State Bank and Trust Co	Topeka	KS
Chisholm Trail State Bank	Wichita	KS
INTRUST Bank, N.A	Wichita	KS
The State Bank	Winfield	KS
Bank of The Valley	Bellwood	NE
Bank of Bennington	Bennington	NE
Washington County Bank	Blair	NE
Custer Federal Savings and Loan Assn	Broken Bow	NE
First Central Bank	Cambridge	NE
Citizens State Bank	Carleton	NE
First Bank and Trust Company	Cozad	NE
Jefferson County Bank	Daykin	NE
First National Bank in Exeter	Exeter	NE
Farnam Bank	Farnam	NE
First State Bank & Trust Company	Fremont	NE
American National Bank of Fremont	Fremont	NE
Gothenburg State Bank & Trust Company	Gothenburg	NE
Five Points Bank of Hastings	Hastings	NE
Henderson State Bank	Henderson	NE
First State Bank	Imperial	NE
Kearney State Bank & Trust Company	Kearney	NE
Farmers State Bank	Maywood	NE
First Central Bank McCook	McCook	NE
Farmers and Merchants Bank	Milligan	NE
Nebraska State Bank of Omaha	Omaha	NE
Centennial Bank	Omaha	NE
First National Bank of Omaha	Omaha	NE
The Potter State Bank of Potter	Potter	NE
Peoples-Webster City Bank	Red Cloud	NE
First State Bank	Shelton	NE
Sutton State Bank	Sutton	NE
First National Bank and Trust of Syracuse	Syracuse	NE

CerescoBank	Wahoo	NE
Citizens Bank of Ada	Ada	OK
First National Bank in Altus	Altus	OK
Stockmans Bank	Altus	OK
First Natl Bank and TC of Broken Arrow	Broken Arrow	OK
Bank of Commerce	Catoosa	OK
Farmers Exchange Bank	Cherokee	OK
First National Bank and Trust Company	Chickasha	OK
1st Bank Oklahoma	Claremore	OK
Kirkpatrick Bank	Edmond	OK
INTERBANK	Elk City	OK
Bank of Western Oklahoma	Elk City	OK
Liberty Federal Savings Bank	Enid	OK
Fairview Savings and Loan Association	Fairview	OK
Oklahoma State Bank	Guthrie	OK
City National Bank & Trust Company	Guymon	OK
The Bank of Kremlin	Kremlin	OK
Liberty National Bank	Lawton	OK
Exchange Nataional Bank	Moore	OK
Morris State Bank	Morris	OK
Bank of Nichols Hills	Oklahoma City	OK
Oklahoma Educators Credit Union	Oklahoma City	OK
First Security Bank and Trust Company	Oklahoma City	OK
Osage Federal Savings & Loan	Pawhuska	OK
Citizens Bank of Oklahoma	Pawhuska	OK
Security Bank	Pawnee	OK
Exchange Bank and Trust Company	Perry	OK
Central National Bank of Poteau	Poteau	OK
First Pryority Bank	Pryor	OK
Peoples Bank & Trust Company	Ryan	OK
Southwest State Bank	Sentinel	OK
Advantage Bank	Spencer	OK
Bank of Commerce	Stilwell	OK
American Bank and Trust Company	Tulsa	OK
Bank South	Tulsa	OK
Sooner State Bank	Tuttle	OK
The Bank of Union	Union City	OK
First State Bank	Valliant	OK
Citizens' Bank	Velma	OK
First State Bank	Watonga	OK
Peoples Bank	Westville	OK
The Bank of Wyandotte	Wyandotte	OK
Yukon National Bank	Yukon	OK

Federal Home Loan Bank of San Francisco—District 11

Western Security Bank	Scottsdale	AZ
Placer Sierra Bank	Auburn	CA
Los Angeles National Bank	Buena Park	CA
Burbank City Employees Federal CU	Burbank	CA
Western Security Bank, N.A.	Burbank	CA
Pacific Trust Bank	Chula Vista	CA
Kaiser Federal Bank	Covina	CA
Financial Partners Credit Union	Downey	CA
Centennial Bank	Fountain Valley	CA
Murphy Bank	Fresno	CA
USC Federal Credit Union	Los Angeles	CA
Yosemite Bank	Mariposa	CA
Neighborhood National Bank	National City	CA
Pan American Bank, FSB	Burlingame	CA
Downey Savings and Loan Assn, FA	Newport Beach	CA
Heritage Oaks Bank	Paso Robles	CA
1st Centennial Bank	Redlands	CA
Provident Credit Union	Redwood City	CA
Provident Savings Bank, FSB	Riverside	CA
Five Star Bank	Rocklin	CA
River City Bank	Sacramento	CA
First U.S. Community Credit Union	Sacramento	CA
First National Bank	San Diego	CA
San Diego National Bank	San Diego	CA
Pacific Coast Bankers' Bank	San Francisco	CA
Bank of the Orient	San Francisco	CA
Meriwest Credit Union	San Jose	CA
Tamalpais Bank	San Rafael	CA
Santa Cruz Community Credit Union	Santa Cruz	CA

Los Padres Bank	Solvang	CA
Sonoma Valley Bank	Sonoma	CA
Bank of Stockton	Stockton	CA
South Bay Bank, N.A.	Torrance	CA
Universal Bank West	Covina	CA
Business Bank of Nevada	Las Vegas	NV

Federal Home Loan Bank of Seattle—District 12

Credit Union 1	Anchorage	AK
Citizens Security Bank (Guam), Inc.	Agana	GU
FirstBank Northwest	Lewiston	ID
Idaho Central Credit Union	Pocatello	ID
Panhandle State Bank	Sandpoint	ID
First Citizens Bank—Billings	Billings	MT
First Citizens Bank of Butte	Butte	MT
Dutton State Bank	Dutton	MT
Valley Bank of Glasgow	Glasgow	MT
1st Liberty Federal Credit Union	Great Falls	MT
Independence Bank	Havre	MT
Manhattan State Bank	Manhattan	MT
First Security Bank of Missoula	Missoula	MT
Community Bank-Missoula, Inc.	Missoula	MT
Community Bank	Ronan	MT
Basin State Bank	Stanford	MT
Evergreen Federal S&L	Grants Pass	OR
Bank of Eastern Oregon	Heppner	OR
South Valley Bank and Trust	Klamath Falls	OR
American Pacific Bank	Portland	OR
Bank of America Oregon, N.A.	Portland	OR
Columbia River Bank	The Dalles	OR
USU Community Credit Union	Logan	UT
Franklin Templeton Bank & Trust, F.S.B	Salt Lake City	UT
American Marine Bank	Bainbridge Island	WA
Charter Bank	Bellevue	WA
Fife Commercial Bank	Fife	WA
The Bank of Washington	Lynnwood	WA
Whidbey Island Bank	Oak Harbor	WA
Twin County Credit Union	Olympia	WA
Olympia Federal Savings	Olympia	WA
First FS & LA of Pt. Angeles	Port Angeles	WA
Riverview Community Bank	Riverview	WA
Northwest Business Bank	Seattle	WA
Western United Life Assurance Company	Seattle	WA
Asia Europe-Americas Bank	Seattle	WA
Washington Mutual Bank fsb	Seattle	WA
Washington Mutual Bank	Seattle	WA
Seattle Savings Bank	Seattle	WA
Simpson Community Federal Credit Union	Shelton	WA
Farmers & Merchants Bank of Rockford	Spokane	WA
Old Standard Life Insurance Company	Spokane	WA
Yakima Federal Savings & Loan	Yakima	WA
Tri-County National Bank	Cheyenne	WY
American National Bank of Rock Springs	Rock Springs	WY
Rock Springs National Bank	Rock Springs	WY

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before January 31, 2005, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2004–05 fourth review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2004–05 fourth quarter review cycle must be delivered to the Finance Board on or before the March 4, 2005 deadline for submission of Community Support Statements.

Dated: December 16, 2004.

Mark J. Tenhundfeld,

General Counsel.

[FR Doc. 04–27967 Filed 12–21–04; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov.* Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC

20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011742–004.

Title: P&O Nedlloyd-Farrell/Hapag-Lloyd/Zim Mediterranean Space Charter Agreement.

Parties: Hapag-Lloyd Container Linie GmbH; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Farrell Lines, Inc.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The proposed modification would reduce the amount of space exchanged under the agreement.

Agreement No.: 011852–015.

Title: Maritime Security Discussion Agreement.

Parties: China Shipping Container Lines, Co., Ltd.; CMA CGM, S.A.; COSCO Container Lines Company, Ltd.; Hanjin Shipping Company, Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha Ltd.; Nippon Yusen Kaisha; Yang Ming Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.; Alabama State Port Authority; APM Terminals North America, Inc.; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; 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; 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.; Virginia International Terminals; and Yusen Terminals, Inc.

Filing Parties: Carol N. Lambos; Lambos & Junge; 29 Broadway, 9th Floor; New York, NY 10006 and Charles T. Carroll, Jr.; Carroll & Froelich, PLLC; 2011 Pennsylvania Avenue, NW.; Suite 301; Washington, DC 20006.

Synopsis: The amendment deletes Hapag Lloyd Container Linie GmbH as a member to the agreement.

Agreement No.: 011863–001.

Title: CMA–CGM/P&O Nedlloyd/Hapag-Lloyd Space Charter Agreement.

Parties: CMA CGM, S.A.; P&O Nedlloyd Limited; and P&O Nedlloyd B.V.; and Hapag-Lloyd Container Linie GmbH.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The proposed modification would, among other things, reduce the amount of space exchanged, allow CMA to sell space directly to Hapag-Lloyd, and restate the agreement.

Agreement No.: 011892.

Title: CSCL/CMA CGM Cross Slot Charter Agreement.

Parties: China Shipping Container Lines Co., Ltd.; China Shipping Container Lines (Hong Kong) Co., Ltd., and CMA CGM, S.A.

Filing Party: Brett M. Esber, Esq.; Blank Rome LLP; 600 New Hampshire Avenue, NW.; Watergate; Washington, DC 20037.

Synopsis: The proposed agreement is a vessel-sharing agreement between the parties in the trade between U.S. East and Gulf ports and ports in the Far East.

By Order of the Federal Maritime Commission.

Dated: December 17, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–28017 Filed 12–21–04; 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: 002771F.
Name: Alfredo Moreno dba Ace Forwarding.
Address: 50 Neptune Road, Toms River, NJ 08753.
Date Revoked: November 27, 2004.
Reason: Failed to maintain a valid bond.

License Number: 018570N.
Name: Bon Voyage Logistics, Inc.
Address: 17595 Almahurst, Suite 212, City of Industry, CA 91748.
Date Revoked: November 30, 2004.
Reason: Failed to maintain a valid bond.

License Number: 015203N.
Name: Classic International, Inc.
Address: 1674 Broadway, Suite 802, New York, NY 10019.
Date Revoked: December 1, 2004.
Reason: Failed to maintain a valid bond.

License Number: 004307F.
Name: Edward Mittelstaedt, Inc.
Address: c/o MGM, 341 Broadway, San Francisco, CA 94133.
Date Revoked: December 7, 2004.
Reason: Surrendered license voluntarily.

License Number: 003273F.
Name: Evans, Wood and Mooring, Inc.
Address: 5959 W. Century Blvd., Suite 571, Los Angeles, CA 90045.
Date Revoked: November 30, 2004.
Reason: Failed to maintain a valid bond.

License Number: 018391N.
Name: LCL Cargo Services Inc.
Address: 8100 NW. 29th Street, Miami, FL 33122.
Date Revoked: December 1, 2004.
Reason: Failed to maintain a valid bond.

License Number: 016584F.
Name: Midwest Freight, Inc.
Address: 7956 Clyo Road, Dayton, OH 45459.
Date Revoked: December 1, 2004.
Reason: Failed to maintain a valid bond.

License Number: 016485N.
Name: Nautical Services Corp. dba Rush International.
Address: 12337 Jones Road, Suite 301, Houston, TX 77070.
Date Revoked: December 1, 2004.
Reason: Failed to maintain a valid bond.

License Number: 001371F.
Name: Pacheco International Corp.
Address: 11207 So. La Cienega Blvd., Los Angeles, CA 90045.
Date Revoked: December 1, 2004.
Reason: Failed to maintain a valid bond.

License Number: 017575N.
Name: Quantum Logistics, Inc.
Address: 5025 Florence Street, Unit D, Denver, CO 80239.
Date Revoked: December 4, 2004.
Reason: Failed to maintain a valid bond.

License Number: 000791F.
Name: Sig M. Glukstad, Inc. dba Miami International Forwarders dba MIF.
Address: 1801 NW 82nd Avenue, Miami, FL 33126.
Date Revoked: December 2, 2004.
Reason: Failed to maintain a valid bond.

License Number: 004175N.
Name: Silken Fortress Corporation dba Transcargo International.
Address: 5858 S. Holmes Avenue, Los Angeles, CA 90001.
Date Revoked: December 1, 2004.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 04–28018 Filed 12–21–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the

Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and 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 applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Fidelity Logistics Corp., 20 W. Lincoln Avenue, Suite 302, Valley Stream, NY 11580. *Officer:* Cheng Hsia, President (Qualifying Individual).

Turkish Express Line, Inc., 875 Avenue of the Americas, Suite 902, New York, NY 1001. *Officers:* Ipek Sokman, President (Qualifying Individual) Oytun Cakir, Vice President.

Titan Lines, Inc., 1831 Borrego Drive, West Covina, CA 91791. *Officer:* Libin Shen, President (Qualifying Individual).

Orca World Lines, Inc., 19818 South Alameda Street, Rancho Dominguez, CA 90221. *Officers:* Rogerio de Oliverira Morais, Vice President (Qualifying Individual) Mamdouh Mokhtar, President.

Marine International Inc., 1410 Valley Lake Drive, #305, Schaumburg, IL 60195. *Officers:* Darnell Spencer, Secretary (Qualifying Individual) Ravinder Grewal, Managing Director.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Metro International Trade Services LLC, 909 East Colon Street, Wilmington, CA 90744. *Officer:* W.F. Whelan, President (Qualifying Individual).

All American Logistics Inc., 194 Quality Plaza, Hicksville, NY 11801. *Officers:* Yaron Ruham, President Alicia Gonzalez, Office Manager.

Inbox Cargo Solutions, Inc., 9515 NW 13th Street, Miami, FL 33172. *Officer:* Fausto Molinares, President (Qualifying Individual).

Seamar Freight International Inc., 175–01 Rockaway Blvd., Jamaica, NY 11434. *Officers:* Rodit Marcovici, President (Qualifying Individual) Isaac Kohn, Secretary.

MMI Logistics, Inc., 12719 Chron Avenue, Hawthorne, CA 90250. *Officer:* Matthew A. Otway, President (Qualifying Individual).

Occidental-Pacific Traders International Corp., 8366 N.W. 66th Street, Miami, FL 33166. *Officers:* Lourdes Nodal, President (Qualifying Individual) Fernando Mirabal, Director.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Ohanneson Freight Forwarding Co., P.O. Box 767, Nicasio, CA 94946, Elizabeth A. Ohanneson, Sole Proprietor.

Romcrest International Corporation, 508 Summer Lake Lane, Virginia Beach, VA 23454–6885. *Officer:* Anton Samoila, President (Qualifying Individual).

USA Petrolog Inc., 2700 Greens Road, Bldg. G, Houston, TX 77032. *Officer:* Gail Milholland, Operations Manager (Qualifying Individual).

Dated: December 17, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–28019 Filed 12–21–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has 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 515.

License No.	Name/address	Date reissued
015646F	Universe Freight Brokers, Inc., 3625 NW., 82nd Avenue, Suite 401, Miami, FL 33126	September 20, 2004.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 04–28020 Filed 12–21–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 3 p.m., Monday, December 20, 2004.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 17, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–28062 Filed 12–17–04; 4:59 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Charges for Certain Disclosures

AGENCY: Federal Trade Commission.

ACTION: Notice regarding charges for certain disclosures.

SUMMARY: The Federal Trade Commission announces that the ceiling on allowable charges under section 612(f) of the Fair Credit Reporting Act (''FCRA'') will increase from $9.00 to $9.50 on January 1, 2005. Under 1996 amendments to the FCRA, the Federal

Trade Commission is required to increase the $8.00 amount referred to in paragraph (1)(A)(i) of section 612(f) on January 1 of each year, based proportionally on changes in the Consumer Price Index (''CPI''), with fractional changes rounded to the nearest fifty cents. The CPI increased 17.80 percent between September 1997, the date the FCRA amendments took effect, and September 2004. This increase in the CPI and the requirement that any increase be rounded to the nearest fifty cents results in an increase in the current maximum allowable charge to $9.50 effective January 1, 2005.

EFFECTIVE DATE: January 1, 2005.

ADDRESSES: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Keith B. Anderson, Bureau of Economics, Federal Trade Commission, Washington, DC 20580, 202–326–3428.

SUPPLEMENTARY INFORMATION: Section 612(f)(1)(A) of the Fair Credit Reporting Act, which became effective in 1997, provides that a consumer reporting agency may charge a consumer a reasonable amount for making a disclosure to the consumer pursuant to section 609 of the Act.[1] The law states that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to section 609, the charge shall not exceed $8 and shall be indicated to the consumer before making the disclosure. Section 612(f)(2) goes on to state that the Federal Trade Commission (''the Commission'') shall increase the $8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

Section 211(a) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'') adds a new section 612(a) to the FCRA that gives consumers the right to request free annual disclosures once every 12 months. The maximum allowable charge established by this notice does not apply to requests made under that new provision. The charge will, however, apply where a consumer orders a file disclosure directly from one of the three nationwide consumer reporting agencies because the consumer is not yet eligible to receive a free annual disclosure, or has already received a free annual disclosure and does not otherwise qualify for an additional free disclosure.

The Commission considers the $8 amount referred to in paragraph (1)(A)(i) of section 612(f) to be the baseline for the effective ceiling on reasonable charges dating from the effective date of the amended FCRA, *i.e.*, September 30, 1997. Each year the Commission calculates the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) from September 1997 to September of the current year. The Commission then determines what modification, if any, from the original base of $8 should be made effective on January 1 of the subsequent year, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2004, the Consumer Price Index for all urban consumers and all items increased by 17.80 percent—from an index value of 161.2 in September 1997 to a value of 189.9 in September 2001. An increase of 17.80 percent in the $8.00 base figure would lead to a new figure of $9.42. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the allowable charge should be $9.50.

The Commission therefore determines that the allowable charge for the year 2005 will be $9.50.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–27981 Filed 12–21–04; 8:45 am]

BILLING CODE 6750–01–P

[1] This provision, originally section 612(a), was added to the FCRA in September 1996 and became effective in September 1997. It was relabelled section 612(f) by section 211(a) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act''), Public Law 108–159, which was signed into law on December 4, 2003.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–202]

Availability of a Guidance Manual for the Assessment of Joint Toxic Action of Chemical Mixtures and Nine Interaction Profiles CD–ROM [Final Documents] and Two Interaction Profiles [Drafts for Public Comments]

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (DHHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Guidance Manual for the Assessment of Joint Toxic Action of Chemical Mixtures and nine interaction profiles CD–ROM prepared by ATSDR [final documents]. This notice also announces two additional interaction profiles that will be released as drafts for public comments.

DATES: The Guidance Manual and nine interaction profiles were included on the ATSDR ToxProfiles 2004™ including ToxFAQs™ CD–ROM released in October 2004. The two additional interaction profiles [drafts for public comments] will be available on January 1, 2005. The comment period for the two additional profiles will be from January 1, 2005 to March 31, 2005.

ADDRESSES: Written requests for the CD–ROM should be sent to the attention of Ms. Yulandia Jordan, Office of Communication, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333 or by e-mail to *atsdric@cdc.gov*.

Requests for the guidance manual and/or interaction profiles must be in writing and submitted to the address mentioned above. ATSDR reserves the right to provide only one copy free of charge.

In case of extended distribution delays, requesters will be notified.

The documents will be also available on ATSDR's Web site at *http://www.atsdr.cdc.gov*.

FOR FURTHER INFORMATION CONTACT: Please send comments or questions regarding information contained in the profiles to Dr. Hana Pohl, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (888) 422–8737.

SUPPLEMENTARY INFORMATION: Six of the interaction profiles were developed by ATSDR for hazardous substances at the National Priority List (NPL) sites and three interaction profiles were developed by ATSDR for the hazardous substances at the Department of Energy (DOE) and National Aeronautics and Space Administration (NASA) waste sites under Section 104(i)(3) and (5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This public law mandates that ATSDR shall assess whether adequate information on health effects is available for the priority hazardous substances. Where such information is not available or under development, ATSDR shall, in cooperation with the National Toxicology Program, initiate a program of research to determine these health effects. The Act further directs that where feasible, ATSDR shall develop methods to determine the health effects

of substances in combination with other substances with which they are commonly found. The Food Quality Protection Act (FQPA) of 1996 requires that factors to be considered in establishing, modifying, or revoking tolerances for pesticide chemical residues shall include the available information concerning the cumulative effects of substances that have a common mechanism of toxicity, and combined exposure levels to the substance and other related substances. The FQPA requires that the Administrator of the Environmental Protection Agency consult with the Secretary of the Department of Health and Human Services (which includes ATSDR) in implementing some of the provisions of the act.

To carry out these legislative mandates, ATSDR has developed a chemical mixtures program. As part of the mixtures program, ATSDR developed a guidance manual that outlines the latest methods for mixtures health assessment. In addition, a series of documents called interaction profiles are being developed for certain priority mixtures that are of special concern to ATSDR. The purpose of an interaction profile is to evaluate data on the toxicology of the ''whole'' priority mixture (if available) and on the joint toxic action of the chemicals in the mixture in order to recommend approaches for the exposure-based assessment of the potential hazard to public health.

All the documents were submitted to both the peer-review and the public review processes. Changes in the documents reflect those addressing reviewers' comments.

The following documents were made available to the public in October 2004.

Document 1

Guidance manual for the assessment of joint toxic action of chemical mixtures.

Document 2

Interaction profile for persistent chemicals found in fish. Chlorinated dibenzo-p-dioxins (CDDs), hexachlorobenzene, dichlorodiphenyl dichloroethane (p,p′-DDE), methyl mercury, and polychlorinated biphenyls (PCBs).

Document 3

Interaction profile for persistent chemicals found in breast milk. Chlorinated dibenzo-p-dioxins (CDDs), hexachlorobenzene, dichlorodiphenyl dichloroethane (p,p′-DDE), methyl mercury, and polychlorinated biphenyls (PCBs).

Document 4

Interaction profile for 1,1,1-trichloroethane, 1,1-dichloroethane, trichloroethylene, and tetrachloroethylene.

Document 5

Interaction profile for benzene, ethylbenzene, toluene, and xylenes (BTEX).

Document 6

Interaction profile for arsenic, cadmium, chromium, and lead.

Document 7

Interaction profile for copper, lead, manganese, and zinc.

Document 8

Interaction profile for cesium, cobalt, polychlorinated biphenyls, strontium, and trichloroethylene.

Document 9

Interaction profile for arsenic, hydrazines, jet fuels, strontium, trichloroethylene.

Document 10

Interaction profile for cyanide, fluoride, nitrate, and uranium.

Two additional Interaction Profiles [Drafts for Public Comments]

Interaction profile for atrazine deethylatrazine, diazinon, simazine, and nitrate.

Interaction profile for chlorpyrifos, lead, mercury, and methylmercury.

Dated: December 16, 2004.

Georgi Jones,

Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health and Agency for Toxic Substances and Disease Registry.

[FR Doc. 04–27954 Filed 12–21–04; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Environmental Health Specialist Network, Program Announcement Number (PA) 05013

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Environmental Health Specialist Network, PA Number 05013.

Times and Dates: 9 a.m.–9:30 a.m., January 25, 2005 (Open), 9:30 a.m.–5 p.m., January 25, 2005 (Closed).

Place: Hilton Atlanta Airport, 1031 Virginia Avenue, Atlanta, GA 30354, Telephone Number 404 767–9000.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Environmental Health Specialist Network, PA Number 05013.

Contact Person for Further Information: Mildred Williams-Johnson, PhD, Scientific Review Administrator, Centers for Disease Control, National Center for Environmental Health, 1600 Clifton Road NE., Mailstop E28, Atlanta, GA 30333, Telephone (404) 498–0639.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 16, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–27950 Filed 12–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel (SEP): Fetal Alcohol Syndrome Prevention and Surveillance in South Africa-Developing Community-Level Strategies that Work, Request for Applications (RFA) DD05–011

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Fetal Alcohol Syndrome Prevention and Surveillance in South Africa-Developing Community-Level Strategies that Work, RFA DD05–011.

Times and Dates: 1 p.m.–1:35 p.m., January 11, 2005 (Open), 1:50 p.m.–4:30 p.m., January 11, 2005 (Closed).

Place: Teleconference Number: USA Toll Free 888–769–8515 Passcode 42438.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Fetal Alcohol Syndrome Prevention and Surveillance in South Africa-Developing Community-Level Strategies that Work, Request for Applications (RFA) DD05–011.

Contact Person for More Information: JoAnn Thierry, PhD., M.S.W., Scientific Review Administrator, Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disabilities, 1600 Clifton Road NE., Mailstop E88, Atlanta, GA 30333, Telephone (404) 498–3022.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 16, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–27953 Filed 12–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the Advisory Committee on Immunization Practices conference call meeting.

Name: Advisory Committee on Immunization Practices.

Time and Date: 11 a.m.–1 p.m., December 17, 2004.

Place: The conference call will originate at the National Immunization Program (NIP), in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: To discuss both the ACIP recommendations and the interim Vaccine for Children's Resolution and as it pertains to influenza vaccine priority groups this year.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 11 a.m., Eastern Standard Time. To participate in the conference call, please dial 1–888–455–0044 and reference passcode 5425415. You will then be automatically connected to the call.

As provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register**.

Contact Person for More Information: Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE., (E–61), Atlanta, Georgia 30333, telephone 404/639–8096, fax 404/639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: December 15, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–27922 Filed 12–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contact proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: January 19, 2005.

Open: 8:30 a.m. to 1:55 p.m.

Agenda: Report of Center Director and other issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th flr., Conf. Rm. 10, Bethesda, MD 20892.

Closed: 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th flr., Conf. Rm. 10, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.ncrr.nih.gov/newspub/minutes.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: December 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27956 Filed 12–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Brain Dopamine III.

Date: January 5, 2005.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Age and Hearing Loss.

Date: January 12, 2005.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7704; *crucew@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27957 Filed 12–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Research Program Projects (PO1).

Date: January 11, 2005.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Yan Z Wang, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594–4957.

(Catalogue of Federal Domestic Assistance Program No. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27958 Filed 12–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: January 24, 2005.

Closed: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: 1 p.m. to 5:15 p.m.

Agenda: (1) a report by the Director, NICHD; (2) a presentation by the Endocrinology, Nutrition and Growth Branch; (3) an NICHD International Programs Update; and other business of the Council.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 5:15 p.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yvonne T. Maddox, PhD, Deputy Director, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892, (301) 496–1848.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center Home page: *http://www.nichd.nih.gov/about.nachhd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27959 Filed 12–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Molecular Studies of Arthritis.

Date: January 11, 2005.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2606, *tshahan@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Review of an Unsolicited P01.

Date: January 14, 2005.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive 3143, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Marc L. Lesnick, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *ml436d@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27960 Filed 12–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Research Program Projects (PO1).

Date: January 5, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Guo HE Zhang, PhD, MD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20817, 301–451–6524, *zhanggu@mail.nih.gov.*

This notice is being published less than 15 days prior to the meting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–27961 Filed 12–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Z–RIN 1660–ZA03]

Emergency Preparedness Demonstration Program

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response (EP&R) Directorate, Department of Homeland Security (DHS).

ACTION: Notice of availability of funds.

SUMMARY: FEMA gives notice of the availability of the Emergency Preparedness Demonstration Program (the ''Program'') for Fiscal Year 2005. The Program will provide a single award of $1.5 million for a cooperative agreement with an eligible organization to conduct post-disaster critiques and evaluations in disadvantaged communities affected by Hurricane Isabel, provide an assessment of emergency preparedness awareness in these communities, and develop recommendations for new methods to improve outreach to these and similar communities.

These funds will be competitively awarded.

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. Sec. 5121–5206).

DATES: Completed applications must be received or postmarked by midnight, EST, January 21, 2005.

ADDRESSES: Grants Management Division, FEMA Headquarters, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Ralph Swisher, Program and System Development Branch, Preparedness Division, FEMA, 500 C Street, SW., Washington, DC 20472, 202–646–3561, or e-mail *ralph.swisher@dhs.gov.*

SUPPLEMENTARY INFORMATION: All information needed for the preparation and submission of information in response to this Notice is included in this Notice. An electronic copy of this information is also available on the Web at *http://www.grants.gov/Find.*

(a) Introduction

The purpose of this notice is to advise of the availability of funds to conduct post-disaster critiques and assessments in disadvantaged communities, promote emergency preparedness awareness, and develop recommendations for new methods to improve preparedness. These targeted disadvantaged

communities may include communities with a significant number of individuals who are socially disadvantaged, economically disadvantaged, have special needs, or are underserved. A single award of $1,500,000 will be available for this purpose in the form of a cooperative agreement between FEMA and the selected Grantee.

The purpose of this project is to conduct research and workshops and assist FEMA to develop an Emergency Preparedness Demonstration Program targeting disadvantaged communities. The Program will involve research into the status of disaster awareness and emergency preparedness in disadvantaged households and communities in Delaware, Maryland, North Carolina, Pennsylvania, Virginia, West Virginia and the District of Columbia (the ''designated States''), which were impacted by Hurricane Isabel; to research the capacity of such communities to provide awareness education for the public, and provide data and information on the project. The Program will model ways of accomplishing program objectives in demonstration sites: improved awareness of the risk of disasters, awareness of the need for preparedness, and achievement of concrete improvements in disaster preparedness, response and recovery.

(b) Program Description

(1) Background

Research and field experience reveal the disproportionate impact of major disasters on disadvantaged households and communities. Hurricane Isabel is a recent, catastrophic disaster, which severely impacted disadvantaged communities, and this provides a unique opportunity to study the preparedness of these specific groups through the Emergency Preparedness Demonstration Program.

The research that will be carried out under the cooperative agreement will focus on communication about disaster hazards and risks and the potential efficacy of general and specific preparedness, prevention, response, and recovery actions by subject persons, families, and communities. In particular, the research will seek to uncover any perceptions, predispositions and motivations held by the community that limit the level of preparedness and the effectiveness of preparedness activities. Such factors may be identified in any or all group and institutional patterns: family, workplace, school, recreation, health care, business and industry, religious and charitable organizations, political organizations, quasi-governmental institutions and local governments. The research is open to any variation on the general concepts of perceived validity, credibility, confidence, and acceptability of actions by individuals and organizations throughout the institutional network of the community that can help explain who should do what, and how the community can become more adequately prepared for disaster.

Numerous factors influence risk communication and the response, both to preparedness messages during normal periods and to emergency instructions when disasters occur. Research for the program focuses on weak links where disadvantaged groups and communities are not responding to emergency preparedness messages and/or emergency instructions, why that is the case, and what can improve the situation. If the initial 24-month period of performance is successful, the period of performance may be extended, depending on the availability of funds.

FEMA's vision for the Program is that informed leaders and citizens of disadvantaged communities will be prepared to protect their families, homes, workplaces, and livelihoods from the impact of all hazards. Through collaboration and coordination with public and private organizations, FEMA will support the development and demonstration of model emergency preparedness information, training and community approaches. Pilot programs must first demonstrate that the materials and approaches are effective in specific disadvantaged communities, establishing and enhancing emergency preparedness and response systems, information materials, warnings and emergency instructions, and actual community response. The successful model(s) will become demonstration projects for broader replication.

The FEMA Project Office (PO) will be proactively involved in research planning and analysis and must approve the research plan before it is implemented. The PO will be engaged in integrating application of research results into demonstration project design, guidance documents and technical assistance to demonstration projects. The PO or designated FEMA staff will coordinate State involvement in identifying disadvantaged communities as the subjects of research, and the PO, in coordination with designated States, must approve selection of demonstration sites. The FEMA PO will also coordinate identification and assessment of national organizations with local affiliates eligible for participation in local demonstration project networks.

(2) Use of Results

The Program will apply the results to help reinforce the nation's overall emergency preparedness and response capabilities by assisting community-based organizations in strengthening the defenses and preparedness efforts of disadvantaged, vulnerable communities. All public education materials and approaches concerning disaster awareness, perceptions, preparedness, prevention, response and recovery developed for and provided to FEMA, under this project will be in the public domain.

(3) Description of Work to Be Performed

In consultation with FEMA the Grantee shall conduct field research, develop materials, conduct workshops, and assist FEMA to develop an Emergency Preparedness Demonstration Program in the States of Delaware, Maryland, North Carolina, Pennsylvania, Virginia and West Virginia and Washington, DC. The Grantee will—

- Conduct research into the status of emergency preparedness and disaster response awareness in socially and economically disadvantaged households located in urban, suburban and rural communities in the designated States, with an emphasis on those impacted by Hurricanes Isabel (2003). Comparisons with Hurricane Floyd (September 1999) and Hurricanes Charley, Frances and Ivan (2004) and others may be used to confirm, elaborate or refine research results.
- Develop culturally competent educational and awareness materials, and modes of communication and program approaches that can be used to disseminate information to community organizations and institutions, and promote awareness of emergency preparedness education programs and materials.
- Provide technical assistance to State and local leaders and organizations.
- Provide a final report on Demonstration program results, and lessons learned in demonstration projects. Revised program materials will be appended.
- Provide a briefing and participate in discussion of results, their implications and applications.

(c) Eligibility

An organization shall be eligible to be awarded a cooperative agreement with respect to this program if the organization is a non-profit organization that is described in section 501(c)(3) of

the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and exempt from tax under section 501(a) of such Code, whose primary mission is to provide services to disadvantaged communities, and that can demonstrate partnerships with a business enterprise or non-profit organization focused on the special needs of these communities, including enterprises located in a HUBZone. The Grantee will have the ability to award nominal subgrants (average $50,000) to support collection and reporting of demonstration program data and information over approximately 18 months. Eligible sub-applicants would include community organizations, local government organizations, and other non-profit organizations in the designated States.

Each applicant must certify status as a Sec. 501(c)3 private non-profit organization, with knowledge of, experience in and capabilities for managing the project.

(d) Application Process

FEMA will fund Emergency Preparedness Demonstration Program activities based on proposals that address the Program's priorities and maximize the benefits to be derived from the funds.

Applications must be submitted in a paper format, and must include Standard Form SF–424 Application for Federal Assistance (for background/contact information), a FEMA Form 20–20 (for budget information), FEMA Forms 20–16A and 20–16C (for assurances and certifications), standard Form LLL Disclosure of Lobbying Activities, and a Program Narrative (all grants administration forms have been approved by the Office of Management and Budget under OMB control number 1660–0025, which expires July 31, 2007.). Each applicant is required to provide a narrative of specifics regarding the proposed activities that they plan to carry out with the grant funds, including an explanation of the activities planned and the benefits to be derived from completion of the activities.

Award Procedure

A single cooperative agreement will be awarded on a competitive basis to be used as specified in the approved application and agreed to between FEMA and the recipient in the cooperative agreement. All proposals will be evaluated by a FEMA panel composed of subject-matter, program and grant experts. The successful application will have the proposal that in FEMA's judgment best addresses the program's priorities and goals. The panel will conduct an assessment of the proposal's merits, with respect to the detail provided in the proposal. The panel will make the award recommendation to the Grants Management Branch of the Financial and Acquisition Management Division. The Grants Management Branch will contact the applicant with the best proposal to discuss and execute the cooperative agreement.

Completed applications must be received or postmarked by January 21, 2005. Applications are required to include a narrative and the required FEMA forms. These forms are available online at *http://www.fema.gov/ofm/grants2.shtm.* Failure to submit all of the required forms will result in a disqualification of the paper application. Applications should be mailed to FEMA, Attn: Emergency Preparedness Demonstration Program, 500 C Street, SW., Room 316, Washington, DC 20472.

(e) Eligible Activities

The Federal Emergency Management Agency (FEMA) will provide funds to an eligible organization to: (1) Acquire expert professional services necessary to conduct research on the status of emergency preparedness and disaster response awareness in disadvantaged communities; (2) develop and prepare informational materials to promote awareness among disadvantaged communities about emergency preparedness and how to protect homes, businesses and communities in advance of disasters; (3) establish consortia with national organizations, institutions of higher education, and community-or faith-based (501(c)(3) nonprofit) institutions with a demonstrated focus on the targeted communities to disseminate information about emergency preparedness to these communities; and (4) implement a joint project with an institution serving disadvantaged individuals and communities, which may include a part B institution (as defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)), an institution described in subparagraph (A), (B), or (C) of section 326(e)(1)of that Act (20 U.S.C. 1063b(e)(1)(A), (B), or (C)), or a Hispanic-serving institution (as defined in section 502(a)(5) of that Act (20 U.S.C. 1101a(a)(5))).

Funds are for demonstration projects in the designated areas affected by Hurricane Isabel in September 2003 (Delaware, Maryland, North Carolina, Pennsylvania, Virginia, West Virginia and the District of Columbia).

(f) Evaluation Criteria

A panel of subject matter expert will review the applications to determine the one that best addresses the program's objectives. The panel will use the following guidelines to determine the proposal with the highest rating, which will be the recommended Grantee.

1. Technical and Management Factors (35 points).

a. Understanding of the problem.

b. Approach to address the problem.

c. Demonstrated competence of Project Manager.

d. Demonstrated competence of key professionals.

e. Demonstrated competence among management and key professionals in building networks and coalitions with national and community voluntary, social, civic, fraternal and/or faith-based organizations.

2. Project Organization and Management (20 points). Experience and performance in administrative management: The division of work into various tasks to be performed, and the coordination of those tasks to accomplish project activities and objectives.

a. Definition of responsibility and accountability for key specific tasks and functions of specifically named key individuals within the organizations and units.

b. Time commitment of key individuals to carry out the proposed tasks and responsibilities necessary to complete the project.

c. Designation of tasks, subtasks, products, and time schedule for performance of those tasks and delivery of reports and products.

d. Procedures for supervising, coordinating and evaluating task performance

e. Procedures for monitoring time schedule and monetary control.

3. Organizational Qualifications (45 points).

a. Current and previous corporate experience in managing and conducting projects of similar scope and complexity and potential for controversy.

b. Corporate experience in networks and coalitions with national and community voluntary, social, civic, fraternal and/or faith-based organizations.

Dated: December 15, 2004.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–27928 Filed 12–21–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4904–N–14]

Notice of Proposed Information Collection: Comment Request: Loan Guarantee Recovery Fund

AGENCY: Office of the Assistant Secretary for Community Planning And Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 22, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing Urban and Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jackie L. Williams, Ph.D., Director, Office of Rural Housing and Economic Development, Room 7137, Washington, DC 20410, telephone: (202) 708–2290, (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as Amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) 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; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Loan Guarantee Recovery Fund.

OMB Control Number, if applicable: 2506–0159.

Description of the need for the information and proposed use: To appropriately determine whether entities that submit applications for assistance under the Loan Guarantee Recovery Fund (Section 4 of the Church Arson Prevention Action of 1996) are eligible applicants and submit applications otherwise in compliance with the regulations, certain information is required. Among other necessary criteria, HUD must determine whether: (1) The financial institution is eligible as defined at 24 CFR Section 573.2 of the regulation; (2) the borrower is eligible as defined under 24 CFR Section; (3) the loan will assist in addressing damage or destruction caused by acts of arson or terrorism; (4) the activities which will be assisted by the guaranteed loans are eligible activities under 573.3; (5) the financial institution utilizes sufficient underwriting standards; and (6) the assisted activities will comply with all applicable environmental laws requirements.

Agency form numbers, if applicable: *Form HUD–40076 LGA (1/2005)*

Members of affected public: Financial institutions such as banks, trust companies, savings and loan associations, credit unions, mortgage companies, or other issues regulated by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Credit Union Administration, or the U.S. Comptroller of the Currency. Certain not-for-profit organizations affected by acts of arson or terrorism.

Estimation of the total number of hours needed to prepare the Information collection including number of respondents, frequency of response, and hours of response: A total of 100 respondents are expected and the total estimated burden hours is 9440.

Status of the proposed information collection: The Department does not have a critical mass of respondents to serve as a source of information from which conclusions can be drawn with respect to the accuracy of its current estimates.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 14, 2004.

Nelson R. Bregón,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 04–27923 Filed 12–21–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1310PP–ARAC]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held February 8–9, 2005, at the Anchorage Federal Building, located at 7th and C Street, beginning at 8:30 a.m. The public comment period will begin at 1 p.m. February 8.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–3322 or e-mail *tmcphers@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics we plan to discuss include:

- Status of land use planning in Alaska
- Off-highway vehicle use designations on BLM-administered lands
- Wildland fire management on BLM-administered lands
- National Petroleum Reserve-Alaska integrated activity plans
- North Slope Science Initiative
- Other topics the Council may raise

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact BLM.

Dated: December 14, 2004.

George P. Oviatt,

Acting Associate State Director.

[FR Doc. 04–27924 Filed 12–21–04; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST] ES–052760, Group No. 165, Wisconsin

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calender days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fourth Principal Meridian, Wisconsin

T. 52 N., R. 4 W.

The plat of survey represents the dependent resurvey of a portion of the east and south boundaries, a portion of the subdivisional lines; the subdivision of sections 26, 27, 28 and 33, in Township 52 North, Range 4 West, Fourth Principal Meridian, Wisconsin, and was accepted December 14, 2004. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: December 14, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–27926 Filed 12–21–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of Agriculture, Forest Service, Chugach National Forest, Anchorage, AK

AGENCY: National Park Service.

ACTION: Notice.

Notice is here given under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the U.S. Department of Agriculture, Forest Service, Chugach National Forest, Anchorage, AK, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The cultural items are 10 adzed planks.

In 1980, U.S. Department of the Interior, Bureau of Indian Affairs (BIA) and U.S. Department of the Interior, National Park Service, Cooperative Park Studies Unit (CPSU) archeologists conducted a survey of Mummy Island I, a 14 (h)(1) selection in Prince William Sound, AK. Cultural items, along with human remains, were collected from five areas at the site. The cultural items are 10 adzed planks. The human remains were reinterred at the original location on October 9, 1990. Chugach National Forest does not have physical custody or control of human remains from the Mummy Island I site.

On October 2, 1990, U.S. Department of Agriculture, Forest Service, Chugach National Forest archeologists conducted an intentional excavation at Mummy Island I in preparation for the reburial of the human skeletal remains that were collected by BIA/CPSU in 1980. Archeological evidence indicates that the Mummy Island I site is a prehistoric Chugach/Sugpiaq rockshelter.

Officials of Chugach National Forest have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 10 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Chugach National Forest also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Native Village of Chenega, which is represented by Chugach Alaska Corporation.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Linda Yarborough, Forest Archeologist, Chugach National Forest, 3301 C Street, Suite 300, Anchorage, AK 99503, telephone (907) 271-2511, fax (907) 271-2725, before January 21, 2005. Repatriation of the unassociated funerary objects to the Chugach Alaska Corporation on behalf of the Native Village of Chenega may proceed after that date if no additional claimants come forward.

The Chugach National Forest is responsible for notifying Chugach Alaska Corporation, Chenega Corporation, Native Village of Chenega, Tatitlek Corporation, Native Village of Tatitlek, English Bay Corporation, Native Village of Nanwalek, Port Graham Corporation, Native Village of Port Graham, Eyak Corporation, and Native Village of Eyak that this notice has been published.

Dated: November 4, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–28002 Filed 12–21–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Lassen National Forest, Susanville, CA, and Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Agriculture, Forest Service, Lassen National Forest, Susanville, CA, and in the physical custody of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from Tehama County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and

associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Lassen National Forest professional staff in consultation with representatives of the Pit River Tribe, California; and Redding Rancheria, California.

In 1952 and 1953, human remains representing a minimum of 59 individuals were removed from Kingsley Cave (CA-Teh-1), Tehama County, CA. Kingsley Cave is a habitation site on an unmarked tributary of Mill Creek. The site was excavated by University of California, Berkeley staff under the direction of M.A. Baumhoff. No known individuals were identified. The 405 associated funerary objects are 1 shell ornament, 1 shell, 319 clamshell beads, 43 olivella shell beads, 1 stone bead, 5 pine nut beads, 2 glass beads, 7 stone projectile points and projectile point fragments, 3 stone scrapers, 1 pestle, 1 abalone shell, 3 bone tool fragments, 1 cordage fragment, 15 fragments of organic material, and 2 lots of animal bone.

Based on characteristics of the human remains and associated funerary objects, and the presence of two glass beads, the human remains are dated to the proto-historic and historic periods, and to a lesser extent from the late prehistoric period.

In 1956, human remains representing a minimum of three individuals were removed from Payne Cave (CA-Teh-193), Tehama County, CA. The human remains were removed during authorized excavations by the University of California Archaeological Survey. No known individuals were identified. No associated funerary objects are present.

Based on characteristics of non-funerary objects removed during the excavations, the human remains are dated to the proto-historic and historic periods.

Based on physical characteristics of the human remains, manner of burial, and the nature of the associated funerary objects, the human remains are determined to be Native American. Ethnographic and historical accounts indicate that both caves are located in areas associated with the Yana people during the late prehistoric and historic periods. The present-day descendents of the Yana people are the Pit River Tribe, California; and Redding Rancheria, California.

Officials of Lassen National Forest have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of at least 62 individuals of Native American ancestry. Officials of Lassen National Forest also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 405 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Lassen National Forest have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Pit River Tribe, California; and Redding Rancheria, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Laurie Tippin, Forest Supervisor, Lassen National Forest, Susanville, CA 96130, telephone (530) 257-2151, before January 21, 2005. Repatriation of the human remains and associated funerary objects to the Pit River Tribe, California; and Redding Rancheria, California, may proceed after that date if no additional claimants come forward.

The Lassen National Forest is responsible for notifying the Pit River Tribe, California; and Redding Rancheria, California, that this notice has been published.

Dated: November 2, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–28006 Filed 12–21–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the American Museum of Natural History, New York, NY, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 20 cultural items are a Chilkat blanket and a shaman's kit that consists of 7 masks, 1 waist robe, 1 shoulder robe, 1 bead, 1 crown, 1 headdress ornament, 1 carving, 2 bracelets, 1 charm, 1 club, 1 pair of earrings, and 1 nose ring.

The Chilkat blanket is woven from mountain goat wool and is ornamented to represent a hawk. The blanket is fringed along the sides and bottom. All seven masks from the shaman's kit are carved from wood, painted, and ornamented in various designs. The first mask is painted red, green, and brown and is ornamented with devilfish tentacles encircling the face. The second mask is painted red, green, and brown and represents a sun dog spirit. The third mask is painted red, green, and brown, is ornamented with bear skin, and represents the spirit living on a small lake. The fourth mask is painted green and brown, is ornamented with black bear fur across the forehead and copper at the nostrils and lips, and represents a land otter man. The fifth mask is painted green, red, and brown, is ornamented with brass at the eyes, nostrils, and lips, and represents the spirit of the trout canoe. The sixth mask is painted green, red, and brown, and represents the spirit living in the stars. The seventh mask is painted green, red, and brown, is ornamented with a copper tongue, and represents the deer spirit. The waist robe is made from a caribou hide that is ornamented with deer hoofs, crested puffin bills, and feathers. The shoulder robe is made from moose hide and represents a whale. The bead is made of carved bone. The crown is made of mountain goat horns. The headdress ornament is made from wood and is carved to represent a bear's head below the dorsal fin of a killer whale. The carving represents a salmon upon which is carved the figure of a crab. The two bracelets are made of bone and one is carved with intersecting lines. The charm is made of stone and is carved to represent an eagle. The club is made of carved wood and represents a salmon with a human head in its mouth. The earrings are made of bone and are carved to represent a salmon. The nose ring is made of ivory.

At an unknown date, Lieutenant George Thornton Emmons acquired the Chilkat blanket. In 1894, the American Museum of Natural History purchased the Chilkat blanket from Lieutenant Emmons and accessioned it into its collection that same year.

Lieutenant Emmons purchased the shaman's kit in 1899. Museum records indicate that Lieutenant Emmons purchased the kit through a friend who had been in ''Auk country.'' In 1900, the American Museum of Natural History purchased the shaman's kit from Lieutenant Emmons and accessioned it into its collection that same year.

The cultural affiliation of the Chilkat blanket is Hutsnuwu (''Hootz-ar-rar qwan'') Tlingit as indicated through Museum records and consultation with representatives of Central Council of the Tlingit and Haida Indian Tribes. The Central Council of the Tlingit and Haida Indian Tribes has requested the blanket on behalf of the clans of Angoon. The cultural affiliation of the shaman's kit is Auk Tlingit as indicated by Museum records and by consultation evidence provided by the Central Council of the Tlingit and Haida Indian Tribes. Museum records indicate that the shaman's kit was removed from a grave house in Berner's Bay and belonged to the chief doctor Kow-ee of the ''Thlu-kar tee'' family of the Auk Kwan. The Central Council of the Tlingit and Haida Indian Tribes requested the shaman's kit on behalf of the L'eeneidi clan of the Auk Kwan.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 20 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Central Council of the Tlingit and Haida Indian Tribes.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, before January 21, 2005. Repatriation of the unassociated funerary objects to the Central Council of the Tlingit and Haida Indian Tribes may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Central Council of the Tlingit and Haida Indian Tribes, Douglas Indian Association, Goldbelt Incorporated, Angoon Community Association, Kootznoowoo, Incorporated, and Sealaska Heritage Foundation that this notice has been published.

Dated: November 16, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–28001 Filed 12–21–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the American Museum of Natural History, New York, NY, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 20 cultural items are a Chilkat blanket and a shaman's kit that consists of 7 masks, 1 waist robe, 1 shoulder robe, 1 bead, 1 crown, 1 headdress ornament, 1 carving, 2 bracelets, 1 charm, 1 club, 1 pair of earrings, and 1 nose ring.

The Chilkat blanket is woven from mountain goat wool and is ornamented to represent a hawk. The blanket is fringed along the sides and bottom. All seven masks from the shaman's kit are carved from wood, painted, and ornamented in various designs. The first mask is painted red, green, and brown and is ornamented with devilfish tentacles encircling the face. The second mask is painted red, green, and brown and represents a sun dog spirit. The third mask is painted red, green, and brown, is ornamented with bear skin, and represents the spirit living on a small lake. The fourth mask is painted green and brown, is ornamented with black bear fur across the forehead and copper at the nostrils and lips, and represents a land otter man. The fifth mask is painted green, red, and brown, is ornamented with brass at the eyes, nostrils, and lips, and represents the spirit of the trout canoe. The sixth mask is painted green, red, and brown, and represents the spirit living in the stars. The seventh mask is painted green, red, and brown, is ornamented with a copper tongue, and represents the deer spirit. The waist robe is made from a caribou hide that is ornamented with deer hoofs, crested puffin bills, and feathers. The shoulder robe is made from moose hide and represents a whale. The bead is made of carved bone. The crown is made of mountain goat horns. The headdress ornament is made from wood and is carved to represent a bear's head below the dorsal fin of a killer whale. The carving represents a salmon upon which is carved the figure of a crab. The two bracelets are made of bone and one is carved with intersecting lines. The charm is made of stone and is carved to represent an eagle. The club is made of carved wood and represents a salmon with a human head in its mouth. The earrings are made of bone and are carved to represent a salmon. The nose ring is made of ivory.

At an unknown date, Lieutenant George Thornton Emmons acquired the Chilkat blanket. In 1894, the American Museum of Natural History purchased the Chilkat blanket from Lieutenant Emmons and accessioned it into its collection that same year.

Lieutenant Emmons purchased the shaman's kit in 1899. Museum records indicate that Lieutenant Emmons purchased the kit through a friend who had been in ''Auk country.'' In 1900, the American Museum of Natural History purchased the shaman's kit from Lieutenant Emmons and accessioned it into its collection that same year.

The cultural affiliation of the Chilkat blanket is Hutsnuwu (''Hootz-ar-rar qwan'') Tlingit as indicated through Museum records and consultation with representatives of Central Council of the Tlingit and Haida Indian Tribes. The Central Council of the Tlingit and Haida Indian Tribes has requested the blanket on behalf of the clans of Angoon. The cultural affiliation of the shaman's kit is Auk Tlingit as indicated by Museum records and by consultation evidence provided by the Central Council of the Tlingit and Haida Indian Tribes. Museum records indicate that the shaman's kit was removed from a grave house in Berner's Bay and belonged to the chief doctor Kow-ee of the ''Thlu-kar tee'' family of the Auk Kwan. The Central Council of the Tlingit and Haida Indian Tribes requested the shaman's kit

on behalf of the L'eeneidi clan of the Auk Kwan.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 20 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Central Council of the Tlingit and Haida Indian Tribes.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, before January 21, 2005. Repatriation of the unassociated funerary objects to the Central Council of the Tlingit and Haida Indian Tribes may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Central Council of the Tlingit and Haida Indian Tribes, Douglas Indian Association, Goldbelt Incorporated, Angoon Community Association, Kootznoowoo, Incorporated, and Sealaska Heritage Foundation that this notice has been published.

Dated: November 16, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04-28004 Filed 12-21-04; 8:45 am]

BILLING CODE 4312-50-S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the physical custody of the Arizona State Museum, University of Arizona, Tucson, AZ, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 366 cultural items are 33 shell beads, 19 stone beads, 60 beads of unspecified material, 7 bone artifact fragments, 1 bone ornament, 6 ceramic artifacts, 1 ceramic bowl, 1 ceramic figurine, 1 glycymeris shell, 110 glycymeris shell bracelet fragments, 2 horn artifacts, 74 projectile points, 4 projectile point fragments, 16 sandstone abrader fragments, 5 sandstone plaque fragments, 1 shell artifact, 3 shell artifact fragments, 11 shell fragments, 4 shell pendants, 1 stone artifact, 2 stone bowl fragments, 1 stone palette fragment, 1 stone ring, and 2 drilled turquoise pieces.

The cultural items were removed in 1934-35, during archeological excavations conducted by the Gila Pueblo Foundation of Arizona, and in 1964-65 during excavations by University of Arizona personnel at the Snaketown site (AZ U:13:1 ASM), on the Gila River Indian Reservation, Pinal County, AZ. Other unassociated funerary objects from this site were published in a notice of intent to repatriate in the **Federal Register** on March 20, 2001, pages 15741-42, FR Doc. 01-6897.

The archeological evidence, including characteristics of portable material culture, attributes of ceramic styles, domestic and ritual architecture, site organization, and canal-based agriculture of the settlement places the Snaketown site within the archeologically-defined Hohokam tradition, and within the Phoenix Basin local variant of that tradition. The occupation of the Snaketown site spans the years circa A.D. 500/700-1100/1150.

Continuities of mortuary practices, ethnographic materials, and technology indicate affiliation of Hohokam settlements with present-day O'odham (Piman), Pee Posh (Maricopa), and Puebloan cultures. Oral traditions documented for the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico support affiliation with Hohokam sites in central Arizona.

Officials of the Bureau of Indian Affairs and Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Bureau of Indian Affairs and Arizona State Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the cultural items and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. The Zuni Tribe has withdrawn from this consultation. The Gila River Indian Community of the Gila River Indian Reservation, Arizona, is acting on behalf of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community, Arizona; Tohono O'odham Nation of Arizona; and themselves.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these cultural items should contact John Madsen, Repatriation Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 621-4795, before January 21, 2005. Repatriation of the cultural items to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Arizona State Museum is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: November 16, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–27999 Filed 12–21–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The Colorado College, Colorado Springs, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of The Colorado College, Colorado Springs, CO. The human remains were removed from Rio Grande County and Saguache Counties, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by The Colorado College professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

On March 11, 1981, human remains representing one individual were discovered during a construction project 1.2 miles east of Del Norte, Rio Grande County, CO. The county coroner determined that the human remains were not of forensic significance and transferred the human remains to The Colorado College. The human remains were curated from 1981 until 1989 in the Anthropology Department Archaeology Laboratory in Palmer Hall. In 1989 the human remains were moved to the Biological Anthropology Classroom/Laboratory of Barnes Science Center. No known individual was identified. No associated funerary objects are present.

On September 2, 1981, human remains representing two individuals were discovered in Saguache County, CO. The county coroner determined that the human remains were not of forensic significance and transferred the human remains to the State archeologist, who transferred the human remains to The Colorado College. The human remains were curated from 1981 until 1989 in the Anthropology Department Archaeology Laboratory in Palmer Hall. In 1989, the human remains were moved to the Biological Anthropology Classroom/Laboratory of Barnes Science Center. No known individuals were identified. No associated funerary objects are present.

A physical anthropological assessment of the human remains resulted in a determination that the individuals are most likely Native American based on cranial morphology. The Colorado Office of Archaeology and Historic Preservation map ''Estimated Tribal Territories in Colorado During the Late Nineteenth Century,'' establishes the presence of the Apache, Navajo, Pueblo groups, and the Ute in Rio Grande and Saguache Counties at that time. The Southern Ute Indian tribe map ''Original Ute Domain'' includes Rio Grande County and Saguache County as a part of the original domain of the Ute; another map of the Southern Ute Indian tribe ''Ute Territory of 1868'' includes these counties in Southern Ute territory. The map ''Early Indian Tribes, Culture Areas, and Linguistic Stocks'' (W. Sturtevant, Smithsonian Institution, 1967) shows the presence of the Ute and the Jicarilla Apache in Rio Grande and Saguache Counties at the time of contact with Europeans. Tribal oral tradition supports the presence of the Eastern Apache, Ute, Puebloans, and Navajo peoples in Rio Grande and Saguache Counties.

Officials of The Colorado College have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of The Colorado College also have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot reasonably be traced between the human remains and any present-day Indian tribe.

According to the Native American Graves Protection and Repatriation Review Committee's charter, the Review Committee is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In May 2004, the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado submitted a request to The Colorado College for repatriation of the culturally unidentifiable human remains. In August 2004, The Colorado College requested that the Review Committee make a recommendation regarding the disposition of the remains of three culturally unidentifiable human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado and to any other Indian tribe that also requested repatriation prior to the Review Committee meeting. The Review Committee considered the proposal at its September 2004 meeting in Washington, DC, and recommended repatriation of the human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado. A September 21, 2004, letter from the Designated Federal Officer, on behalf of the interim chair of the Review Committee, to The Colorado College transmitted the Review Committee's recommendation that the museum repatriate the culturally unidentifiable human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Joyce Eastburg, Legal Assistant, The Colorado College, 14 East Cache La Poudre Street, Colorado

Springs, Colorado 80903, telephone (719) 389–6703, before January 21, 2005. Repatriation of the human remains to the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado may proceed after that date if no additional claimants come forward.

The Colorado College is responsible for notifying the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: November 12, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–28005 Filed 12–21–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the physical custody of the Arizona State Museum, University of Arizona, Tucson, AZ. The human remains and associated funerary objects were removed from sites within the boundaries of the Gila River Indian Reservation, Pinal County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Arizona State Museum professional staff and Bureau of Indian Affairs professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. The Zuni Tribe has withdrawn from this consultation. The Gila River Indian Community of the Gila River Indian Reservation, Arizona is acting on behalf of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona; and themselves.

In September 1964, human remains representing one individual were collected from the surface of the Snaketown site (AZ:U:13:1 ASM) on the Gila River Indian Reservation, Pinal County, AZ, by F.V. Crane. No known individual was identified. The five associated funerary objects are three sherds and two lithic artifacts. Other human remains and associated funerary objects from this site were published in a notice of inventory completion in the **Federal Register** on December 29, 2000, pages 83079-81, FR Doc. 00-33272.

Mr. Crane removed the human remains and associated funerary objects from the Snaketown site and donated them, with M.W.A. Crane, to the Denver Museum of Natural History in 1983. In July 2002, officials from the Bureau of Indian Affairs transferred custody of the human remains and associated funerary objects to the Arizona State Museum.

The archeological evidence, including characteristics of portable material culture, attributes of ceramic styles, domestic and ritual architecture, site organization, and canal-based agriculture of the settlement, places the Snaketown site within the archeologically-defined Hohokam tradition and within the Phoenix Basin local variant of that tradition. The occupation of the Snaketown site spans the years circa A.D. 500/700-1100/1150.

At an unknown date between 1931 and 1934, human remains representing one individual were removed from a cremation feature at an unknown site in the vicinity of Sacaton (AZ U:14:--) area, Gila River Indian Reservation, Pinal County, AZ, by Carl A. Moosberg. No known individual was identified. The one associated funerary object is a Sacaton Red-on-buff jar in which the remains had been placed subsequent to cremation. The vessel and the human remains were donated to the Arizona State Museum by Carl A. Moosberg in 1935. In 1953, the vessel and the remains were sent to the Denver Museum of Natural History as part of an exchange. In July 2002, officials from the Bureau of Indian Affairs transferred custody of the human remains and the vessel back to the Arizona State Museum.

Based on characteristics of the mortuary pattern and the attributes of the ceramic style, this burial has been identified as being associated with the Sedentary Phase of the Hohokam archeological tradition, which spanned the years circa A.D. 950-1150.

Continuities of mortuary practices, ethnographic materials, and technology indicate affiliation of Hohokam settlements with present-day O'odham (Piman), Pee Posh (Maricopa), and Puebloan cultures. Oral traditions documented for the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico support affiliation with Hohokam sites in central Arizona.

Officials of the Bureau of Indian Affairs and Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Bureau of Indian Affairs and Arizona State Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the six cultural items described above are reasonably believed to have been placed with or near individual human

remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Indian Affairs and Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact John Madsen, Repatriation Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 621-4795, before January 21, 2005. Repatriation of the human remains and associated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Arizona State Museum is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: November 16, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–28000 Filed 12–21–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Nebraska State Historical Society, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of Nebraska State Historical Society, Lincoln, NE. The human remains and cultural items were removed from the Oacama site, Lyman County, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Nebraska State Historical Society professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

In 1951 and 1952, human remains representing a minimum of three individuals were removed from the Oacama site, Lyman County, SD, by Dr. Martin Kivett of the Nebraska State Historical Society. The site was on land that was probably private at the time that it was excavated. No known individuals were identified. The four associated funerary objects are two animal bones and two fragments of burned earth.

The Oacama site was excavated by Dr. Kivett in 1951 and 1952. The investigation was completed in association with the Smithsonian River Basin Survey in the area of Chamberlain, SD. Oacama is a postcontact earthlodge village, which Dr. Kivett believes dates to the period A.D. 1675–1725 (unpublished manuscript on file, Nebraska State Historical Society, 1958), and is most likely an Arikara village. The pottery recovered in association with the human remains is typical of that made by the Arikara, who occupied a number of villages in this area during the postcontact period. Cranial morphology also supports affiliation to the Arikara. The simple–stamped pottery noted by Dr. Kivett has not been located. The Arikara are today represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota

Officials of the Nebraska State Historical Society have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the Nebraska State Historical Society also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the four objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Nebraska State Historical Society have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Rob Bozell, Associate Director, Nebraska State Historical Society, 1500 R Street, P.O. Box 82554, Lincoln, NE 68501–2554, telephone 402–471–4789, before January 21, 2005. Repatriation of the human remains and associated funerary objects to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota may proceed after that date if no additional claimants come forward.

The Nebraska State Historical Society is responsible for notifying Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: November 3, 2004

Sherry Hutt, Manager

National NAGPRA Program.

[FR Doc. 04–28003 Filed 12–21–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–56,018]

Alphatech, Inc, Fletcher, NC; Notice of Termination of Investigation.

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 17, 2004 in response to a worker

petition filed by a company official on behalf of workers at AlphaTech, Inc., Fletcher, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 3rd day of December, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3775 Filed 12–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–53,918]

BMC Software, Inc., Houston, TX; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for voluntary remand for further investigation in *Former Employees of BMC Software, Inc.* v. *U.S. Secretary of Labor* (Court No. 04–00229).

The Department's denial of the initial petition (filed on December 23, 2003) was issued on January 20, 2004. The Notice of determination was published in the **Federal Register** (69 FR 11888) on March 12, 2004. The negative determination was based on the finding that, while the subject company experienced significant employment declines, the worker group did not produce an article within the meaning of section 222 of the Trade Act of 1974 (TAA), as amended. Workers at the subject facility develop software solutions.

By letter dated February 9, 2004, the petitioner requested administrative reconsideration, contending that the subject company did, in fact, produce articles. During review of the request for reconsideration, the Department asked the company to characterize the work performed at the subject facility. The company responded that workers of BMC Software, Inc., Houston, Texas, are software developers. The official further stated that software developed at the subject firm is not mass-produced on media devices and is not sold in an ''off-the-shelf'' manner. The company official also stated that due to significant restructuring actions to reduce ongoing operational expenses, BMC Software, Inc., had implemented a large reduction of its worldwide workforce, which included the Houston, Texas location of the firm. Based on the information provided by the company official, the Department confirmed its initial finding and issued a Notice of Negative Determination Regarding Application for Reconsideration on March 31, 2004 and published the Notice in the **Federal Register** on April 16, 2004 (69 FR 20642).

By letter dated June 1, 2004, the petitioner filed an appeal with the USCIT, alleging that the Department had erred in its determination that the subject facility did not produce an article. The appeal included photocopied pictures of packaged software produced at the subject facility, which the Department had not seen before. Having identified the need to resolve the apparent conflict between information provided by the petitioners and that provided by the employer, the Department filed a motion for voluntary remand, on July 6, 2004. In an Order issued on August 11, 2004, the USCIT granted the Department's uncontested motion for voluntary remand and further investigation.

The Department conducted a remand investigation in order to determine whether the subject worker group met the criteria set forth in the Trade Act of 1974 for TAA certification as primarily-affected workers. Section 222(a) of the Trade Act (19 U.S.C. 2272(a)) provides:

> A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for adjustment assistance under this part pursuant to a petition filed under section 2271 of this title if the Secretary determines that—
>
> (1) A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and
>
> (2)(A)(i) The sales or production, or both, of such firm or subdivision have decreased absolutely; (ii) imports of articles like or directly competitive with articles produced by such firm or subdivision have increased; and (iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or
>
> (B)(i) There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and (ii)(I) the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States; (II) the country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or (III) there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

During the remand investigation, the Department raised additional questions and obtained detailed supplemental responses from the company. In particular, the new information showed that, in addition to software design and development, the firm does, in fact, mass-replicate software at the subject facility. Further, software produced by the firm at the subject facility includes not only custom applications, but packaged ''off-the-shelf'' applications which are mass-replicated on various media (CDs and tapes) at the subject facility. Workers at the subject facility are not separately identifiable by product line. Therefore, the subject worker group did engage in activity related to the production of an article.

The Department has consistently maintained that the design and development of software is a service. In order to be treated as an article, for TAA purposes, a software product must be tangible, fungible, and widely marketed. The Department considers software that is mass-replicated on physical media (such as CDs, tapes, or diskettes) and widely marketed and commercially available (*e.g.*, packaged ''off-the-shelf'' programs) and dutiable under the Harmonized Tariff Schedule of the United States to be an article. The workers designing and developing such products would be considered to be engaged in services supporting the production of an article.

On remand, the Department also investigated the petitioner's allegations that the firm shifted production. Based on the information generated through that investigation, the Department determined that there was no shift in production, for TAA purposes, to a foreign country of articles like or directly competitive with the packaged, mass-replicated software produced by BMC during the relevant period.

The investigation also revealed that employment and production of packaged, mass-replicated software at the subject facility had declined significantly from 2002 to 2003, while company imports of mass-replicated software increased during the same period. The Department has found that the increase in company imports represented a significant percentage of the decline in production at the subject facility during the relevant period.

Conclusion

After careful review of the facts generated through the remand investigation, I determine that increases of imports of articles like or directly

competitive with those produced at BMC Software, Inc., Houston, Texas, contributed importantly to the total or partial separation of a significant number of workers and to the decline in sales or production at that firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of BMC Software, Inc., Houston, Texas, who became totally or partially separated from employment on or after December 23, 2002, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of December 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3777 Filed 12–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment And Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of November and December 2004.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–56,046; Burrows Paper Corp., Pulp Div., Little Falls, NY

TA–W–55,838; Carolina Steel, Lynchburg, VA

TA–W–55,708; Alcatel USA Resources, EF&I Group, Plano, TX

TA–W–55,820; Thermal and Interior, Vandalia Operations of Delphi Corp., Vandalia, OH

TA–W–55,831; Cardinal Health PTS LLC, Vegicaps Oral Technologies Div., Springville, UT

TA–W–56,065; River Valley Contract Manufacturing, Inc., Menifee, AR

TA–W–55,918; Alpha Spectra, Inc., Grand Junction, CO

TA–W–55,806; Value Line Supply Co., Arkadelphia, AR

TA–W–55,842; Upholstery Felt Co., Portland, OR

TA–W–55,965; Accidental Anomalies, Inc., Turner, ME

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–56,029; Underwriters Laboratories, Inc., Research Triangle Park, NC

TA–W–56,051; Cambria Somerset Authority, Wilmore and Hinkston Reservoirs, Johnstown, PA

TA–W–55,890; Gwinnett Medical Center, Lawrenceville, GA

TA–W–55,957; Stellar Engineering, Inc., Warren, MI

TA–W–55,884; Jordan Fashions Corp., Westbury, NY

TA–W–55,961; Thomas & Betts Corp., Heater Div., Jonesboro, AR

TA–W–55,995; Conocophilips, Downstream Technology Div., Ponca City, OK

TA–W–56,044; Ametek—Prestolite Power & Switch, Switch Business Unit, Troy, OH

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–55,864; The Glass Group, Inc., Flat River Glass Operations, Park Hills, MO

TA–W–55,817; Celanese, Ticona Div., Bishop, TX

The investigation revealed that criterion (a)(2)(A)(I.B) (Sales or

production, or both, did not decline) and (a) (2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–55,810; Honeywell, Inc., Honeywell Hobbs Div., Drafting and Design Department, Springfield, IL

TA–W–55,924; Castle Industries LLC, Greenville, SC High Point, NC

The investigation revealed that criteria (a)(2)(A) (I.C) increased imports and (II.C) (has shifted production to a foreign country) have not been met.

TA–W–55,845; Maha USA, LLC, Pinckard, AL

TA–W–55,898; Glenshaw Glass Co., Glenshaw, PA

TA–W–55,973; Celanese Acetate LLC, including on-site leased workers of Venturi Staffing, Rock Hill, SC

TA–W–55,833; Brooks-Pri Automation, Inc., including leased workers of Davis Companies and Footbridge, Chelmsford, MS

The investigation revealed that criteria (2) has not been met.

The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–55,848; Crotty Corp., Quincy, MI

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–55,987; Romar Textile Co., Inc., Ellwood City, PA: November 11, 2003.

TA–W–55,859; C&H Fashions, Inc., San Francisco, CA: September 29, 2003.

TA–W–55,952; CMD Apparel, LLC, Detroit, AL: November 5, 2003.

TA–W–55,850; Hill Fastener Corp., Rock Falls, IL: October 20, 2003.

TA–W–55,835; ITT Industries, C&K Switch Components, Inc., C&K Switch Products Div., Newton, MA: October 18, 2003.

TA–W–55,822; ZLB Behring LLC, Bradley, IL: October 18, 2003.

TA–W–55,808; Ford Motor Co., St. Louis Assembly Plant, Hazelwood, MO: October 12, 2003.

TA–W–55,805; K2F Garment, Inc., Huntington Park, CA: October 5, 2003.

TA–W–55,718; Halstab, Div. of Hammond Group, Inc., Hammond, IN: September 9, 2003.

TA–W–55,922; Oldham Saw Co., a subsidiary of Black and Decker, including workers of The Woodworker's Choice and leased workers of Manpower, West Jefferson, NC: October 25, 2003.

TA–W–55,883; Hitachi Electronic Devices, Inc., Greenville, SC: October 5, 2004.

TA–W–55,862; Piedmont Home Textiles, Walhalla, SC: October 22, 2003.

TA–W–56,008; N.J.L. Coat, Clifton, NJ: September 13, 2003.

TA–W–55,999; Schneider Mills, Inc., Alexander Mills Division, Forest City, NC: November 12, 2003.

TA–W–55,829–A; Excell Home Fashions, Inc., a wholly owned subsidiary of Glenoit, LLC, including on-site leased workers of Mega Force Temporary Services, Goldsboro, NC and Tarboro, NC: October 14, 2003.

TA–W–55,749; Troy LLC, Harrisville, WV: October 1, 2003.

TA–W–55,847; Whitewater Mold, Inc., Traverse City, MI: October 18, 2003.

TA–W–55,846; Hewlett-Packard Co., Imaging and Printing Group-Personal Inkjet Printing Division, Vancouver, WA: October 21, 2003.

TA–W–55,915; Freudenberg Nonwovens, LP, Interlinings Div., Madison, TN: November 2, 2003.

TA–W–55,945 & A; Louisville Ladder Group, a subsidiary of Imsalum, Smyrna, TN and Corporate Location, Louisville, KY: November 1, 2003.

TA–W–55,944; Premium Allied Tool, Inc., a division of The Hines Group, Owensboro, KY: October 19, 2003.

TA–W–55,886; Whiting Manufacturing Co., Inc., Corporate Offices, Fairfield, OH: September 28, 2003.

TA–W–55,875; Hedstrom Corp., Hazlehurst, GA: October 13, 2003.

TA–W–55,866; SCP Global Technologies, Inc., Boise, ID: June 21, 2004.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–55,857; Kamei Garment Co., Inc., San Francisco, CA: September 29, 2003.

TA–W–56,021; Nippon Metalworking U.S.A., Inc., Woodbury, GA: November 2, 2003.

TA–W–55,917; Precision Dynamics Corp., San Fernando, CA: October 21, 2003.

TA–W–55,981; Cerf Brothers Bag Co., New London, MO: November 11, 2003.

TA–W–55,879; Sun Microsystems, World Wide Operations Division, Building 10, Newark, CA: October 25, 2003.

TA–W–56,027; Jenn-Tom Hosiery, Connelly Springs, NC: November 16, 2003.

TA–W–55,854; Amcor PET Packaging, Merimack, NH: October 22, 2003.

TA–W–55,937; Cherry Corp., Cherry Automotive Division, Waukegan, IL: May 7, 2004.

TA–W–55,899; Merchants Metals, a division of MMI Products, Inc., San Fernando, CA: October 13, 2003.

TA–W–55,946; Sanmina—SCI Corp., Global Engineering and Design Group, Salem, NH: November 3, 2003.

TA–W–55,912; Better Bags, Inc., Manufacturing Div., Houston, TX: October 29, 2003.

TA–W–55,896; Turex, Engineered Films Div., a subsidiary of Pliant Corp., Harrisville, RI: October 28, 2003.

TA–W–56,033; Dura Operating Corp., Cable Division, including leased workers of Sperion, Brookfield, MO: November 16, 2003.

TA–W–55,913; Harper Pet Products, Inc., Chicago, IL: November 3, 2003.

TA–W–55,892; Learjet, Inc., Indianapolis, IN: October 27, 2003.

TA–W–55,966; Vesuvius USA Corp., Hillsboro, TX: November 8, 2003.

TA–W–55,927; A-One Hosiery, Fort Payne, AL: November 2, 2003.

TA–W–55,914; American Uniform Co., Headquarters/Cleveland Plant, Cleveland, TN: November 3, 2003.

TA–W–56,031; E–Z–EM, Inc., Westbury, NY: November 3, 2003.

TA–W–56,003; Chicago Miniature Lamp, a division of SLI Holdings International, LLC, Wynnewood, OK: November 1, 2003.

TA–W–56,013; Clinton Tube (USA), Plattsburgh, NY: November 16, 2003.

TA–W–55,992; Elcom Wire Plant, including leased workers of Kelly Services, El Paso, TX: November 10, 2003.

TA–W–55,974; Schnadig Corp., 101–Cornelia Div., including on-site leased workers of Etcon Staffing Agency, Cornelia, GA: November 5, 2003.

TA–W–55,972; AMI Semiconductor, Inc., Pocatello Sort Operations, including leased workers of Express Personnel, Pocatello, ID: October 30, 2003.

TA–W–56,043; Diageo Chateau & Estate Wines, Carneros Production & Distribution Facility, including leased Workers of Remedy Intelligent Staffing, Alkar, Yoh Scientific and Nelson, Sonoma, CA: November 10, 2003.

TA–W–55,985; Hobino Corporation of America, Gainesville, GA: November 9, 2003.

TA–W–55,969; Oxford Slacks, a subsidiary of Oxford Industries, Inc., Monroe, GA: March 19, 2004.

TA–W–56,039; Whittier Wood Products, including on-site leased workers of Oregon Temporary, Barret Staffing Services, Pearl Buck, Selectemp, Personnel Solutions, Labor Ready and Employers Overload, Eugene, OR: November 16, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–55,899; Merchants Metals, a division of MMI Products, Inc., San Francisco, CA

TA–W–55,937; Cherry Corp., Cherry Automotive Div., Waukegan, IL

TA–W–55,854; Amcor PET Packaging, Merrimack, NH

TA–W–55,952; CMD Apparel, LLC, Detroit, AL

TA–W–55,944; Premium Allied Tool, Inc., a division of The Hines Group, Owensboro, KY

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older. *None*

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–55,708; Alcatel USA Resources, EF&I Group, Plano, TX

TA–W–55,820; Thermal and Interior, Vandalia Operations of Delphi Corp., Vandalia, OH

TA–W–55,831; Cardinal Health PTS LLC, Vegicaps Oral Technologies Div., Springville, UT

TA–W–56,065; River Valley Contract Manufacturing, Inc., Menifee, AR

TA–W–55,918; Alpha Spectra, Inc., Grand Junction, CO

TA–W–55,806; Value Line Supple Co., Arkadelphia, AR

TA–W–55,842; Upholstery Felt Co., Portland, OR

TA–W–55,965; Accidental Anomalies, Inc., Turner, ME

TA–W–55,957; Stellar Engineering, Inc., Warren, MI

TA–W–55,884; Jordan Fashions Corp., Westbury, NY

TA–W–55,961; Thomas & Betts Corp., Heater Div., Jonesboro, AR

TA–W–55,995; Conocophilips, Downstream Technology Div., Ponca City, OK

TA–W–56,044; Ametek—Prestolite Power & Switch, Switch Business Unit, Troy, OH

TA–W–55,864; The Glass Group, Inc., Flat River Glass Operations, Park Hills, MO: Zenith Electronics Corp., a subsidiary of LG

TA–W–55,817; Celanese, Ticona Div., Bishop, TX

TA–W–55,810; Honeywell, Inc., Honeywell Hobbs Div., Drafting and Design Department, Springfield, IL

TA–W–55,924; Castle Industries LLC, Greenville, SC

TA–W–55,898; Glenshaw Glass Co., Glenshaw, PA

TA–W–55,845; Maha USA, LLC, Pinckard, AL

TA–W–55,973; Celanese Acetate LLC, including on-site leased workers of Venturi Staffing, Rock Hill, SC

TA–W–55,833; Brooks-Pri Automation, Inc., including leased workers of Davis Companies and Footbridge, Chelmsford, MA

TA–W–55,848; Crotty Corp., Quincy, MI

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–55,946; Sanmina—ACI Corp., Global Engineering and Design Group, Salem, NH: November 3, 2003.

TA–W–55,850; Hill Fastener Corp., Rock Falls, IL: October 20, 2003.

TA–W–55,835; ITT Industries, C&K Switch Components, Inc., C&K Switch Products Div., Newton, MA: October 18, 2003.

TA–W–55,822; ZLB Behring LLC, Bradley, IL: October 18, 2003.

TA–W–55,808; Ford Motor Company, St. Louis Assembly Plant, Hazelwood, MO: October 12, 2003.

TA–W–55,805; K2F Garment, Inc., Huntington Park, CA: October 5, 2003.

TA–W–55,718; Halstab, Div. of Hammond Group, Inc., Hammond, IN: September 9, 2003.

TA–W–55,922; Oldham Saw Co., a subsidiary of Black and Decker, including workers of The Woodworker's Choice and leased workers of Manpower, West Jefferson, NC: October 25, 2003.

TA–W–55,883; Hitachi Electronic Devices, Inc., Greenville, SC: October 5, 2004.

TA–W–55,862; Piedmont Home Textiles, Walhalla, SC: October 22, 2003.

TA–W–56,008; N.J.L. Coat, Clifton, NJ: September 13, 2003.

TA–W–55,999; Schneider Mills, Inc., Alexander Mills Div., Forest City, NC: November 12, 2003.

TA–W–55,829 & A; Excell Home Fashions, Inc., a wholly owned subsidiary of Glenoit, LLC, including on-site leased workers of Mega Force Temporary Services, Goldsboro, NC and Tarboro, NC: October 14, 2003.

TA–W–55,749; Troy LLC, Harrisville, WV: October 1, 2003.

TA–W–55,847; Whitewater Mold, Inc., Traverse City, MI: October 18, 2003.

TA–W–55,846; Hewlett-Packard Co., Imaging and Printing Group—Personal Inkjet Printing Div., Vancouver, WA: October 21, 2003.

TA–W–55,915; Freudenberg Nonwovens, LP, Interlinings Div., Madison, TN: November 2, 2003.

TA–W–55,945 & A; Louisville Ladder Group, a subsidiary of Imsalum, Smyrna, TN and Corporate Location,Louisville, KY: November 1, 2003.

TA–W–55,886; Whiting Manufacturing Co., Inc., Corporate Offices, Fairfield, OH: September 28, 2003.

TA–W–55,875; Hedstrom Corp., Hazlehurst, GA: October 13, 2003.

TA–W–55,866; SCP Global Technologies, Inc., Boise, ID: June 21, 2004.

TA–W–55,891; C.O.W. Industries, Inc., including leased workers of CBS Companies, Columbus, OH: September 22, 2002.

TA–W–54,354; Arvesta Corporation, Perry Div., Perry, OH: February 17, 2003 through March 26, 2006.

TA–W–55,912; Better Bags, Inc., Manufacturing Div., Houston, TX: October 29, 2003.
TA–W–53,344; Royal Appliance Manufacturing Co., a wholly owned subsidiary of Techtronic Industries, including leased workers of Snider-Blake, Inc., Glenwillow, OH and including leased workers of Snider-Blake, Inc., Mentor, OH: October 16, 2002 through November 17, 2005.
TA–W–55,896; Turex, Engineered Films Div., a subsidiary of Pliant Corp., Harrisville, RI: October 28, 2003.
TA–W–56,033; Dura Operating Corp., Cable Div., including leased workers of Sperion, Brookfield, MO: November 16, 2003.
TA–W–55,913; Harper Pet Products, Inc., Chicago, IL: November 3, 2003.
TA–W–55,892; Learjet, Inc., Indianapolis, IN: October 27, 2003.
TA–W–55,966; Vesuvius USA Corp., Hillsboro, TX: November 8, 2003.
TA–W–55,927; A-One Hosiery, Fort Payne, AL: November 2, 2003.
TA–W–55,914; American Uniform Company, Headquarters/Cleveland Plant, Cleveland, TN: November 3, 2003.
TA–W–56,031; E–Z–EM, Inc., Westbury, NY: November 3, 2003.
TA–W–56,013, Clinton Tube (USA), Plattsburgh, NY: November 16, 2003.
TA–W–56,003; Chicago Miniature Lamp, a division of SLI Holdings International, LLC, Wynnewood, OK: November 1, 2003.
TA–W–55,992; Elcom Wire Plant, including leased workers of Kelly Services, El Paso, TX: November 10, 2003.
TA–W–55,974; Schnadig Corportion, 101-Cornelia Div., including on-site leased workers of Etcon StaffingAgency, Cornelia, GA: November 5, 2003.
TA–W–55,972; AMI Semiconductor, Inc., Pocatello Sort Operations, including leased workers of Express Personnel, Pocatello, ID: October 30, 2003.
TA–W–56,043; Diageo Chateau & Estate Wines, Carneros Production & Distribution Facility, including leased workers of Remedy Intelligent Staffing, Alkar, Yoh Scientific and Nelson, Sonoma, CA: November 10, 2003.
TA–W–55,985; Hibino Corporation of America, Gainesville, GA: November 9, 2003.
TA–W–56,039; Whittier Wood Products, including on-site leased workers of Oregon Temporary, Barret Staffing Services, Pearl Buck, Selectemp, Personnel Source, Personnel Solutions, Labor Ready and Employers Overload, Eugene, OR: November 16, 2003.
TA–W–55,969; Oxford Slacks, a subsidiary of Oxford Industries, Inc., Monroe, GA: March 19, 2004.

I hereby certify that the aforementioned determinations were issued during the month of November and December 2004. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 14, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E4–3778 Filed 12–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–56,103]

Cherry Electrical Products, Waukesha, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 30, 2004 in response to a worker petition filed on behalf of workers at Cherry Electrical Products, Waukesha, Illinois.

The petitioning group of workers is covered by an active certification, (TA–W–55,937) which expires on November 23, 2006. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 2nd day of December, 2004.

Elliott S. Kushner

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3773 Filed 12–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–56,093]

Hamilton Sundstrand, Grand Junction, CO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 26, 2004 in response to a petition filed by a company official on behalf of workers at Hamilton Sundstrand, Grand Junction, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 6th day of December, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3770 Filed 12–21–04; 8:45 am]

BILLING CODE 4510–30–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 January 3, 2005.

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 January 3, 2005.

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 at Washington, DC this 14th day of December 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted Between 11/15/2004 and 11/26/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,986	Invista S.a.r.1. (Comp)	Kinston, NC	11/15/2004	11/05/2004
55,987	Romar Textile Co., Inc. (Comp)	Ellwood City, PA	11/15/2004	11/11/2004
55,988	Cecil Saydah Co. (Comp)	Los Angeles, CA	11/15/2004	11/10/2004
55,989	Delta Woodside Industries (Comp)	Wallace, SC	11/15/2004	11/02/2004
55,990	Eastman House (USWA)	Burlington, IA	11/15/2004	11/12/2004
55,991	Fruit of the Loom (Comp)	Jamestown, KY	11/15/2004	10/15/2004
55,992	Elcom Wire Plant (Comp)	El Paso, TX	11/15/2004	11/10/2004
55,993	Arvin Meritor (UBCJA)	Franklin, IN	11/15/2004	11/05/2004
55,994	California Micro	Tempe, AZ	11/15/2004	11/10/2004
55,995	Concocophilips (Wkrs)	Ponca City, OK	11/15/2004	11/02/2004
55,996	Union Wadding Company (Comp)	Pawtucket, RI	11/15/2004	11/09/2004
55,997	Celanese Acetate (UNITE)	Narrows, VA	11/15/2004	11/04/2004
55,998	Meromex USA, Inc. (Comp)	El Paso, TX	11/15/2004	11/08/2004
55,999	Schneider Mills, Inc. (Comp)	Forest City, NC	11/15/2004	11/12/2004
56,000	Lyon Workspace Products (USWA)	Montgomery, IL	11/15/2004	11/10/2004
56,001	Holophane Corp. (IBEW)	Newark, OH	11/15/2004	11/01/2004
56,002	Taisho Elec. Corp. of America (State)	El Paso, TX	11/15/2004	11/15/2004
56,003	Chicago Miniature Lamp (Wkrs)	Wynnewood, OK	11/15/2004	11/01/2004
56,004	Acme Cutting and Sewing (State)	Chatsworth, CA	11/15/2004	11/01/2004
56,005	LL East, Inc. (Comp)	Vernon, CA	11/15/2004	11/12/2004
56,006	LaCrosse Footwear (Wkrs)	Claremont, NH	11/15/2004	11/12/2004
56,007	VF Jeanswear Limited Partnership (Comp)	El Paso, TX	11/15/2004	11/11/2004
56,008	N.J.L. Coat (Wkrs)	Clifton, NJ	11/16/2004	09/10/2004
56,009	JVS Fabrics (Comp)	New York, NY	11/16/2004	11/01/2004
56,010	Milwaukee Electric Tool (Wkrs)	Brookfield, WI	11/16/2004	11/15/2004
56,011	Eaton Corporation (Wkrs)	Auburn, IN	11/16/2004	10/26/2004
56,012	NMC Non-Metallic Components (Wkrs)	Cuba City, WI	11/16/2004	11/12/2004
56,013	Clinton Tube (USA) (Comp)	Plattsburgh, NY	11/17/2004	11/16/2004
56,014	Oxford Automotive (State)	Troy, MI	11/17/2004	11/15/2004
56,015	Straits Steel and Wire (Comp)	Greenville, MI	11/17/2004	11/11/2004
56,016	Keane, Inc. (NPS)	Jacksonville, FL	11/17/2004	11/13/2004
56,017	Internet d/b/a Ganton (UAW)	Sturtevant, WI	11/17/2004	11/15/2004
56,018	AlphaTech, Inc. (Comp)	Fletcher, NC	11/17/2004	11/08/2004
56,019	Millstone Industries, LLC (Comp)	Redmond, OR	11/17/2004	11/11/2004
56,020	International Textile Group (Comp)	Cordova, NC	11/17/2004	11/09/2004
56,021	Nippon Metalworking U.S.A., Inc. (Wkrs)	Woodbury, GA	11/17/2004	11/02/2004
56,022	Impressions Book and Journal Services (Wkrs)	Madison, WI	11/17/2004	11/12/2004
56,023	GDX North America, Inc. (USWA)	Wabash, IN	11/17/2004	11/12/2004
56,024	Fedder's (Wkrs)	Effingham, IL	11/17/2004	11/16/2004
56,025	Rockwell (Comp)	Pomona, CA	11/17/2004	11/16/2004
56,026	Mayflower Vehicle Systems, Inc. (UAW)	S. Charleston, WV	11/17/2004	11/15/2004
56,027	Jenn-Tom Hosiery (Comp)	Connelly Spring, NC	11/17/2004	11/16/2004
56,028	Munters Corporation (State)	Phoenix, AZ	11/17/2004	11/12/2004
56,029	Underwriters Laboratories, Inc. (Comp)	Research Tri. Pk, NC	11/17/2004	11/18/2004
56,030	Arista Beaver Brook Circuits (Wkrs)	Bethel, CT	11/17/2004	11/12/2004
56,031	E-Z-EM, Inc. (Comp)	Westbury, NY	11/17/2004	11/03/2004
56,032	Toolmasters, Inc. (Comp)	Longmont, CO	11/17/2004	11/16/2004
56,033	Dura Automotive (Comp)	Brookfield, MO	11/18/2004	11/16/2004
56,034	Mundy Maintenance Services & Op, LLC (Comp)	Kinston, NC	11/18/2004	11/03/2004
56,035	Motion Watersports (Wkrs)	Auburn, WA	11/19/2004	11/17/2004
56,036	Sprint PCS (Wkrs)	Bolingbrook, IL	11/19/2004	11/10/2004
56,037	Specialty Electronics, Inc. (Comp)	Landrum, SC	11/19/2004	11/12/2004
56,038	Watermark (Wkrs)	Fruitland, ID	11/19/2004	11/15/2004
56,039	Whittier Wood Products (Comp)	Eugene, OR	11/19/2004	11/16/2004
56,040	Solo Cup Company (Comp)	Williamsburg, PA	11/19/2004	11/10/2004
56,041	Fawn Plastics (Wkrs)	Middlesex, NC	11/19/2004	11/16/2004
56,042	CPI Card Group (State)	Los Angeles, CA	11/19/2004	11/09/2004
56,043	Diageo Chateau and Estate Wines (Comp)	Sonoma, CA	11/19/2004	11/10/2004
56,044	Ametek (NPW)	Troy, OH	11/19/2004	11/10/2004
56,045	Regency Home Fashions, Inc. (Comp)	Conover, NC	11/19/2004	11/11/2004
56,046	Burrows Paper Corp. (Wkrs)	Little Falls, NY	11/19/2004	11/08/2004
56,047	Sitel (Wkrs)	Augusta, GA	11/19/2004	11/12/2004
56,048	Method Electronic, Inc. (Wkrs)	Carthage, IL	11/19/2004	11/17/2004
56,049	Black and Decker (Comp)	Fayetteville, NC	11/19/2004	11/18/2004

APPENDIX—Continued

[Petitions Instituted Between 11/15/2004 and 11/26/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
56,050	Federal Signal/Leach Company (Comp)	Oshkosh, WI	11/19/2004	11/18/2004
56,051	Cambria Somerset Authority (NPC)	Johnstown, PA	11/19/2004	11/01/2004
56,052	Kordziel Industries, Inc. (Comp)	Sparta, MI	11/19/2004	11/05/2004
56,053	Gilman Engineering and Mfg. (Wkrs)	Janesville, WI	11/22/2004	11/19/2004
56,054	Brown Manufacturing, Inc. (Wkrs)	Marion, NC	11/22/2004	11/15/2004
56,055	North Star Steel (State)	Edina, MN	11/22/2004	11/11/2004
56,056	SET Enterprises (Comp)	Warren, MI	11/22/2004	11/19/2004
56,057	Quaker Fabric Corp. (Wkrs)	Fall River, MA	11/22/2004	11/18/2004
56,058	Harrison Publishing Co. (Wkrs)	Asheville, NC	11/22/2004	11/14/2004
56,059	Louisiana Pacific Corp. (PACE)	Baileyville, ME	11/22/2004	11/18/2004
56,060	HCP Packaging Co. (State)	Bridgeport, CT	11/22/2004	11/19/2004
56,061	Sunrise Hosiery of GA, Inc. (Comp)	Lafayette, GA	11/22/2004	11/12/2004
56,062	Express Personnel (State)	Griffin, GA	11/22/2004	11/22/2004
56,063	Roller Derby Skate Corp. (Wkrs)	Litchfield, IL	11/22/2004	11/17/2004
56,064	Boston Scientific (Comp)	Murrieta, CA	11/22/2004	11/15/2004
56,065	River Vally Contract Mfg., Inc. (State)	Menifee, AR	11/22/2004	11/22/2004
56,066	Lastra-America Corp. (State)	Danbury, CT	11/22/2004	11/22/2004
56,067	Alltrista Products (State)	Cloquet, MN	11/23/2004	11/19/2004
56,068	Metallic Ventures Gold (State)	Hawthorne, NV	11/23/2004	11/15/2004
56,069	Spectrum Textured Yarns, Inc. (Comp)	Hictory, NC	11/23/2004	11/19/2004
56,070	Dallas Airmotive (IAM)	Millville, NJ	11/23/2004	11/18/2004
56,071	Lambert Manufacturing Co., Inc. (Wkrs)	Chillicothe, MO	11/23/2004	11/17/2004
56,072	Optical Connectivity (State)	Totowa, NJ	11/23/2004	11/19/2004
56,073	Peake Plastics (State)	Forest Hill, MD	11/23/2004	11/22/2004
56,074	Klipstand Manufacturing Co., Inc. (State)	Westfield, MA	11/23/2004	11/22/2004
56,075	Anchor Glass Container (USWA)	Connellsville, PA	11/23/2004	11/16/2004
56,076	Mastercraft, LLC (Comp)	Cramerton, NC	11/24/2004	11/16/2004
56,077	EDA Staffing (Wkrs)	E. Greenwich, RI	11/24/2004	11/18/2004
56,078	Additional Contract Services (Wkrs)	E. Greenwich, RI	11/24/2004	11/18/2004
56,079	Olsten Professional Staffing (Wkrs)	E. Greenwich, RI	11/24/2004	11/18/2004
56,080	SanDisk Corp (Comp)	Sunnyvalle, CA	11/24/2004	11/16/2004
56,081	Starkey Lab, Inc. (Wkrs)	Glencoe, MN	11/24/2004	11/16/2004
56,082	Cooper Tire and Rubber Co. (USWA)	Clarksdale, MS	11/24/2004	11/23/2004
56,083	Apex Pattern Co. (Wkrs)	Los Angeles, CA	11/24/2004	11/23/2004
56,084	Auburn Foundry (GMP)	Auburn, IN	11/24/2004	11/16/2004
56,085	A and W Screen Printing (Wkrs)	Ephrata, PA	11/24/2004	11/18/2004
56,086	Sony Electronics (Wkrs)	Bristol, PA	11/24/2004	08/27/2004
56,087	Delphi Automotive Systems (State)	Anaheim, CA	11/24/2004	01/16/2004
56,088	Maytag NLP (UAW)	Newton, IA	11/24/2004	11/22/2004
56,089	Netgear, Inc. (Wkrs)	Santa Clara, CA	11/24/2004	11/12/2004
56,090	American Falcon Corp. (State)	Auburn, ME	11/26/2004	11/23/2004
56,091	Eagle-Ottawa Leather Co. (GMP)	Grand Haven, MI	11/26/2004	11/08/2004
56,092	Oxford Automotive (Wkrs)	Alma, MI	11/26/2004	11/18/2004
56,093	Hamilton Sundstrand (Comp)	Grand Junction, CO	11/26/2004	11/16/2004

[FR Doc. 04–27975 Filed 12–21–04; 8:45am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,009]

JVS Fabrics, New York, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 16, 2004 in response to a petition filed by a company official on behalf of workers at JVS Fabrics, New York, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 6th day of December, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3771 Filed 12–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,092]

Oxford Automotive, Alma, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 26, 2004 in response to a petition filed on behalf of workers at Oxford Automotive, Alma, Michigan.

The petitioning group of workers is covered by an earlier petition (TA–W–56,014) filed on November 17, 2004 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further

investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 6th day of December, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3769 Filed 12–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,056]

Set Enterprises, Warren, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 22, 2004 in response to a petition filed by a company official on behalf of workers at SET Enterprises, Warren, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 3rd day of December 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3776 Filed 12–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,820A]

Thermal & Interior, Vandalia Operations Of Delphi Corporation, Vandalia, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 19, 2004, in response to a petition filed by the United Steelworkers of America on behalf of workers at Thermal & Interior Vandalia Operations of Delphi Corporation, Vandalia, Ohio. Workers were engaged in employment related to the production of W-car door trim and air bag covers.

The workers were separated from the subject firm more than one year prior to the date on the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 2nd day of December, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3772 Filed 12–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and Sate. Dates of publications in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
- CT030001 (Jun. 13, 2003)
- CT030003 (Jun. 13, 2003)
- CT030004 (Jun. 13, 2003)

New Hampshire
- NH030001 (Jun. 13, 2003)
- NH030005 (Jun. 13, 2003)
- NH030007 (Jun. 13, 2003)

New York

NY030003 (Jun. 13, 2003)
NY030008 (Jun. 13, 2003)
NY030013 (Jun. 13, 2003)
NY030017 (Jun. 13, 2003)
NY030018 (Jun. 13, 2003)
NY030026 (Jun. 13, 2003)
NY030041 (Jun. 13, 2003)
NY030066 (Jun. 13, 2003)
Rhode Island
RI030001 (Jun. 13, 2003)

Volume II

Virginia
VA030005 (Jun. 13, 2003)
VA030011 (Jun. 13, 2003)
VA030018 (Jun. 13, 2003)
VA030022 (Jun. 13, 2003)
VA030023 (Jun. 13, 2003)
VA030033 (Jun. 13, 2003)
VA030034 (Jun. 13, 2003)
VA030039 (Jun. 13, 2003)
VA030046 (Jun. 13, 2003)
VA030076 (Jun. 13, 2003)
VA030085 (Jun. 13, 2003)
VA030087 (Jun. 13, 2003)
VA030088 (Jun. 13, 2003)
West Virginia
WV030003 (Jun. 13, 2003)
WV030006 (Jun. 13, 2003)
WV030010 (Jun. 13, 2003)

Volume III

Alabama
AL030006 (Jun. 13, 2003)
AL030033 (Jun. 13, 2003)
Florida
FL030012 (Jun. 13, 2003)
FL030015 (Jun. 13, 2003)
FL030017 (Jun. 13, 2003)
Kentucky
KY030001 (Jun. 13, 2003)
KY030002 (Jun. 13, 2003)
KY030007 (Jun. 13, 2003)
KY030025 (Jun. 13, 2003)
KY030027 (Jun. 13, 2003)
KY030029 (Jun. 13, 2003)
KY030035 (Jun. 13, 2003)

Volume IV

Indiana
IN030001 (Jun. 13, 2003)
IN030002 (Jun. 13, 2003)
IN030003 (Jun. 13, 2003)
IN030004 (Jun. 13, 2003)
IN030005 (Jun. 13, 2003)
IN030006 (Jun. 13, 2003)
IN030008 (Jun. 13, 2003)
IN030018 (Jun. 13, 2003)

Volume V

Kansas
KS030007 (Jun. 13, 2003)
KS030012 (Jun. 13, 2003)
KS030016 (Jun. 13, 2003)
KS030025 (Jun. 13, 2003)
Missouri
MO030001 (Jun. 13, 2003)
MO030003 (Jun. 13, 2003)
MO030006 (Jun. 13, 2003)
MO030008 (Jun. 13, 2003)
MO030010 (Jun. 13, 2003)
MO030018 (Jun. 13, 2003)
MO030019 (Jun. 13, 2003)
MO030041 (Jun. 13, 2003)
MO030043 (Jun. 13, 2003)
MO030047 (Jun. 13, 2003)
MO030051 (Jun. 13, 2003)
MO030052 (Jun. 13, 2003)
MO030055 (Jun. 13, 2003)
MO030056 (Jun. 13, 2003)
MO030059 (Jun. 13, 2003)
Oklahoma
OK030013 (Jun. 13, 2003)
OK030014 (Jun. 13, 2003)
OK030034 (Jun. 13, 2003)
OK030037 (Jun. 13, 2003)
Texas
TX030003 (Jun. 13, 2003)
TX030005 (Jun. 13, 2003)
TX030007 (Jun. 13, 2003)
TX030010 (Jun. 13, 2003)
TX030014 (Jun. 13, 2003)
TX030016 (Jun. 13, 2003)
TX030017 (Jun. 13, 2003)
TX030019 (Jun. 13, 2003)
TX030033 (Jun. 13, 2003)
TX030034 (Jun. 13, 2003)
TX030037 (Jun. 13, 2003)
TX030054 (Jun. 13, 2003)
TX030060 (Jun. 13, 2003)
TX030061 (Jun. 13, 2003)
TX030063 (Jun. 13, 2003)
TX030064 (Jun. 13, 2003)

Volume VI

North Dakota
ND030004 (Jun. 13, 2003)
ND030010 (Jun. 13, 2003)
ND030011 (Jun. 13, 2003)
ND030012 (Jun. 13, 2003)

Volume VII

California
CA030009 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents. U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 16th Day of December 2004.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–27935 Filed 12–21–04; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Producer Price Index Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before February 22, 2005.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone

number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Producer Price Index (PPI), one of the Nation's leading economic indicators, is used as a measure of price movements, as an indicator of inflationary trends, for inventory valuation, and as a measure of purchasing power of the dollar at the primary-market level. It also is used for market and economic research and as a basis for escalation in long-term contracts and purchase agreements.

PPI data provide a description of the magnitude and composition of price change within the economy, and serve a wide range of governmental needs. These monthly indexes are closely followed and are viewed as sensitive indicators. Price data are vital in helping both the President and Congress set fiscal spending targets. PPIs are monitored by the Federal Reserve Board Open Market Committee to help decide monetary policy. The Department of Treasury and the Council of Economic Advisors use PPI data to help form and evaluate monetary and fiscal measures, and to help interpret the business environment. Furthermore, dollar-denominated measures of economic performance, such as the Gross Domestic Product, require accurate price data in order to convert nominal-dollar values to constant-dollar values. Inflation-free national income accounting figures are vital to fiscal and monetary policymakers when setting objectives. In addition, it is common to find one or more PPIs, alone or in combination with other measures, used to escalate the delivered price of goods for government purchases.

PPI data are used by the private sector. Private industry uses PPI data for contract escalation. For one particular method of tax-related Last-In-First-Out (LIFO) inventory accounting, the Internal Revenue Service suggests that firms use PPI data. Private businesses make extensive use of industrial-price data for planning and operating. Price trends are used to assess market conditions. Firms commonly compare the prices they pay for material inputs and the prices they receive for products that they sell with changes in similar PPIs.

Economic researchers and forecasters also use the PPI. Price indexes are widely used to probe and measure the interaction of market forces. Some examples of research topics that require extensive price data include: the identification of varying price elasticities and the degree of cost pass-through in the economy, the identification of potential lead and lag structures among price changes, and the identification of prices which exert major impacts throughout market structures.

A description of program enhancements that improve data completeness, streamline collection procedures, and reduce overall respondent burden follows.

A. *Disaggregation*—Improvements made to disaggregation (*i.e.*, item selection) procedures have helped to better define a publication structure that is: (1) Publishable in its entirety, (2) meets user needs, (3) continuous, and (4) permits meaningful classification of current production. Data now are collected using a method where price-quotation selection is spread across predetermined product categories that correspond to the complete output for a North American Industry Classification System (NAICS) industry. This modification nearly guarantees that the PPI will collect enough price quotations to populate more lightly weighted cells.

B. *Sampling*—Modifications made to sampling procedures now permit the PPI to update weights of industry indexes without initiating a new set of respondents. This process change is called ''recycling without resampling.'' The PPI also has made it operationally feasible to augment the sample of price quotations for a single product line within a NAICS industry, rather than having to initiate an entirely new set of respondents when such needs arise. These improvements enable the PPI program to reduce both data-collection expenses and respondent burden, while permitting efficient reallocation of program resources.

C. *Publication*—Historically, the PPI had been a family of indexes focusing on the mining, manufacturing, agriculture, and forestry sectors. However, the PPI's mission now includes a mandate requiring the program work toward publication, wherever possible, of output price indexes for every six-digit NAICS industry, including coverage of non-goods producing industries. The PPI currently publishes 128 industry-based indexes for non-goods producing industries. PPI coverage efforts are now focusing on the development of price indexes that would track the construction sector of the U.S. economy.

D. *NAICS Classification*—Effective with the release of data for January 2004, the PPI converted its sampling, data collection, and industry-based publication structures to the NAICS. Through December 2003, PPI's industry-based procedures were linked to the Standard Industrial Classification (SIC) organizational system.

E. *Electronic Data Collection*—The BLS currently is developing electronic data collection procedures that will reduce respondent burden and increase efficiency. In addition, the BLS continues to investigate and pursue technological solutions that permit secure e-mail transactions between the BLS and its respondents. However, these technological improvements also must safeguard the confidential respondent information the BLS receives.

II. Desired Focus of Comments

The BLS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the Producer Price Index Survey.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Producer Price Index Survey.

OMB Number: 1220–0008.

Affected Public: Business and other for-profit.

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden (hours)
BLS 1810A, A1, B, C, C1, and E	6,340	once	6,340	120	12,680
BLS 473P	26,250	monthly	1,260,000	18	378,000
Totals	32,590		1,266,340		390,680

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 7th day of December 2004.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 04–27974 Filed 12–21–04; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Report on Employment, Payroll, and Hours (BLS–790).'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before February 22, 2005.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Current Employment Statistics (CES) Survey is a Federal/State program of the BLS. It produces monthly estimates of total employment, woman worker employment, production or nonsupervisory worker employment, and hours, and earnings for production or nonsupervisory workers based on a sample of U.S. nonagricultural establishments. Information for these estimates is derived from a sample of approximately 283,000 reports, as of September 2004. Each month, these firms report their employment, payroll, and hours on forms identified as the BLS–790. All of these reports are collected under a probability based sample design.

A list of all form types currently used is included below in the Current Action section of this notice. Respondents receive variations of the basic collection forms, depending on their industry. The BLS is requesting approval through February 29, 2008.

The CES program is a voluntary program under Federal statute. Reporting to the State agencies is voluntary in all but five States (California, Oregon, Washington, North Carolina, South Carolina) and Puerto Rico, and, to our knowledge, the States that do have mandatory reporting rarely exercise their authority. The collection form's confidentiality statement cites the Confidential Information Protection and Statistical Efficiency Act of 2002 and mentions the State mandatory reporting authority.

Automated data collection methods are now used for most of the CES sample. Approximately 86,000 reports are received through Electronic Data Interchange and 76,000 reports are collected using Touchtone Data Entry, as of September 2004. Computer Assisted Telephone Interviewing is the third largest mode, accounting for 54,000 reports. In comparison, only 8,400 reports are collected by mail. Fax also is a significant collection mode, as 36,000 reports are collected via this method. The balance of the sample is collected through other automated methods including web and submission of tapes and diskettes.

Research on use of the World Wide Web for data collection is continuing. The BLS is continuing to evaluate Web based data collection and investigating approaches for optimizing response rates. The BLS also is testing the feasibility of fax with optical character recognition (OCR) collection for the CES. OCR technology has improved to the point where respondents can fax their data to the BLS and the incoming fax can be automatically processed into a data set.

II. Desired Focus of Comments

The BLS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Topic for Special Consideration

The BLS is introducing the collection of several new data items and eliminating one item. The new items are All Employee Payroll, All Employee Commissions, All Employee Hours, and Gross Monthly Earnings. The BLS is eliminating collection of the Women

Worker data element as a separate date item. Gender specific data will no longer be available from the Current Employment Statistics program. However, data on the total number of employees will continue to be collected.

The present CES hours and earnings series, which apply only to production and non-supervisory workers, are seriously limited in scope. This limits their value as overall economic indicators. Expanding the concept of hours and earnings to cover all employees, and adding a series on gross monthly earnings will be especially beneficial to the Bureau of Economic Analysis for derivation of personal income estimates, and also for the BLS productivity estimates. Both personal income and productivity estimates use the current production/non-supervisory worker-based CES series as a proxy for all employee hours and earnings data. The production worker series will be dropped only after the new series are well established and acceptable to BLS and its users, including having sufficient data observations to allow for seasonal adjustment.

An additional motivation for change is the difficulty of collecting hours and earnings information from respondents using the current CES production/non-supervisory worker definitions. Many respondents' payroll records do not allow them to readily identify workers according to CES definitions. Interviews with respondents and large payroll processing firms indicate that all employee payroll would be more reportable.

The decision to eliminate collection of a separate women workers data item is based on several factors: (1) Respondent burden; (2) an assessment of the relative number of users of this series; and (3) the availability of these data from other sources such as the Current Population Survey (which provides a large body of other related demographic information). Because this data series does not have a large number of users and there is an alternative source for these data, the BLS believes that the respondent burden to continue collection of these data is not justified, especially considering the increase in burden associated with collecting the new data elements which have more wide-ranging uses.

IV. Current Action

Office of Management and Budget Clearance is being sought for the Report on Employment, Payroll, and Hours (BLS–790).

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Report on Employment, Payroll, and Hours (BLS–790).

OMB Number: 1220–0011.

Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Form	Number of respondents	Minutes per report	Frequency of response	Annual responses	Annual burden hours
A—Natural Resources and Mining	1,400	10	12	16,800	2,800
B—Construction	12,800	10	12	153,600	25,600
C—Manufacturing	18,000	10	12	216,000	36,000
E—Service Providing Industries	153,300	10	12	1,839,600	306,600
G—Public Administration	56,700	5	12	680,400	56,700
S—Education	4,000	5	12	48,000	4,000
F1, F2, F3 Fax Forms	36,400	10	12	436,800	72,800
Total	282,600			3,391,200	504,500

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 13th day of December 2004.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E4–3731 Filed 12–21–04; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. 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 72, Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste.

2. *Current OMB Approval Number:* 3150–0132.

3. *How Often the Collection is Required:* Required reports are collected and evaluated on a continuing basis as events occur; submittal of reports varies from less than one per year under some rule sections to up to an average of about 100 per year under other rule sections. Applications for new licenses, certificates of compliance (CoCs), and amendments may be submitted at anytime; applications for renewal of licenses are required every 20 years for an Independent Spent Fuel Storage Installation (ISFSI) or Certificate of Compliance (CoC) and every 40 years for a Monitored Retrievable Storage (MRS) facility.

4. *Who is Required or Asked to Report:* Certificate holders of casks for the storage of spent fuel, licensees and applicants for a license to possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI, and the Department of Energy for licenses to receive, transfer, package and possess power

reactor spent fuel, high-level waste, and other radioactive materials associated with spent fuel and high-level waste storage in an MRS.

5. *The Estimated Number of Annual Respondents:* 50.

6. *The Number of Hours Needed Annually to Complete the Requirement or Request:* 25,551 (22,781 hours for reporting [71 hours per response plus 2,770 hours for recordkeeping 55 hours per recordkeeper]).

7. *Abstract:* 10 CFR part 72 establishes mandatory requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI, and requirements for the issuance of licenses to the Department of Energy to receive, transfer, package, and possess power reactor spent fuel and high-level radioactive waste, and other associated radioactive materials, in an MRS. The information in the applications, reports and records is used by NRC to make licensing and other regulatory determinations.

Submit, by February 22, 2005, 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 15th day of December 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–27945 Filed 12–21–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

Amergen Energy Company, LLC; Oyster Creek Nuclear Generating Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of Title 10 of the Code of Federal Regulations (10 CFR), Subsection 2.109(b), for Facility Operating License No. DPR–16, which authorizes operation of the Oyster Creek Nuclear Generating Station (OCNGS), a boiling-water reactor facility, located in Ocean County, New Jersey. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

Subsection 109(b) of 10 CFR part 2 states, ''If the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of an operating license at least 5 years prior to the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.'' This requirement for license renewal applications was established in December 1991 in conjunction with the publication of the final license renewal rule, 10 CFR part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants'' (56 FR 64943).

AmerGen's application requested an exemption from the timing requirements of 10 CFR 2.109(b), for submittal of the OCNGS license renewal application. The exemption would allow the submittal of the renewal application with less than 5 years remaining prior to expiration of the operating license while maintaining the protection of the timely renewal provision in 10 CFR 2.109(b).

The proposed action is in accordance with the licensee's application for exemption dated August 10, 2004.

The Need for the Proposed Action

AmerGen stated that the OCGNS license renewal application would be submitted in July 2005 and that application of the 5-year term in 10 CFR 2.109(b) for filing a license renewal application is not necessary in this situation to achieve the purpose of the regulation. The July 2005 filing date, which is approximately 44 months before expiration of the existing license in April 2009, according to AmerGen will provide the NRC staff with ample time in which to perform a full and adequate review.

The licensee proposed an exemption from the requirements of 10 CFR 2.109(b), to allow submittal of the license renewal application with less than 5 years remaining prior to expiration of the operating license, while maintaining the protection of the timely renewal provision in 10 CFR 2.109(b).

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the pursuant to 10 CFR 50.12(a), the proposed exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. In addition, special circumstances exist to justify the proposed exemption. The details of the staff's evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent release offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no-

action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for OCNGS, dated December 1974, published by the Atomic Energy Commission.

Agencies and Persons Consulted

In accordance with its policy, on December 16, 2004, the NRC staff consulted with the New Jersey State official, Mr. Richard Pinney, of the New Jersey Department of Environmental Protection, Bureau of Nuclear Engineering, regarding the environmental impact of the proposed action. During the consultation, the NRC staff acknowledged a September 23, 2004, letter from Mr. Bradley Campbell, Commissioner of the State of New Jersey Department of Environmental Protection, which opposed the exemption. The NRC staff responded by letter dated November 2, 2004. No environmental concerns were raised by the September 23, 2004 letter. During the consultation, the State official had no additional comments regarding the environmental aspects of the exemption.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action. However, a site specific supplement to the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG–1437)'' will be required for the license renewal application submitted under this exemption.

For further details with respect to the proposed action, see the licensee's letter dated August 10, 2004. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 16th day of December 2004.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–28066 Filed 12–21–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a tele-conference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on January 18, 2005. The topic of discussion will be ''Update to Medical Event Criteria Definition.'' During this discussion, an ACMUI subcommittee will forward to the full ACMUI its recommendations regarding revision of the medical event criteria definition in Pt. 35. NRC staff is seeking the ACMUI's recommendations on this issue, as well as any recommendations on communicating associated risks to the public.

DATES: The tele-conference meeting will be held on Tuesday, January 18, 2005, from 1 p.m. to 3 p.m Eastern Standard Time.

Public Participation: Any member of the public who wishes to participate in the tele-conference discussion may contact Angela R. McIntosh using the contact information below.

FOR FURTHER INFORMATION CONTACT: Angela R. McIntosh, telephone (301) 415–5030; e-mail *arm@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Conduct of the Meeting: Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud 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 McIntosh, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, Washington, DC 20555–0001. Hard copy submittals must be postmarked by January 12, 2005, and electronic submittals must be submitted by January 14, 2005. 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 March 18, 2005. Minutes of the meeting will be available on or about February 1, 2005.

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); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, part 7.

Dated: December 16, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–27947 Filed 12–21–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [69 FR 75360, December 16, 2004].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional meeting.

An Open Meeting will be held on Wednesday, December 22, 2004 at 10 a.m. in Room 1C30, the William O. Douglas Room.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the Open Meeting scheduled for Wednesday, December 22, 2004 will be:

1. The Commission will consider a staff recommendation regarding the application of the Investment Advisers Act of 1940 to certain broker-dealers. (See Proposed Rule, IA–1845, and Reopening of Comment Period, IA–2278).

FOR FURTHER INFORMATION CONTACT: Robert Tuleya, Senior Counsel, Division of Investment Management, at (202) 942–0719.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: December 17, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–28053 Filed 12–17–04; 4:03 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27926]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

December 17, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 6, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After January 6, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

KeySpan Corporation (70–10274)

KeySpan Corporation (''KeySpan''), a combination gas and electric registered public utility holding company, One Metro Tech Center, Brooklyn, NY 11201, has filed a declaration (''Declaration'') with the Commission under sections 6(a) and 7 and rule 54 under the Act.

Applicants KeySpan states that it is a diversified registered public utility holding company. KeySpan directly or indirectly owns seven public utility companies in New York and Massachusetts.[1] KeySpan also directly or indirectly owns various nonutility subsidiaries (collectively referred to as the ''Nonutility Subsidiaries'') through which KeySpan engages in energy related nonutility activities.

By order dated December 18, 2003 (HCAR No. 27776) (''Financing Order''), the Commission authorized KeySpan and its subsidiaries to engage in a program of external and intrasystem transactions including, among other things, to engage in certain types of credit support arrangements through December 31, 2006 (''Authorization Period''). The Financing Order authorized KeySpan to enter into guarantees (''Guarantees''), performance Guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of its subsidiaries as may be appropriate or necessary to enable the subsidiaries to carry on in the ordinary course of their respective businesses in an aggregate principal amount not to exceed $4.0 billion outstanding at any one time (excluding obligations exempt under rule 45) (''Guarantee Financing Limit'').

KeySpan now requests authorization to engage in certain transactions involving the divestiture of one or more Nonutility Subsidiaries, Delta KeySpan, LLC (''Delta KeySpan''), Granite State Plumbing & Heating, LLC (''Granite State'') and Northern Peabody, LLC (''Northern Peabody'' and, collectively ''KSI Nonutilities''), which are owned indirectly by KeySpan Services, Inc. (''KSI'').[2] KeySpan states that the divestiture transactions will involve the continued maintenance of certain existing Guarantees by KeySpan in favor of the KSI Nonutilities that were previously issued in accordance with the Financing Order (''KSI Divestiture Transaction''). KeySpan expects to sell these KSI Subsidiaries to individuals, groups or corporations. KeySpan requests authorization to engage in KSI Divestiture Transactions from time to time, the specific terms and conditions of which are not at this time known, without further prior approval by the Commission.

In connection with these proposed divestitures, KeySpan states that the terms of these previously issued and authorized Guarantees would not change in any respect. No new Guarantees and indemnities would be issued in connection with any proposed KSI Divestiture Transaction. KeySpan states that the Guarantees would remain in place only for an interim period until the completion of a project and the expiration of any associated warranty period in accordance with contractual obligations. KeySpan states that the original aggregate value of the issued Guarantees was approximately $76 million. KeySpan states that the presently outstanding aggregate exposure of the Guarantees has been substantially reduced and as of November 30, 2004 is approximately $23 million.

KeySpan states that each of the Guarantees have varying terms, and in certain cases the term has no date

[1] (i) The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (''KEDNY''), which distributes natural gas at retail to residential, commercial and industrial customers in the New York City boroughs of Brooklyn, Staten Island and Queens; (ii) KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (''KEDLI''), which distributes natural gas at retail to customers in New York State located in the counties of Nassau and Suffolk on Long Island and the Rockaway Peninsula in Queens County; (iii) KeySpan Generation LLC (''KeySpan Generation''), which owns and operates electric generation capacity located on Long Island all of which is sold at wholesale to the Long Island Power Authority (''LIPA'') for resale by LIPA to its approximately 1.1 million customers; (iv) Boston Gas Company d/b/a KeySpan Energy Delivery New England (''Boston Gas''), which distributes natural gas to customers located in Boston and other cities and towns in eastern and central Massachusetts; (v) Essex Gas Company d/b/a KeySpan Energy Delivery New England (''Essex Gas''), which distributes natural gas to customers in eastern Massachusetts; (vi) Colonial Gas Company d/b/a KeySpan Energy Delivery New England (''Colonial Gas''), which distributes natural gas to customers located in northeastern Massachusetts and on Cape Cod; and (vii) EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (''ENGI''), which distributes natural gas to customers located in southern and central New Hampshire, and the City of Berlin located in northern New Hampshire.

[2] KeySpan states that Delta KeySpan is a Delaware limited liability company which designs, builds and installs HVAC systems primarily for commercial customers in Rhode Island and the New England region. KeySpan states that Granite State (formerly Granite State Plumbing and Heating, Inc.) is a Delaware limited liability company that is a mechanical contractor engaged in the design, installation and service of commercial and industrial plumbing, HVAC equipment and process piping systems for customers in the industrial and governmental sector, as well as real estate developers in new England. KeySpan states that Northern Peabody (formerly Northern Peabody, Inc.) is a Delaware limited liability company that is a mechanical contractor engaged in the design, installation and service of plumbing, heating, ventilation, air conditioning and process piping systems. It serves commercial, industrial and institutional customers, in the hospital, healthcare and governmental markets in New Hampshire, southern Maine and Massachusetts (excluding Boston).

certain but is set to expire upon completion of the associated work project. In any event, KeySpan states that with respect to each of the KSI Nonutilities, none of the Guarantees, including any associated warranty period, are expected to terminate later than the dates set forth below:

Delta KeySpan, LLC: February 28, 2007
Granite State Plumbing & Heating, LLC: September 30, 2006
Northern Peabody, LLC: February 28, 2006

KeySpan also requests that the Commission reserve jurisdiction over the maintenance, for an interim period of time, of certain existing Guarantees and other credit support mechanisms, previously issued under the Financing Order and directly related to the proposed divestiture of the following additional KSI subsidiaries: WDF Inc. (''WDF''), and its subsidiaries, Binsky & Snyder, LLC (''Binsky'') and its subsidiaries and Binsky and Snyder Service, LLC (''Binsky Service'').[3]

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–27998 Filed 12–21–04; 8:45 am]

BILLING CODE 8010–01–M

[3] KeySpan states that WDF, and its subsidiaries provide mechanical contracting services, which are primarily the design, construction, alteration, maintenance and repair of plumbing and HVAC, systems including related piping installation and welding, to large scale commercial, institutional and industrial customers in the New York area. KeySpan states that Binsky and its subsidiaries are specialty mechanical contractors which install heating, ventilating and air conditioning systems, which use electricity or gas, for commercial and industrial customers located primarily in New Jersey. KeySpan states that engaged in installing HVAC systems for commercial and industrial customers located primarily in New Jersey.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50866; File No. SR–Amex–2003–90]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to the Amendment of Exchange Rule 153 and Amendment No. 1 Thereto

December 16, 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 9, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II below, which Items have been prepared by the Exchange. On December 15, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] 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 Amex proposes to amend its Rule 153 relating to the creation of an electronic audit trail. The text of the proposal rule change is set forth below. New text is in italics; deletions are in brackets.

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Record of Orders

Rule 153. (a) Every member or member organization shall maintain a record of every order and every modification and cancellation of such order transmitted to the Floor of the Exchange, which record shall include the name, amount and price of the security and the time when such order, modification or cancellation was so transmitted.

(b) Every member or member organization shall maintain a record of every order and every modification and cancellation of such order received by such member or member organization on the Floor of the Exchange. Such record shall include the name, amount and price of the security and the time when such order, modification or cancellation was received. With respect to orders that are eligible for input into the Exchange's electronic order processing facilities, members and member organizations shall comply with their record keeping obligations under this Rule by inputting immediately upon receipt eligible orders, modifications and cancellations that are not already systematized into the Exchange's electronic order processing facilities and retaining the record of such orders provided to them by the Exchange for this purpose.

(c) Rescinded.

(d) Every member or member organization shall preserve for at least three years a record of every commitment or obligation to trade issued from the Floor and cancellation thereof, which record shall include the name, amount, and price of the security, the destination market center, and the time when such commitment was issued or cancelled.

(e) Every member or member organization shall maintain for at least three years a record of every order and every modification and cancellation of such order entered into the After-Hours Trading Facility (as Rule 1300 (After-Hours Trading: Applicability and Definitions) defines that term), which record shall include the name and amount of the security, the terms of the order, the time when it was so entered, and the time at which a report of execution was received. Every specialist shall maintain for at least three years reports of all executions and modification and cancellations of orders placed with the specialist through the After-Hours Trading Facility.

(f) Every member or member organization shall maintain a record for at least three years of every report of the execution of an order, commitment or obligation covered by paragraph (a), (b), (d) or (e) of this rule in addition to the record required by such paragraphs, which shall include the time of the receipt of such report.

(g) Before any order, commitment or obligation covered by paragraph (a), (b), (d) or (e) of this rule is executed, there shall be placed upon the order slip or other record the name or designation of the account for which such order, commitment or obligation is to be executed; no change in such account name or designation shall be made unless the change has been authorized by any member or officer in the member organization or authorized representative thereof who shall, prior to giving his approval of such change, be personally informed of the essential facts relative thereto and shall indicate his approval of such change in writing on the order.

(h) All records required to be maintained under this rule shall include such information and shall be preserved for such period as required by the Securities Exchange Act of 1934 and the rules thereunder relating to the requirements for the retention of orders.

(i) The term ''order'' as used in this Rule 153 includes any modification to or cancellation of such order.

* * * *Commentary*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange: (1) Applied the proposed rule change to index options that are exclusively traded on Amex, (2) changed a deadline in the proposed rule, (3) provided that orders for FLEX options and accommodation trades do not need to be systematized prior to representation, (4) provided for the use of the Exchange's ''Order Ticket'' enhancement to BARS as a second acceptable means for systematizing order, (5) clarified that the systemization prior to representation requirement applies to modifications and cancellations of orders, and (6) made minor corrections to the text of the rule and filing.

.01 Consolidated Options Audit Trail System Requirements—Non-System Orders—COATS Phase V—. The Exchange has undertaken with the other options exchanges to build a Consolidated Options Audit Trail System (COATS) which, when fully implemented, will provide an accurate, time-sequenced record of electronic and other orders, quotations and transactions in listed options on the exchanges. Rule 153(b) currently requires members and member organizations to systematize ''immediately upon receipt'' orders ''that are eligible for input into the Exchange's electronic order processing facilities'' if such orders are not already systematized in the Exchange's electronic order processing facilities. Commencing on January 10, 2005, members and member organizations must systematize in BARS those options orders and modifications and cancellations of such orders that are not already systematized in an Amex system prior to representing the order in the crowd. Members and member organizations also must record in BARS immediately upon receipt information pertaining to the execution of option orders.

The Exchange currently is developing an enhancement to its BARS system (called ''Order Ticket'') to facilitate order systemization by floor brokers and their clerks. This enhancement will be available by the end of the first quarter in 2005. The Order Ticket enhancement will allow members and member organizations to create electronic, time stamped, handwritten order tickets which will be saved by the Exchange as JPEG files. This enhancement, when implemented, will provide members and member organizations with a second acceptable means for complying with their COATS Phase V obligation to systematize orders prior to representation. The following information must be recorded in an Order Ticket if this enhancement is used to record an option order prior to representing it:

- *Buy/Sell*
- *Symbol*
- *Quantity*
- *Call/Put (calls are assumed unless ''P'' is written)*
- *Expiration*
- *Strike (fractions are assumed, e.g., ''22½'' should be written as ''22'')*
- *Price term (a limit order is assumed if a price is written, e.g., ''1.20'' means a 1.20 limit. Market orders are blank or represented by a dash)*
- *Contingencies (if applicable, e.g., NH, AON, FOK, IOC)*
- *Open/Close (close is assumed unless ''O'' is written)*
- *Customer/Firm/Member Market Maker/Non-Member Market Maker (customer is assumed unless ''F'', ''P'' or ''N'' is written.)*
- *Give up*

At the first mark on the Order Ticket, the Exchange's systems will automatically time stamp the ticket. When a broker or clerk finishes entering the information on the Order Ticket, he or she should hit a ''save'' button, and the Order Ticket will be assigned a specific sequence number. Once the ''save'' button is hit, the Order Ticket cannot be modified and is stored by the Exchange as a JPEG file. After the Order Ticket is saved, a broker or clerk must enter the order information into BARS as soon as possible, and the Order Ticket enhancement will transfer both the time stamp and the sequence number from the Order Ticket into BARS. Brokers and their clerks also must enter information relating to any modification or cancellation of an order into BARS prior to representing the revised order in the crowd. Brokers and their clerks must record in BARS immediately upon receipt information pertaining to the execution of option orders.

Any proprietary system approved by the Exchange on the Exchange's trading floor which receives orders will be considered an Exchange system for the purpose of systematizing those options orders and modifications and cancellations of such orders that are not already systematized in an Amex system prior to representing the orders in the crowd. Any proprietary system approved by the Exchange shall have the functionality to comply with the requirements of COATS.

Members and member organizations do not need to systematize orders for accommodation trades (Rule 959) or FLEX options (Rules 900G through 909G) prior to representing the orders in the crowd. Information about these orders must be submitted to the Exchange on trade date no later than ten minutes after the close of trading. The Exchange will maintain information submitted to it pertaining to FLEX option and accommodation trades in the COATS format.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has undertaken with the other options exchanges to build a Consolidated Options Audit Trail System (''COATS'') which, when fully implemented, will provide an accurate, time-sequenced record of electronic and other orders, quotations and transactions in listed options on the exchanges. In connection with the implementation of COATS, the Exchange has modified its Booth Automated Routing System (''BARS'')[4] to accept option order types that are not otherwise eligible for input into the Exchange's order routing facilities (*e.g.,* complex orders) so that members and member organizations may systematize these orders, and the Exchange can integrate them into COATS. The Exchange also is in the process of developing a further enhancement to BARS called Order Ticket, which, when implemented, the Exchange believe will provide a second acceptable means for brokers and clerks to comply with their COATS Phase V obligation to systematize orders prior to representation.

Amex Rule 153(b) currently requires members and member organizations to systematize ''immediately upon receipt'' orders, and modifications or cancellations of orders, ''that are eligible for input into the Exchange's electronic order processing facilities'' if such orders are not already systematized in the Exchange's electronic order processing facilities.[5] To comply with the COATS standard for an accurate time sequencing of option orders, transactions and quotations, the Exchange is proposing that members and member organizations should systematize, prior to representation, either in BARS or in the Order Ticket

[4] *See* Exchange Act Release No. 45782 (April 18, 2002), 67 FR 20559 (April 25, 2002). BARS is an order routing system that allows brokers to manage and route orders for Amex traded securities. BARS also has a ''Market Look'' functionality that allows floor brokers to transmit information to booth clerks by means of time stamped JPEG files. The Exchange maintains these files.

[5] *See,* Exchange Act Release No. 34–45794 (April 22, 2002), 67 FR 20849 (April 26, 2002).

enhancement to BARS described below, those options orders and modifications and cancellations of such orders that are not already systematized in an Amex system. The obligation to systematize orders prior to representation would commence on January 120, 2006.[6]

In the case of an order that is not systematized when it reaches the Exchange, a floor broker or a broker's clerk would systematize the order by (1) opening an Order Entry Template (''OET'') on the Exchange's BARS booth or hand held terminal, (2) entering the order terms into the OET, and (3) transmitting the order to the Amex Order File (''AOF''). The first keystroke in the OET would be captured by the Exchange's systems as the time of order receipt. Brokers and their clerks also would enter information relating to any modification, cancellation or execution of an order into BARS. The Exchange incorporates order and execution information in the AOF into the COATS file. In addition to entering a non-system order directly into BARS, the Amex has designed an enhancement to the BARS system (called ''Order Ticket'') to facilitate order systemization by floor brokers and their clerks. The Exchange anticipates that the Order Ticket enhancement will be available by the end of the first quarter of 2005. The Order Ticket enhancement will allow floor brokers and their clerks to create electronic, time stamped, handwritten order tickets which will be saved by the Exchange as JPEG files.

A broker or clerk who wants to use the BARS order Ticket enhancement would select a new ''Order Ticket'' button on the booth or hand held BARS terminal. This would create a blank image template on a screen that already exists on both the booth and hand held BARS terminals Brokers and their clerks would write on the screen with a stylus and, in this manner, record order terms just as if they were using a paper order ticket. A person using the Order Ticket enhancement would be required to record the following order terms on the ticket prior to representing the order in the trading crowd.

- Buy/Sell.
- Symbol.
- Quantity.
- Call/Put (calls would be assumed unless ''P'' is written).
- Expiration.
- Strike (fractions would be assumed *e.g.,* ''22½'' would be written as ''22'').
- Price term (a limit order would be assumed if a price were written, *e.g.,* ''1.20'' would mean a 1.20 limit. Market orders would be blank or represented by a dash).
- Contingencies (if applicable, *e.g.,* NH, AON, FOK, IOC, stock).
- Open/Close (close would be assumed unless ''O'' is written).
- Customer/Firm/Member Market Maker/Non-Member Market Maker (customer would be assumed unless ''F,'' ''P'' or ''N'' is written.).
- Give-up.

At the first mark on the template, the Order Ticket would be automatically time stamped by the Exchange's systems to the nearest second. When the broker or clerk finishes entering the information on the Order Ticket, he or she would hit a ''save'' button, and the Order Ticket would be assigned a specific sequence number. Once the ''save'' button is hit, the Order Ticket could not be modified and would be stored by the Exchange as a JPEG file.

Once the order is systematized in Order Ticket, the member or member organization that accepted the order must transfer the order terms into BARS so that a record of the order may be maintained in the Exchange's AOF system and any trade information submitted to comparison. In order to enter the order into BARS, a floor broker or clerk would open a BARS OET on a saved Order Ticket by selecting a new OET button within the image. This would cause both the time stamp and the sequence number from the Order Ticket to be automatically transferred from the Order Ticket to the OET. The transfer of the time stamp and sequence number would be done by the Exchange's systems and could not be modified by the broker or clerk. The broker or clerk then would enter the required order terms into the OET and transmit the order to AOF. The broker or clerk also would enter any information pertaining to a modification or cancellation of an order, or the execution of an order, firectly into BARS from where it would be transmitted to AOF. Information pertaining to order modifications and cancellations would have to be systemized prior to representation of the revised order in the crowd. As previously noted, order information in AOF is incorporated into the COATS file.

Any proprietary system approved by the Exchange on the Exchange's trading floor which receives orders will be considered an Exchange system for the purpose of systematizing those options orders and modifications and cancellations of such orders that are not already systematized in an Amex system prior to representing the orders in the crowd. Any proprietary system approved by the Exchange shall have the functionality to comply with the requirements of COATS.

Orders for FLEX options and accommodation trades would not have to be systematized prior to representation. Information about these orders would be submitted to the Exchange on trade date no later than 10 minutes after the close of trading. The Exchange will maintain information submitted to it pertaining to FLEX option and accommodation trades in the COATS format.

The Exchange believes that the systemization of options orders directly into BARS or through the Order Ticket enhancement to BARS (once it is available) both would provide acceptable means for brokers and clerks to comply with their COATS Phase V obligation to systematize orders prior to representation. The Order Ticket enhancement, moreover, would facilitate COATS Phase V compliance by persons who are unfamiliar with keyboard style data entry because Order Ticket uses handwriting on an electronic pad similar to the traditional paper order tickets. [7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [8] in general and furthers the objectives of Section 6(b)(5) [9] in particular in that the proposed rule change 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 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

[6] COATS Phase V obligates the options exchanges to ''incorporate into the audit trail all non-electronic orders such that the audit trail provides an accurate, time sequenced record of electronic and other orders, quotations and transactions * * * beginning with the receipt of an order * * * and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order, which audit trail shall be readily retrievable in the common computer format.''

[7] The Exchange recognizes the need for effective and proactive surveillance for activities such as trading ahead and frontrunning. It currently conducts surveillance for such activities and will incorporate a review of order systemization as part of such surveillance. The Exchange also intends to implement supplementary surveillance and examination programs related to the systemization of order requirement promptly after this requirement is instituted, and which will support, among other things, trading ahead and frontrunning surveillances.

[8] 15 U.S.C 78f(b).

[9] 15 U.S.C. 78f(b)(5).

permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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. 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 self-regulatory organization 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2003–90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2003–90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2003–90 and should be submitted on or before January 12, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50871; File No. SR–Amex–2004–72]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Amend Its Minor Rule Violation Plan

December 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 2004, 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 23, 2004, Amex filed 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend Exchange Rule 590, its Minor Rule Violation Fine Plan (''Plan''). The text of the proposed rule change is available at Amex's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has had the Plan since 1976 which provides a simplified procedure for the resolution of minor rule violations. Codified in Amex Rule 590, the Plan has three distinct parts: Part 1 (''General Rule Violations'') covers more substantive matters that, nonetheless, are deemed ''minor'' by Amex; Part 2 (''Floor Decorum'') covers floor decorum and operational matters; and Part 3 (''Reporting Violations'') covers the late submission of routine reports.

Amex is proposing to amend Part 1 of Amex Rule 590 to bring additional rules within its coverage. Amex believes that inclusion of such matters within Part 1 of Amex Rule 590 would provide a fair means of prompt resolution of minor rule violations that do not rise to the level of a formal enforcement action. Specifically, Amex is proposing to add the following violations to Part 1 of Amex Rule 590:

(i) Failure to comply with trade reporting requirements for options (Amex Rule 992 requires the member initiating the options transaction to report, or ensure the transaction is reported, within 90 seconds of the

[3] Amendment No. 1 replaced the original proposed rule change in its entirety.

execution to be disseminated to the Options Price Reporting Authority).

(ii) Expand the current violation under the Plan where a specialist deactivates quote assist without proper authorization to include options (Amex Rules 950(g), Commentary .01 and 950–ANTE(g), Commentary .01).

(iii) Violation of Exchange rules regarding the Options Linkage program relating to the responding to, and receiving of, Linkage orders (Amex Rule 941(d) and (e)); avoidance and satisfaction of trade-throughs (Amex Rule 942(a)); and locked markets (Amex Rule 943).

(iv) Violation of the Exchange's policy with regard to affirmative determination of the availability for borrowing of shares of Amex-listed issues prior to effecting short sale transactions (Circular 90–25).[4]

(v) Effecting or causing to be effected a transaction outside of business hours through the Intermarket Trading System (Amex Rules 1, 100, and 233).

Amex also is proposing to amend and relocate Part 2(d)(3) of Amex Rule 590 (failure to submit option trade comparison data to the Exchange by specified deadlines) to Part 1(g) of Amex Rule 590. The proposed amendment would expand the requirement of reporting trade comparison data to include all transactions effected on the Exchange (presently, the rule only applies to options). Repositioning the above-mentioned violation would allow such behavior to be subject to Amex Enforcement Department action rather than Amex Floor Official action and also would increase the size of possible fines. The Exchange believes that inclusion of such matters within Part 1 of Amex Rule 590 would provide a fair means of prompt resolution of minor rule violations that do not rise to the level of a formal enforcement action.

As previously noted, Part 3 of Amex Rule 590, Reporting Violations, allows the specified departments of the Exchange that routinely receive regulatory reports from members and member organizations to issue abbreviated ''written statements'' to persons who may have violated the specified reporting rules, identifying the rules violated, the act or omission constituting the violation, and the amount of the fine. The fines are $50 per day for each day the report is late. The Exchange is proposing to revise Part 3 of Amex Rule 590 to reflect the current filing schedule for the Form 50 (Short Position), which was previously only required to be filed at or about mid-month but is now additionally required to be filed at or about the end of the month for selected derivative products.[5] The text of Part 3(g) of Amex rule 590 as it discusses Form 1–S (Round Lot Short Sales Transactions) is being corrected to reflect that the form is due on Friday rather than Thursday.[6]

2. Statutory Basis

Amex believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(1),[8] 6(b)(6),[9] and 6(b)(7),[10] in particular, in that it would enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; it would help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange; and it would provide a fair procedure for disciplining members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes the proposed rule change, as amended, would impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of 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. 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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2004–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–72 and should be submitted on or before January 12, 2005.

[4] *See* Securities Exchange Act Release No. 27542 (December 15, 1989), 54 FR 53222 (December 27, 1989) (SR–Amex–89–17).

[5] *See* Amex Member Firm Regulation Informational Circular 98–0234 which pertains to Diamonds, SPDRS, MIDCAP SPDRS, and the various WEBS series known as iSHARES.

[6] *See* Amex Member Firm Regulation Informational Circular 97–597, which states that the Form 1–S will be due on the Friday following the week included in the report.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(6).

[10] 15 U.S.C. 78f(b)(7).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50874; File No. SR–CBOE–2004–66]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Borrowing and Lending by Registered Persons

December 16, 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 18, 2004, the Chicago Board Options Exchange, Incorporated (''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 CBOE. 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

CBOE proposes to adopt a new rule restricting registered persons of members or member organizations from borrowing from or lending to their customers, except pursuant to the conditions specified in the rule. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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 I above. 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

1. Purpose

The purpose of the proposed rule change is to adopt a rule that prohibits registered persons of CBOE members or members organizations from borrowing money from or lending money to a customer unless each of the following applies: (1) The members or member organization has written procedures allowing such borrowing or lending arrangements; and (2) the borrowing or lending arrangement fall within one of five permissible types of lending arrangements.[3] In certain of these cases, the member or member organization must also pre-approve the loan in writing. The five types of permissible lending arrangements are:

(i) The customer is a member of the registered person's immediate family (as defined in the proposed rule);

(ii) The customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business;

(iii) The customer and the registered person are both registered persons of the same member organization;

(iv) The lending arrangement is based on a personal relationship outside of the broker-customer relationship; or

(v) The lending arrangement is based on a business relationship outside of the broker-customer relationship.

CBOE believes that the solicitation of loans from customers by registered persons is an area of legitimate CBOE interest because of the potential for misconduct. CBOE has brought disciplinary action against registered persons who have violated just and equitable principles of trade by taking unfair advantage of their customers by inducing them to lend money in disregard of the customers' best interests, or by borrowing funds from, but not repaying, customers. The potential for misconduct also exists when a registered person lends money to a customer.

The proposed rule change establishes a regulatory framework that would give members and member organizations greater control over, and mores specific supervisory responsibilities for, lending arrangements between registered persons and their customers. Members and member organizations could choose to permit their registered persons to borrow from or lend to customers constituent with the requirements of the rule or, as was the case before the proposal of this new rule, prohibit the practice in whole or in part. If members or member organizations choose to permit their registered persons to engage in lending arrangements with customers, the proposed rule change would require members and member organizations to have written procedures allowing the borrowing and lending of money between registered persons and customers or the member or member organization. As stated above, members and member organizations would be permitted to approve loans only if the loan falls within one of the five types of permissible lending arrangements set forth in the rule.

The proposed rule would require members and member organizations to pre-approve in writing three out of five types of lending arrangements permitted by the rule. It would exempt from the rule's notice and approval requirements lending arrangements involving a registered person and his/her customer that is: (1) A member of his/her immediate family (as defined in the proposed rule); or (2) a financial institution regularly engaged in the business of providing credit, financing, or loans (or other entity or person that regularly arranges or extends credit in the ordinary course of business), provided the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose, and creditworthiness. The Exchange believes the requirement in the proposed rule that certain types of lending and borrowing arrangements must be pre-approved by the member or member organization would enhance members' and member organizations' ability to supervise such lending and borrowing activities of registered personnel.

CBOE also believes that, the proposed rule change would also enhance the Exchange's ability to monitor loans between registered persons and their customers. Currently, under controlling Commission decisions, to bring a disciplinary action against a registered person who has entered into an unethical lending arrangement with a customer, CBOE generally must prove that the arrangement is inconsistent with just and equitable principles of trade under CBOE Rule 4.1 because the registered person has acted in bad faith

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule is substantially similar to NASD Rule 2370. *See* Securities Exchange Act Release No. 48424 (August 29, 2003), 68 FR 52806 (September 5, 2003). NASD Rule 2370 was amended in Securities Exchange Act Release No. 49269 (February 18, 2004), 69 FR 8718 (February 25 2004).

or unethically. This can be difficult to prove in cases in which the customer is unable or unavailable to testify, or refuses to testify because he or she is relying on the registered person for financial advice. The proposed rule change would better enable CBOE to monitor and bring disciplinary actions in cases involving such loans.

The Exchange notes that the safeguards provided under the proposed rule, including bringing disciplinary actions for violations of the rule, are in addition to the general powers that CBOE has to bring a disciplinary action against a registered person who has entered into an unethical lending arrangement with a customer under CBOE Rule 4.1. It is also important to note that this proposal does not change the application of Regulation T to lending activities by associated persons. Specifically, the definition of ''creditor'' under Regulation T extends to associated persons of broker-dealers and therefore, certain loans to customers by associated persons may require compliance with the provisions of Regulation T.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, which requires, among other things, that CBOE's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. CBOE believes the proposed rule change is designed to accomplish these ends by establishing a regulatory framework that will give members greater control over lending arrangements by permitting members to permit such arrangements only if they fall within one of five types of permissible arrangements, or, as was the case before the proposal of this new rule, prohibit such arrangements altogether. Members that permit such arrangements would be required to keep written procedures. These procedures would enable both members and CBOE to proscribe certain customer-broker loans and monitor those that have been approved.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

CBOE has stated that the foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(6) thereunder [5] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest. 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 the furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without charge; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CBOE–2004–66 and should be submitted on or before January 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–27968 Filed 12–21–04; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] 15 U.S.C. 78s(b)(3)(C).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50865; File No. SR–CHX–2004–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Manual Execution of Orders and Amendment No. 1 Thereto

December 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on February 11, 2004, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

regulatory organization. On December 14, 2004, the Exchange filed Amendment No. 1 to its original submission. 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 Exchange proposes to amend Article XX, Rule 37 of the CHX Rules, which governs, among other things, manual execution of market and marketable limit orders, to eliminate a specific requirement that a specialist execute eligible orders at the price and size associated with the national best bid or offer. The text of the proposed rule change appears below. Additions are italicized; deletions are in brackets.

* * * * *

RULE 37(a). Guaranteed Executions.

1. Eligible Orders. Specialists must accept and guarantee execution of all agency market and marketable limit orders from 100 through 5099 shares in accordance with this rule.

2. Market and Marketable Limit Orders. With respect to any market or marketable limit order not executed automatically, a specialist *shall use reasonable diligence to ascertain the best available price for the subject security so that the resultant execution price is as favorable to the order sender as possible under prevailing market conditions. Among the factors that will be considered in determining whether a specialist has used ''reasonable diligence'' are:*

(a) the character of the market for the security, e.g., price, volatility, relative liquidity, and pressure on available communications; and

(b) the size and type of transaction. [shall be obligated to either (a) manually execute such order at a price and size equal to or better than the NBBO price and size at the time the order was received; or (b) act as agent for such order in seeking to obtain the best available price for such order on a marketplace other than the Exchange, using order routing systems where appropriate. The specialist's obligation shall always be subject to the requirements of the short sale rule. For purposes of this rule, ''NBBO'' shall mean, for Dual Trading System issues, the size and price associated with the best bid among the American, Boston, Cincinnati, Chicago, New York, Pacific, Philadelphia or the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES'') quote (''ITS Best Bid'') on a sell order or the price and size associated with the best offer among the American, Boston, Cincinnati, Chicago, New York Pacific, Philadelphia or the ITS/CAES quote (''ITS Best Offer'') on a buy order (the ''ITS Best Bid'' and ''ITS Best Offer'' are collectively referred to as the ''ITS BBO''). For NASDAQ/NM Securities, ''NBBO'' shall mean the price and size associated with the best bid disseminated pursuant to SEC Rule 11Ac1–1 on a sell order or price and size associated with the best offer disseminated pursuant to SEC Rule 11Ac1–1 on a buy order (collectively, the ''NBBO''); or, if the specialist is quoting at the NBBO, the size associated with the specialist's bid or offer and the auto-execution threshold designated by the specialist.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding 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 amend Article XX, Rule 37(a) of the CHX Rules, which governs, among other things, manual execution of market and marketable limit orders, to eliminate a specific requirement that a specialist execute order at the price and size associated with the national best bid or offer.

Background. The CHX currently has a rule, referred to as the ''BEST Rule,'' which sets out specific execution guarantees for eligible orders. The BEST Rule provides that, when executing orders manually, as principal, the specialist generally must execute the order at the then-prevailing BBO price up to the BBO displayed quantity, *i.e.,* the best price and liquidity available in the national market system.[3] Alternatively, the specialist may elect to act as agent for the order, in which case the specialist must obtain the best available price for the order, using order-routing systems where appropriate.[4]

Since the securities industry conversion to decimal trading, the CHX asserts that the availability of liquidity at a BBO price point has declined, in many cases significantly. The Exchange represents that a specialist, if he chooses to offset his positions in another market, often encounters great difficulty in accessing liquidity at the BBO price that he is obligated to provide. The Exchange asserts that this is particularly true in the case of manually-executed orders, given the associated time latency and the frequency with which quotes in other markets are changing.

According to the Exchange, many CHX specialists thus believe that it is no longer appropriate to guarantee manual principal executions at the BBO price. Indeed, they believe that in today's trading environment, the BEST Rule exposes them to unwarranted liability, which they often have no ability to mitigate.[5] Moreover, they note, CHX order-sending firms now have access to comprehensive order execution quality statistics, rending a ''front-end'' execution price guarantee unnecessary as a means of attracting order flow. Many CHX specialists, the Exchange

[3] For Nasdaq/NM securities, the NBBO is defined as the best bid or offer disseminated pursuant to SEC Rule 11Ac1–1. For listed securities, the BBO is defined as the best bid or offer disseminated by the participants in the Intermarket Trading System Plan. *See* CHX Article XX, Rule 37(a)(2).

[4] Under the CHX's rules, orders that are executed using the CHX's automatic execution systems are executed at the BBO. *See* CHX Article XX, Rule 37(b).

[5] The CHX believes that it is important to note that under the current version of the BEST Rule, a CHX specialist acting in his principal capacity is required to execute an unlimited number of orders at the then-prevailing BBO price, up to the BBO displayed size, until the consolidated quotation stream reflects a change in the BBO price or size. As a consequence, if a large number of orders are routed to the CHX specialist simultaneously, before the consolidated quotation is updated, the CHX specialist would be obligated to fill all of the orders at the BBO price, despite the fact that the aggregate number of shares vastly exceeded the BBO size. The CHX asserts that this virtually unlimited liability is an unintended, and unwarranted, consequence of execution guarantees such as the BEST Rule.

For example, if the national best bid (''NBB'') was 50 × 1000 shares, the CHX specialist would be obligated to execute an unlimited number of customer sell orders at 50, as long as each order was 1000 shares or less in size, until the consolidated quotation information indicated a change in the NBB. Continuing this hypothetical example, assume that 200 sell orders, each for 100 shares, were routed to the CHX before a change in the NBB to 49 one second later. Notwithstanding the one-second pendency of the 50 NBB, the CHX specialist would be obligated to buy 20,000 shares at 50, when such liquidity at that price was not truly present anywhere in the national market system. In today's decimal environment, such extraordinary results, which could not have been anticipated when the BEST Rule was enacted, occur often.

contends, therefore will continue to execute orders at the BBO price voluntarily, as a means of maintaining superior execution quality statistics.

Under the proposed revision of Article XX, Rule 37(a), the specific provisions of the BEST Rule would be deleted. Instead, the specialist's execution obligation would be described in more general terms. Under the proposed new standard, a CHX specialist would, in executing an order manually, be obligated to ''* * * use reasonable diligence to ascertain the best available price for the subject security so that the resultant execution price is as favorable to the order sender as possible under prevailing market conditions.'' Among the factors that will be considered by the Exchange's Department of Market Regulation in determining whether a specialist has used ''reasonable diligence'' are: (a) The character of the market for the security, *e.g.,* price, volatility, relative liquidity, and pressure on available communications; and (b) the size and type of transaction.[6]

Significantly, although this standard may appear more general in its terms, it does not remove a CHX specialist's obligation to provide a timely best execution for each order, nor does it modify any other specialist obligations set forth in Article XXX of the CHX Rules. The CHX Department of Market Regulation has indicated that it will continue its surveillance of order executions to ensure that CHX specialists meet all of their obligations to each order.

It is also important to note that the CHX rules (specifically, CHX Article XX, Rule 37(b)) would continue to require execution of the BBO price for orders that are automatically executed within the Exchange's MAX® system. The Exchange represents that there is no proposal forthcoming to modify automatic execution price guarantees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] In particular, the proposed rule is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[8]

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

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 other 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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2004–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2004–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–03 and should be submitted on or before January 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–27943 Filed 12–21–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50844; File No. SR–NYSE–2004–53]

Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Relating to a Fee for the NYSE Alerts Datafeed

December 13, 2004.

On September 17, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with 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 establish a fee of $500 per month for a

[6] The proposed new standard is substantially similar to Rule 2320 (''Best Execution'') of the National Association of Securities Dealers (''NASD''). However, the NASD has filed a proposed rule change to amend Rule 2320. *See* File No. SR–NASD–2004–26.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30\3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

customer's receipt of the NYSE Alerts datafeed. On October 15, 2004, the NYSE filed Amendment No. 1 to the proposed rule change.[3] On October 28, 2004, the NYSE filed Amendment No. 2 to the proposed rule change.[4]

The proposed rule change, as amended, was published for comment in the **Federal Register** on November 12, 2004.[5] The Commission received no comments on the amended proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6 of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act[8] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

The Commission notes that the NYSE is amending its fee schedule to incorporate a $500 fee for its NYSE Alerts datafeed, which will provide real-time information relating to MOC Market Imbalances, Delayed Openings/Trading Halts, ITS Pre-Opening Indications/Trading Range Indications, Trading Collar Messages, and Circuit Breaker Messages. The Commission further notes that the information that would be included in the NYSE Alerts datafeed is currently available and would continue to be available to the public through the Consolidated Tape Association network and through various news services. Vendors and investors who choose to subscribe to NYSE Alerts would be paying for the convenience of having this currently available public information repackaged into a single datafeed. The Commission therefore believes that the proposed fee is reasonable and finds that the proposed rule change, as amended, is consistent with the Act.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 14, 2004 (''Amendment No. 1'').

[4] *See* letter from Mary Yeager, Assistant Secretary, NYSE to Nancy Sanow, Assistant Director, Division, Commission, dated October 27, 2004 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 50639 (November 5, 2004), 69 FR 65488.

[6] In aproving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

It is therefore ordered, pursuant to Section 19(b)(s) of the Act[9], that the proposed rule change (File No. SR–NYSE–2004–53), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–27937 Filed 12–21–04; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50847; File No. SR–PCX–2002–57]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the Pacific Exchange, Incorporated Relating to the Implementation of a New Order Audit Trail System

December 14, 2004.

On August 9, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] to adopt new rules relating to the creation of an order audit trail system called Electronic Order Capture System (''EOC''). On July 28, 2003, the Exchange filed Amendment No. 1 to the proposed rule change. On July 30, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change. On August 7, 2003, the proposed rule change, as amended, was published for comment in the **Federal Register** to solicit comment for interest persons.[3] No comments were received. Subsequently, on October 9, 2003 and October 14, 2003, the Exchange submitted Amendment Nos. 3 and 4 to the proposed rule change.

On December 14, 2004, the Exchange withdrew the proposed rule change and all amendments thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–27936 Filed 12–21–04; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48264 (July 31, 2003), 68 FR 47124.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50868; File No. SR–PCX–2004–59

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to a New Order Modifier Entitled ''Proactive if Locked Reserve''

December 16, 2004.

On July 1, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''), filed with 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 amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE, by adding new processing capability for ArcaEx Reserve Orders in situations where a Reserve order in an exchange-listed security is locked by another market. On October 26, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.[3] On October 28, 2004, the PCX submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on November 15, 2004.[5] The Commission received no comments on the proposal.

The Exchange proposes to add a new order modifier entitled ''Proactive if Locked Reserve'' as an additional

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 25, 2004, and accompanying Form 19b–4 (''Amendment No. 1''). Amendment No. 1 replaced and superseded the originally filed proposed rule change.

[4] *See* letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated October 25, 2004 (''Amendment No. 2'') Amendment No. 2 made technical corrections to the proposed rule text of the proposed rule change, as amended.

[5] *See* Securities Exchange Act Release No. 50645 (November 5, 2004), 69 FR 65670.

processing capability for ArcaEx Reserve Orders[6] in exchange-listed securities. An Equity Trading Permit Holder (''ETP Holder'') could use this new order modifier when its Reserve Order in an exchange-listed security is locked by another market and that market has not shipped a commitment or moved its quote to clear the lock. The Proactive if Locked Reserve modifier would allow an ETP Holder to instruct ArcaEx to ship its Reserve order to an away market when the Reserve Order has been locked (or crossed) by the away market and the offending away market has not resolved the lock (or cross) in a timely manner. Under the proposal, if the away market does not respond to a locked market complaint as provided for under the ITS Plan within an acceptable time period based on average responses from ITS participants, ArcaEx would proactively route an order to the offending market for the away market's displayed size up to the reserve amount of such order.[7]

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[8] and, in particular, the requirements of Section 6(b) of the Act[9] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires that the rules of an exchange be 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 of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that, in providing a method for ETP Holders to proactively unlock or uncross markets and execute their orders while working within the requirements of the ITS Plan, the proposed rule change, as amended, should provide greater efficiencies in the marketplace by giving ArcaEx participants increased opportunities for executing orders. In particular, the Commission believes that allowing ArcaEx participants to utilize this order modifier may enhance order interaction and foster price competition.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–PCX–2004–59), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–27940 Filed 12–21–04; 8:45 am]

BILLING CODE 8010–01–M

[6] Reserve Orders, defined in PCXE Rule 7.31, are limit orders with a portion of the size displayed and with a reserve portion of the size not displayed.

[7] *See* ITS Plan Exhibit B, Section (d).

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50854; File No. SR–PCX–2004–122]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Implementation of a New Order Audit Trail System

December 14, 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 December 14, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comment 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 Exchange proposes to amend its rules relating to the systematization of orders in connection the requirement to design and implement a consolidated options audit trail system (''COATS''). The text of the proposed rule change appears below. Additions are italicized; deletions are in brackets.

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Rule 6

Options Trading

Applicability, Definitions and References

Rule 6.1(a)—No change.

(b) Definitions. The following items as used in Rule 6 shall, unless the context otherwise indicates, have meanings herein specified:

(1)–(38)—No change.

(39) The term ''Electronic Order Capture System (''EOC'') means the Exchange's electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions on the Exchange pursuant to Section IV.B.e.(v) of the Commission's order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. EOC records the receipt of an order and documents the life of the order through the process of execution, partial execution, or cancellation. This system includes the electronic communications interface between EOC booth terminals and then Floor Broker Hand Held applications. Each OTP Holder or OTP Firm's EOC booth terminal and each Floor Broker Hand Held Terminal contains an electronic order entry screen that displays the terms and conditions of each order received by that OTP Holder or OTP Firm. OTP Holders and OTP Firms may record the details of the order directly into the EOC system as described herein, or, in the alternative, into the Electronic Tablet described in subsection (b)(40) below.

(40) The term ''Electronic Tablet'' means the Exchange's electronic method of recording orders that are hand written and transmitted to a Floor Broker's workstation for representation in order to create an accurate time-sequenced record of orders on the Exchange. The Electronic Tablet will automatically timestamp the receipt of an order when such order is transmitted to a Floor Broker's workstation for representation in the trading crowd and document the life of the order through the process of execution, partial execution or cancellation. This system includes the ability for a Floor Broker to hand write order information and automatically timestamp the report and provides a method to display report images at an OTP Holder or OTP Firm's workstation to manually key the order information for clearing purposes. Such clearing information will become part of the data required pursuant to Section IV.B.e.(v) of the commission's Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. OTP Holders and OTP Firms may record the details of the order directly into the EOC system (as

[1] U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

described above in subsection (b)(39)) or, in the alternative, into the Electronic Tablet as described herein.

(c)–(e)—No change.

* * * * *

Admission to and Conduct on the Options Trading Floor

Rule 6.29a)–(g)—No change.

(h)(1)–(2)—No change.

(3) Requirements and Conditions.

(A)—No change.

(B) Orders transmitted by registered Exchange Market Makers may be entered directly to the trading posts. All other orders may b e entered directly to the trading posts only during outgoing telephone calls that are initiated at the option posts. *Pursuant to Rule 6.67(c), all such orders must be immediately recorded into the EOC or the Electronic Tablet unless the exception set forth in Rule 6.67(d)(1)(A) applies, in which case the EOC/Electronic Tablet Contingency Reporting Procedures will be in effect in accordance with Rule 6.67(d)(2).*

(C)—No change.

(4)—No change.

(5) Floor Brokers.

(A)–(B)—No change.

(C) *EOC or Electronic Tablet* Ticket to Follow Procedures *Pursuant to Rule 6.67(d)(1)(A).* A Floor Broker in a trading crowd who receives a telephonic [a] order from an OTP Holder or OTP Firm representative located on the Trading Floor may represent that order immediately in the trading crowd, provided (a) that an order ticket for the order must be prepared and time stamped in the OTP Holder or OTP Firm booth before the order is transmitted telephonically to the Floor Broker *and represented* in the trading crowd; and (b) that the written, time-stamped order ticket for the order must be taken to the Floor Broker in the trading crowd immediately after it has been prepared.

(D)—No change.

(6)–(10)—No change.

Commentary:

.01–.02—No change.

.03 While on the Trading Floor, clerks *must* [shall] display at all times the badge(s) supplied to them by the Exchange. [Any Market-Maker clerk who writes up an option order on the Options Floor must give his employer a copy of that order before it is delivered; the employer must retain the copy on his person until it is executed.] A clerk receiving a phone order must *immediately record the details of the order into EOC or the Electronic Tablet pursuant to Rule 6.67(c), except as otherwise provided in Rule 6.67(d)(1)(A).* [must initial, must mark as opening or closing and must time-stamp the order.]

.04—No change.

* * * * *

Fast Markets and Unusual Market Conditions

Rule 6.28(a)—No change.

(b)(1)—No change.

(2) *For orders excepted from EOC or the Electronic Tablet, pursuant to Rule 6.67(d)(1)(A),* [T]*t*he OBO may temporarily move less active issues to another post if the Book is extremely active. [Books left at the post may be separated and order shoes provided for the most active series to facilitate order flow. A special time stamp will be placed behind the Book to stamp incoming transactions before they go to Price Reporting.]

(3)–(6)—No change.

(c)–(d)—No change.

* * * * *

Appointment of Market Makers

Rule 6.35—No change.

Commentary:

.01–.03—No change.

.04 For the purposes of this rule, temporarily undertaking the obligations of a Primary Appointment with respect to non-Primary Appointment classes of option contracts at the request of an Exchange OTP Holder or OTP Firm shall not be deemed trading in non-Primary Appointment classes. In addition, a Market Makers' trades effected through a Floor Broker do not count for nor against the Market Maker's 75% requirement, regardless of whether the trades are in issues within or without his Primary Appointment. Also, Market Makers who are solicited on an order on behalf of an account other than that of another Market Maker may accommodate such orders, provided that the orders are clearly announced in the trading crowd as solicited, and such transactions shall not count for nor against the 75% requirement. Such *orders* [trades] *must* [shall] be designed by the Market Maker with an ''S'' in the ''[o]*O*ptiona*l* Data'' *field* [section] of [the] *EOC or the Electronic Tablet or, for orders excepted from EOC or the Electronic Tablet pursuant to Rule 6.67(d)(1)(A), in the ''Optional Data'' section of the* trade ticket.

.05—No change.

* * * * *

Crossing Orders and Stock/Option Orders

Rule 6.47(a)—No change.

(b) Crossing of Facilitation Orders. A Floor Broker who holds an order for a public customer or a broker-dealer (''customer order'') and an order for the proprietary account of an OTP Holder OTP Firm that is representing that customer (the ''facilitation order'') may cross such orders only if the following procedures are followed.

(1)—No change. (2) The option order tickets for both the [f]*F*acilitation order*s* and [the] customer order*s* must *be entered into EOC or the Electronic Tablet and* [display] all of the terms of such orders, including any contingencies involving, and all related transactions in, either options or underlying or related securities*, must be displayed on EOC or the Electronic Tablet. If facilitation orders and customer orders are excepted from EOC or the Electronic Tablet, pursuant to Rule 6.67(d)(1)(A), then order tickets must display this same information.* The Floor Broker must disclose all securities that are components of the customer order.

(3)–(6)—No change.

(c)—No change.

(1)–(3)—No change.

(4) ''Solicited'' *must* [shall] be *entered* [written] in the ''Optional Data'' *field of the EOC or the Electronic Tablet or, for orders excepted from EOC or the Electronic Tablet pursuant to Rule 6.67(d)(1)(A), written in the ''Optional Data'' section of the trade ticket.* [area on the order ticket of the solicited order. If the solicited order is for a market maker account, the order ticket shall be personally initialed by the solicited market maker, who must have in his possession a copy of such order ticket at all times such order is active.]

(5)—No change.

(d)–(e)—No change.

(f)(1) Stock/Option and SSF/Option Orders. When a stock/option order is taken to a crowd for execution, the stock transaction or SSF transaction must be effected prior to the option transaction pursuant to Rule 6.47, Commentary .04. The following procedure applies to all executions of stock/option and SSF/option orders: [A]*a*fter an agreement with other OTP Holders or OTP Firms of the crowd has been reached as to the terms of the transaction, the option order *must be entered into EOC or the Electronic Tablet or, for orders excepted from EOC or the Electronic Tablet, pursuant to Rule 6.67(d)(1)(A), written on* tickets [must be written up] and time stamped. However, the *option transaction will* [order tickets should] not be *reported to Options Price Reporting Authority (''OPRA'') by EOC or Electronic Tablet or, for orders excepted from EOC or the Electronic Tablet, pursuant to Rule 6.67(d)(1)(A),* turned in to the Order Book Official at this time. The OTP Holders or OTP

Firms *will* [shall] attempt to immediately effect the transaction in the underlying or related security. If the stock transaction cannot be executed immediately or is effected at a price other than *an* [the] agreed-upon price, the OTP Holders or OTP Firms *will* [shall] not be held to the option transaction. If the stock transaction is effected at *an* [the] agreed-upon price, then all the OTP Holders or OTP Firms who participated in the option transaction *will* [shall] be held to their agreed-upon price. At the time the stock transaction is effected, the option *transaction must be immediately entered into EOC or the Electronic Tablet and reported to OPRA or, for orders excepted from EOC or the Electronic tablet, pursuant to Rule 6.67(d)(1)(A),* trade tickets *must* [should] be given to the Order Book Official.

(f)(2)—No change.

Commentary:

.01–.06—No change.

* * * * *

Discretionary Transactions

Rule 6.48.(a)–(b)—No change.

(c) A Market Marker shall not exercise discretion in an account unless he has a direct interest in such account. Market Makers may not exercise discretion over any account other than: A joint account approved pursuant to Rule 6.39, or an account in which the Market Maker has a direct interest. For purposes of this Rule, the term ''direct interest'' in an account is limited in its meaning to include only a participation in the profits and losses in such account, or in the case of a partnership or corporation, a representative of such partnership or corporation who has a supervisory responsibility over such account. Only persons registered as Market Makers and subject to the performance obligations set forth in Rule 6.37, may exercise discretion over an account.

(1) A Market Maker wishing to effect such discretionary transactions for accounts other than the Market Maker's personal account or a joint account must enter the order with a Floor Broker and the procedures set forth in Rule 6.85. The identification of the order as a discretionary order is required pursuant to [PCX] Rule 6.68(a)*(5)*. [(7), ''Record of Orders.'']

(A) The *clearing acronym* [name] of the Market Maker for whom the transaction is being executed must be [printed at the bottom of the ticket (B–6–1(c)),] *entered into EOC or the Electronic Tablet, for orders excepted from EOC or the Electronic Tablet, pursuant to Rule 6.67(d)(1)(A), written on the ticket* along with the *clearing acronym* [badge number] of the Market Maker exercising discretion [(i.e. e.g., Joe Trader/MO7)]; and

(B) A''D'' must be placed after the Market Maker's *clearing acronym* [number,] for whose account the trade is executed[, in the firm box (e.g., MO5 D)].

Solicited Transactions

Rule 6.49(a)–(b)—No change.

(c) ''Solicited'' *must* [shall] be *entered* [written] in the ''Optional Data'' *field of EOC or the Electronic Tablet for* [area on the order ticket of] the Solicited order. *For orders excepted from EOC or the Electronic Tablet, pursuant to Rule 6.67(d)(1)(A), ''Solicited'' must be written in the ''Optional Data'' section on the order ticket of the Solicited order.*

* * * * *

ORDER BOOK OFFICIALS

Order Book Official Defined

Obligations for Orders

Rule 6.52(a)–(d)—No change.

Commentary:

.01.–.03—No change.

.04 For purposes of this Section, orders *excepted from EOC or the Electronic Tablet, pursuant to Rule 6.67(d)(1)(A),* will be within the custody of Order Book Officials only when they have been deposited, properly time-stamped and marked, in the proper receptacle.

.05–No change.

* * * * *

Certain Types of Orders Defined

Rule 6.62(a)–(b)—No change.

(c) A contingency order is a limit or market order to buy or sell that is contingent upon a condition being satisfied. [while the order is at the Post.]

(d)—No change.

(e) Not held order. *A not held order is an order that provides a broker with discretion as to price or time in executing the order. A ''not held'' order must be designated as such in the ''Optional Data'' field of the EOC or the Electronic Tablet. For orders excepted from EOC or the Electronic Tablet, pursuant to Rule 6.67(d)(1)(A), a* [A] not held order [is an order that] is market ''not held'', ''NH'', ''take time'' or *marked with some* [that bears any] qualifying notation giving discretion as to the price or time at which such order is to be executed. The ''not held'' designation must appear in the ''special instructions'' portion of the order ticket. Orders that merely include a ''not held'' designation as part of the time stamp will not be deemed to be ''not held'' orders.

(f)–(k)—No change.

* * * * *

Order Format and System Entry Requirements

[Orders Required to be in Written Form]

Rule 6.67(a). Transmitted to the Floor. Each order transmitted to the Floor must be recorded legibly in a *format* [written form] that has been approved by the Exchange, and the OTP Holder receiving such order must record the time of its receipt on the Floor. Each such order must be in *a* legible *format* [written form] when *transmitted* [taken] to the post for attempted execution. Orders sent electronically through the Exchange's Member Firm Interface *or orders entered into the Exchange's EOC or the Electronic Tablet* are [deemed to be written] *approved formats (as described in subsection (b) below) for transmitting orders* for purposes of Rule 6.67.

(b) Order Format Requirements. Orders sent to the Exchange for execution must comply with the order format requirements established by the Exchange relating to, among other things, option symbol, expiration month, exercise price, type of option (call or put), quantity of option contracts, clearing member organization, whether the order is to buy or sell, and whether the order is market or limit.

[(b) Cancellations and changes. Each cancellation of, or change to, an order that has been transmitted to the Floor must be recorded legibly in a written form that has been approved by the Exchange, and the OTP Holder receiving such cancellation or change must record the time of its receipt on the Floor.] *(c) EOC or Electronic Tablet Entry Requirement. Every OTP Holder or OTP Firm that receives an order for execution on the Exchange must immediately, prior to representation in the trading crowd, record the details of the order (including any modification of the terms of the order or cancellation of the order) into either the EOC or the Electronic Tablet, unless such order has been entered into the Exchange's other electronic order processing facilities (e.g., orders sent electronically through the Exchange's Member Firm Interface).*

(1) EOC. The details of each order required to be recorded upon receipt must include the data elements prescribed in Rule 6.68(a)(1) through (9), and such other information as may be required by the Exchange from time to time. The remaining elements prescribed in Rule 6.68(a) shall be recorded as the events occur and/or during trade reporting procedures.

(2) Electronic Tablet. The details of each order required to be recorded upon receipt must include the data elements prescribed in Rule 6.68(a)(1) through (6), and such other information as may be required by the Exchange from time to time. The remaining elements prescribed in Rule 6.68(a) shall be recorded as the events occur and/or during trade reporting procedures.

[(c) Executions. An OTP Holder transmitting from the Floor a report of the execution of an order must record the time at which a report of such execution is received by such OTP Holder.]

(d)(1) Exceptions to EOC or Electronic Tablet Entry Requirements. The EOC or Electronic Tablet entry requirement provision of subsection (c) will not apply to the following:

(A) Any EOC or Electronic Tablet system disruption or malfunction as confirmed by two Trading Officials or Exchange staff (as designated by the Chief Regulatory Officer).

(2) EOC/Electronic Tablet Contingency Reporting Procedures. If the exception set forth in subsection (d)(1)(A) applies, then the following procedures must be followed.

(A) OTP Holders and OTP Firms shall use a backup supply of tickets to record the details of all orders (the data elements of which are prescribed in Rule 6.68(a)(1) through (9)), received through non-electronic means. The order ticket must be processed in accordance with Rule 6.2(h)(5)(C). All order events (i.e., receipt, changes, execution, partial execution, cancellation, or nothing done) must be immediately time stamped (a time stamp synchronized with the National Institute of Standards and Technology Atomic Clock in Boulder Colorado ''NIST Clock'' will be available at all OTP Holder and OTP Firm booths and trading posts).

(B) During such circumstances, existing rules on manual processing of order tickets are applicable.

(C) If there is an EOC or Electronic Tablet system disruption/malfunction as set forth in subsection (1)(A), the EOC or Electronic Tablet order entry requirements in Rule 6.67(c) will be reinstated once the disruption/malfunction to the EOC or Electronic Tablet system has been corrected as determined by one Trading Official or Exchange staff (as the case may be). Once the disruption/malfunction to the EOC or Electronic Tablet system has been corrected, all OPT Holders and OTP Firms affected by the system disruption/malfunction must input all relevant orders into an EOC device via the ''as-of'' field, noting the times of events of the orders. The required information must be entered into EOC by such prescribed period of time, as determined by the Exchange, following the trade, but no later than the end of the trading day that such trade occurred (or on the day the order was received if no trade was executed). Any OTP Holder or OTP Firm who fails to follow such procedures will be subject to disciplinary action pursuant to Rule 10.

[(d) A Floor Broker may represent a telephonic order, with a ticket to follow, as provided in Rule 6.2(h)(4)(C).]

[(e) Hand Signals. The following regulations govern the proper use of hand signals on the Options Trading Floor: (1) Hand signals may always be used to request and to relay information regarding current quotations and market size. Hand signals may also be used to increase or decrease the size of an order, to change the order's limit, to cancel an order or to activate a market order.

Any cancellation of or change to an order relayed to a Floor Broker through the use of hand signals also must be relayed to the Floor Broker in a time stamped, written form immediately thereafter. All cancellations and changes of orders held by the Order Book Official must be in written form. Executing brokers who receive such communications must have a written order in their possession with all of the following information on the ticket:

Underlying security ticker symbol
Expiration month
Striking price
Volume
Purchase or Sale Notation
Whether Market or Limit Order

(2) Cancellaiton of orders held by the Floor Broker must be in written form in accordance with current practice. A Floor Broker may cancel an order through the use of hand signals if it is followed immediately by written cancellation. (3) Any change to an order must be documented in writing outside of the crowd and the ticket time-stamped, before the revised order may be represented.] [(f) Any OTP Holder desiring to use an order form in a format other than that provided by the Exchange must submit such form to the Exchange and obtain its approval prior to using such form on the Floor.]

(e) The system entry requirement prescribed in subsection (c), above, will be operative on or before January 10, 2005.

Commentary .01: FLEX and Cabinet Trades are exempt from the EOC and Electronic Tablet Entry Requirements as set forth in Rule 6.67(c). Such trades shall be processed using manual time stamped order tickets. The PCX will maintain a separate record (i.e., spreadsheet) of quotes, orders and transactions related to such trades in the same format require pursuant to Section IV.B.e.(v) of the Commission's order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions.

* * * * *

Record of Orders

Rule 6.68(a). Every OTP Holder or OTP Firm *must* [shall] maintain and preserve for the period specified under SEC Rule 17a–4, a [written] record of every order and of any other instruction given or received for the purchase or sale of option contracts. *The Exchange shall maintain and preserve all electronic orders on behalf of the OTP Holder or OTP Firm.* Such record *must* [shall] show the terms and conditions (market order, limit order, etc.) of the order or instruction and of any modification or cancellation thereof, and in addition *must* [shall] include:

[(1) the account designation for which such order is to be executed; (2) the date and time stamp indicating the time the order was entered and executed or cancelled; (3) the type of option and the underlying stock; (4) the expiration month, the exercise price, the number of option contracts and the execution price (premium); (5) whether the order is a purchase or a sale (writing) and whether the order is an opening or a closing transaction; (6) whether the order is solicited or unsolicited; and (7) whether the order is discretionary.]

(1) CMTA Information and claring OTP Holder or Firm;

(2) Option symbol, expiration month, exercise price, and type of option (call or put);

(3) Side of market (buy or sell) and order type (customer, firm, firm market maker);

(4) Quantity of option contracts;

(5) Any limit price, stop price, or special conditions;

(6) Opening or closing transaction;

(7) Time in force;

(8) Account origin code;

(9) Solicited or unsolicited;

(10) Order identification number;

(11) Order entry date and time, or the date and time of any modification of the terms of the order or cancellation of the order;

(12) Order execution time and price;

(13) Identity of the executing broker and the other party to the transaction; and

(14) Such other information as may be required by the Exchange.

(b) Record Retention *for Orders Excepted from EOC or the Electronic*

Tablet Pursuant to Rule 6.67(d)(1)(A). In addition to the white (control) copy, and/or hard copy, which must be kept for the entire amount of time specified in Securities Exchange Act Rule 17a–4, the green (commission) copy must also be retained for a minimum of 48 hours from the trade date. In the case of those orders executed by independent Floor Brokers, it is their responsibility to retain the green (commission) copy, and the executing OTP Holder must retain the white or hard copy. Also, all such records must be readily available for use on the trading floor for the resolution of any problems relating to the execution of these orders.

* * * * *

Reporting Duties

Rule 6.69(a)–(e)—No change.

Commentary:

.01 *EOC or Electronic Tablet Reporting Procedure.* The Exchange has established the following procedure for reporting of transactions pursuant to Rule 6.69. For each transaction on the Exchange in which *an OTP Holder* [he] participates as seller, *that* [a floor] OTP Holder *will* [shall] immediately record into *EOC or the Electronic Tablet,* [on a card or ticket in a form acceptable to the Committee his] *its* assigned broker initial code, the symbol of the underlying security, the type, expiration month and exercise price of the option contract sold, the transaction price, the number of contract units comprising the transaction, the name of the contra clearing member, and the assigned broker initial code of the contra OTP Holder or OTP Firm. OTP Holders or OTP Firms *must report any* [shall identify price reporting tickets which represent the] partial execution of a larger order in*to EOC or the Electronic Tablet* [the manner prescribed by the Exchange. The card or ticket for a]*A*ny agency order *must* [shall] also include the account origin code[,]. [as set forth in Commentary .02 below. This reporting card or ticket shall immediately be time-stamped at the station where option contracts of the class involved are traded and attached to the appropriate ''buy'' ticket. The card or ticket shall then be placed in the price reporting card box provided at the station. Before placing the tickets in the box, the OTP Holder shall use his best efforts to make sure that the Order Book Official with respect to option contracts of the class involved, or the Order Book Official clerk, is aware of the transaction and its price. In transactions when the buyer accepts tickets from the seller(s), it shall be the buyer's responsibility to time-stamp the tickets, use best efforts at securing the Order Book Staff's attention to the transaction, and submit the tickets into the box.] Any OTP Holder failing to immediately report a transaction in accordance with Rule 6.69 *will* [shall] be subject to [being fined] *disciplinary action pursuant to Rule 10.* [by the Exchange.]

.02—Reserved.

[.02 Reporting of Trade Information. The responsibility for time stamping and reporting of trades to the Order Book is as follows: (a) One buyer, multiple sellers—responsibility is with the buyer

(b) One seller, multiple buyers—responsibility is with the seller(c) one buyer, one seller—responsibility is with the seller]

.03 *Origin Codes for Orders Excepted from EOC or the Electronic Tablet Pursuant to Rule 6.67(d)(1)(A).* For purposes of Rule 6.69(d), trade information includes the proper account origin codes, which are as follows: ''C'' for non-broker-dealer customer accounts; ''F'' for firm proprietary accounts; ''M'' for Market Maker accounts; and ''B/D'' for firm orders of non-OTP Holder or OTP Firm broker-dealer accounts, stock specialist accounts, or customer account trades of the broker-dealer or non-OTP Holder or OTP Firm broker-dealer. In addition, Market Maker clearing firms are directed to instruct their respective trading desks to identify Market Maker orders that are entered from off the floor and not entitled to Market Maker margin treatment by placing a ''C'' after the Market Maker's number in the ''firm'' box on the ticket. Floor Brokers, when accepting an order by phone from a Market Maker, are similarly directed to identify that order in the same manner.

.04—No change.

* * * * *

Priority and Order Allocation Procedures

Rule 6.75(a)–(h)—No change.

Commentary:

.01–.03—No change.

.04 Combination, Spread and Straddle Orders. Following are the proper trading procedures for combination, spread and straddle orders:

(a) Announcing the Order. Any OTP Holder or OTP Firm holding a combination, spread, or straddle order must [write it on one ticket and must] bid or offer for each series in the order. *For orders expected from EOC or the Electronic Tablet, pursuant to Rule 6.67(d)(1)(A), such orders must be written on a ticket in accordance with Rule 6.2(h)(5)(C).* The OTP Holder or OTP Firm may express the order as it applies to each separate series or may express the order at its total or net debit/credit alone, so long as it is clear that the OTP Holder or OTP Firm is attempting to execute both series as a combination, spread, or straddle. The executing OTP Holder or OTP Firm must ensure that the trading crowd is aware of the request for a market and has an opportunity to participate in the transaction.

(b)–(g)—No change.

* * * * *

Joint Accounts

Rule 6.84(a)–(h)—No change.

Commentary:

.01–.02—No change.

.03 Transactions on the Floor will be presumed to be for the proprietary account of the individual OTP Holder or OTP Firm unless the *executing OTP Holder or OTP Firm enters the* joint account symbol *into EOC or the Electronic Tablet. For orders excepted from EOC or the Electronic Tablet, pursuant to Rule 6.67(d)(1)(A), transactions on the Floor will be presumed to be for the proprietary account of the individual OTP Holder or OTP Firm unless the joint account symbol* is given up and used on the trade ticket to represent the joint account as the executing OTP Holder or OTP Firm.

.04 Any order of a joint account participant[,] *that* [which] is executed by a Floor Broker, *must* [shall] be in accordance with *the* procedures set forth in Rule 6.85, except that the joint account trading number with its alpha identification *must be entered into EOC or the Electronic Tablet, or, for order excepted from EOC or the Electronic Tablet, pursuant to Rule 6.67(d)(1)(A), the joint account trading number with its alpha identification must* [should] appear in the ''executing firm'' area. Additionally, a joint account may not bid, offer, purchase, sell, or enter orders in an option series in which a Floor Broker holds an order on behalf of the joint account or for the proprietary account of another participant in the joint account. Orders of joint account participants in a particular option series may not be concurrently represented[,] by one or more Floor Brokers.

.05–.07—No change.

* * * * *

Market Maker Orders Executed By Floor Brokers

Rule 6.85(a)–(c)—No change.

Commentary:

.01–.02—No change.

.03 *Orders Excepted from EOC or the Electronic Tablet Pursuant to Rule 6.67(d)(1)(A).* Market Maker order

tickets should be prepared by the Market Maker, when possible. All orders *must* [shall] be recorded and time-stamped, pursuant to Rule 6.67. Order tickets *must* [shall] include the acronym of the Market Maker entering the order in the area marked ''buying firm/selling firm,'' within the Market Maker's name printed at the bottom of the ticket. Order tickets must be marked to indicate whether the order is ''GTC'' or day only. The acronym of the executing Floor Broker *must* [shall] be written in the are marked ''executing member.'' When utilizing a ''partial order'' ticket to facilitate the completion of an order, the control number of the original order ticket must be written on the partial order ticket. Except as provided in Rule 6.2(h)(*5*)[(4)](C) (Ticket to Follow Rule), when a Floor Broker receives a verbal order from a Market Maker, or when a Floor Broker is requested by a Market Maker to alter an order in his possession in any way, the Floor Broker *must* [shall] immediately prepare an order ticket from outside the trading crowd and timestamp it.

* * * * *

Floor Broker Hand-held Terminals

Rule 6.89(a)—No change.

(b) Proprietary Brokerage Order Routing Terminals:

(1)–(3)—No change.

(4)(A)—No change.

(B) *Orders Excepted from EOC or the Electronic Tablet Pursuant to Rule 6.67(d)(1)(A).* When an OTP Holder or OTP Firm executes an order that was received over a Terminal, the OTP Holder or OTP Firm must fill out and *immediately* time stamp a trading ticket [within one minute of the execution]. Exchange rules on record keeping and trade reporting are unchanged.

(C)–(D)—No change.

(5)–(7)—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Section s 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

a. *Background.* The Exchange is proposing this rule change to comply with the requirement to implement COATS. In connection with the filing of this proposed rule change, the PCX withdraws SR–PCX–2002–57, and Amendment Nos. 1–4 thereto, which the Exchange previously filed to comply with the requirement to implement COATS.[3]

Specifically, the Exchange is proposing to effect rule changes to support the implementation of its new audit trail system known as Electronic Order Capture System (''EOC''). The EOC is intended to fulfill one of the undertakings contained in the Commission's Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. (''Order'').[4] Specifically, this rule filing is intended to respond to Section IV.B.e(v) of the Order, which requires, among other things, that the PCX incorporate into its audit trail all non-electronic orders such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions, beginning with the receipt of the order and documenting the life of the order through the process of execution, partial execution, or cancellation.[5]

Currently, the PCX operates two electronic order routing and execution system called Pacific Options Exchange Trading System (''POETS'')[6] and PCX Plus,[7] and other peripheral systems including the Pacific Options Processing System (''POPS'')[8] and the Floor Broker Hand Held trading system,[9] in conjunction with traditional open outcry trading with Floor Brokers and competing Market Makers. The Exchange's Member Firm Interface (''MFI'') enables OTP Holders and OTP Firms to send orders electronically to the Exchange for delivery to POETS, PCX Plus, a Floor Broker Hand Held Terminal, or to an OTP Holder or OTP Firm's default destination.[10] While all executions using POETS, PCX Plus, and electronic hand-held devices carry immediately assigned system times, orders that are routed to the trading floor of the Exchange by telephone or sent to the OTP Holder or OTP Firm's printers located on the trading floor generally require manual trade ticket processing. Under the proposal, the EOC will eliminate the manual processing of order tickets and will further facilitate the creation and development of a comprehensive audit trail and automated surveillance systems for these orders that are currently processed manually.

b. *Summary of Proposed Rule Changes.* The Exchange is proposing to adopt changes to its rules regarding the record of orders (principally PCX Rules 6.67 and 6.68) to enhance the Exchange's audit trail and self-regulatory capabilities. The proposed changes to the text of the PCX rules are summarized below.

1. *EOC/Electronic Tablet.* The Exchange is proposing to adopt new PCX Rule 6.67(c),[11] which requires that every OTP holder or OTP Firm that receives an order for execution of the Exchange must immediately[12] record the details of the order (including any modification of the terms of the order or cancellation of the order) into EOC, unless such order has been entered into the Exchange's other electronic order processing facilities[13] (*e.g.,* orders sent

[3] *See* Securities Exchange Act Release No. 48264 (July 31, 2003), 68 FR 47124 (August 7, 2003) (SR–PCX–2002–57).

[4] *See* Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3–10282.

[5] *Id.* at 13–14.

[6] POETS is the Exchange's automated trading system comprised of an options order routing system, an automatic execution system (''Auto-Ex''), an on-line limit order book system (''Auto-Book''), and an automatic market quote update system (''Auto-Quote'').

[7] *See* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order approving PCX Plus).

[8] POPS is the Exchange's automated system that compares trade information entered by OTP Holders and Firms and submits trades to the Options Clearing Corporation for clearance and settlement.

[9] The Floor Broker Hand Held interface is an automated order delivery system that enables Floor Brokers to receive and execute orders electronically, and to report trade executions to the tape via the Options Price Reporting Authority (''OPRA'') and to POPS for clearing. *See* PCX Rule 6.89.

[10] An OTP Holder or OTT Firm's default destination may be either a particular firm booth or a remote entry site, to which orders that fail to meet the eligibility criteria necessary for Auto-Ex or Auto-Book will be delivered.

[11] Former Rules 6.67(b), (c) and (d) are being deleted as they are redundant and superfluous provisions pursuant to proposed Rules 6.67(c), 6.67(d) and 6.67(d)(1).

[12] The Exchange commits that it will implement proactive and effective surveillance procedures for violations of Exchange rules and federal securities laws, including, but not limited to, rules prohibiting trading ahead and front running, related to the entry of customer orders into the EOC system.

[13] The EOC entry requirement will also apply to PCX Plus.

electronically through the Exchange's MFI).[14] OTP Holders and OTP Firms will have two ways to record the details of an order into EOC prior to representation in the trading crowd: (i) Direct entry into the EOC system, or (ii) entry to an Electronic Tablet that enables the user to hand-write the order information onto the tablet, which converts the information into an electronic format. The information from the Electronic Tablet is then transmitted to a Floor Broker's workstation for representation with an automatic timestamp for order receipt. A booth clerk will then key in the order information from the Electronic Tablet into the EOC system for clearing purposes in order for it to become part of the data required for COATS.

The details of each order that will be required to be recorded upon receipt if directly entered into the EOC system include the following:[15] (1) CMTA information/Clearing OTP Holder or Firm; (2) Option symbol, expiration month, exercise price, and type of option (call or put); (3) Side of market (buy or sell); (4) Quantity of option contracts; (5) Any limit price, stop price, or special conditions, (6) Opening or closing transaction; (7) Time in force; (8) Account origin code; and (9) Solicited or unsolicited.[16]

The details of each order that will be required to be recorded upon receipt if entered into the Electronic Tablet include the following: (1) CMTA information/Clearing OTP Holder or Firm; (2) Option symbol, expiration month, exercise price, and type of option (call or put); (3) Side of market (buy or sell); (4) Quantity of option contracts; (5) Any limit kprice, stop price, or special conditions, and (6) Opening or closing transaction.

Therefore, OTP Holders and OTP Firms may comply with proposed PCX Rule 6.67(c) in one of three ways: (1) Required order details may be transmitted via the Exchange's other electronic order processing facilities that electronically assign the time of receipt on the Exchange; (2) Order details may be routed to the OTP Holder or OTP Firm booth by telephone or be sent to the OTP Holder or OTP Firm's printer located on the Floor, and immediately entered into EOC (either directly into EOC or via the Electronic Tablet), which will electronically assign the time of receipt of the Exchange; or (3) Orders may be received during outgoing telephone calls that are initiated at the option post, and then immediately entered into the EOC (either directly into EOC or via the electronic Tablet), which will electronically assign the time of receipt of the Exchange pursuant to PCX Rule 6.2(h)(3)(B).[17]

The EOC device that is used to record the details of the order upon receipt on the Floor is an Exchange provided system.[18] The EOC and the enhancements to the existing Floor Broker Hand Held Terminal applications will support the entry of all order types (including contingency and complex orders, *i.e.,* multiple-leg option and stock/option orders) and all required information, as well as provide quick entry templates to speed data entry. Once an OTP Holder or OTP Firm's booth clerk records the details of an order into EOC (or the Electronic Tablet) or in the case when a Floor Broker receives an order pursuant to PCX Rule 6.2(h)(3)(B), the order is routed electronically to a Floor Broker Hand Held Terminal for representation in the trading crowd.[19] OTP Holders and OTP Firms will have the capability to track and display all orders that are submitted through the EOC, as all orders will be assigned a unique identifier that will be used throughout the life of the order.

The Exchange believes that the implementation of EOC and the Electronic Tablet, as described above, will improve order information management features resulting in operational efficienies for OTP Holders and OTP Firms.

2. *Order Format Requirements.* The Exchange's current rules governing the order format requirements in transmitting orders to the Exchange are set forth in PCX Rule 6.67(a). The Exchange is proposing to add interpretive language to make it clear that EOC and the Electronic Tablet are approved formats for transmitting orders for purposes of this Rule. In addition, proposed PCX Rule 6.67(b) requires that orders sent to the Exchange for execution must comply with the order format requirements established by the Exchange relating to, among other things, option symbol, expiration month, exercise price, type of option (call or put); quantity of option contracts, clearing member organization, whether the order is to buy or sell, and whether the order is market or limit.

3. *Exceptions to EOC Entry Requirement.* An exception to the requirement for recording order information into EOC or the Electronic Tablet is contained in proposed PCX Rule 6.67(d). Under this proposed rule, if a disruption or malfunction to EOC or the Electronic Tablet or any other Exchange electronic order processing system occurs, the EOC or the Electronic Tablet entry reuqirement will be suspended upon the approval of two Trading Officials, and the EOC/Electronic Tablet Contingency Reporting Procedures will be in effect pursuant to PCX Rule 6.67(d)(1)(A).[20] If the Exchange is still able to process and disseminate quotes accurately, then any orders received by the Exchange will be processed manually through the use of paper tickets. In such circumstances, all other Exchange rules governing options trading will remain in effect. Accordingly, the Exchange intends to retain its existing rules that are applicable to the manual processing of order tickets. Minor changes have been made throughout the existing options trading rules to allow for manual processing of trade tickets when necessary.

4. *Record of Orders.* Current PCX Rule 6.68(a) requires OTP Holder and OTP Firms to maintain and preserve certain information items relating to the terms of each option order. The Exchange is proposing to make minor technical changes to the text by renaming and renumbering certain information items enumerated in the Rule for clarity. The Exchange is also proposing language to specify that the Exchange shall maintain

[14] The systemic entry requirement would not be applicable to transactions initiated on the Floor and executed by a registered Market Maker or a Lead Market Maker for their own account, as such trades that may be initiated on the Floor and that they are already reported to POETS via proprietary hand-held devices.

[15] The Exchange notes that certain data elements tied to execution, such as executing broker, contra broker, execution time and price are not required to be entered by this Rule, as they are not available at the time that order details are entered into EOC. The Exchange also notes that the order entry time and identification number are automatically assigned upon entry into EOC.

[16] The proposed rule also includes a provision that would require OTP Holders and OTP Firms to record such other information as may be required by the Exchange from time to time.

[17] The Exchange's order processing systems have been designed so that the clocking mechanisms do not deviate by more than three seconds from the Naval Observatory atomic clock in Washington, DC.

[18] The EOC will not initially support the use of a OTP Holder or OTP Firm's proprietary system to comply with the proposed order entry requirements.

[19] Orders sent via the EOC interface to a Floor Broker in the trading crowd may subsequently be transmitted electronically to another Floor Broker on the Floor. When an order is transmitted from one OTP Holder or OTP Firm to another, the EOC will capture each phase of processing at the order moves from entry to execution.

[20] Under the proposed rule, OTP Holders and OTP Firms must use a backup supply of tickets to record the details of the order received through non-electronic means and time stamp the order of events. Once the disruption or malfunction has been corrected, as determined by one Floor Official, OTP Holders and OTP Firms must input all orders into the EOC device using the ''as-of'' field.

and preserve all electronic orders on behalf of OTP Holders and OTP Firms. The proposed rule change does not replace existing requirements for recording orders contained in this Rule.

The Exchange is also proposing to amend PCX Rule 6.68(b) to make it clear that OTP Holders and OTP Firms must comply with their record keeping obligations for order excepted from the EOC/Electronic Tablet requirements.

5. *Reporting of Trade Information.* The Exchange proposes to rescind current PCX Rule 6.69, Commentary .02, which relates to the trade reporting requirements of OTP Holders and OTP Firms. The Exchange believes that this rule is superfluous and that it is inconsistent with PCX Rule 6.69(b), which already requires that the OTP Holder or OTP Firm representing the sell side of a transaction is responsible for reporting the transaction to the Exchange in a form and manner presecribed by the Exchange. Therefore, because current PCX Rule 6.69(b) accurately reflects the PCX's existing trade reporting requirements, the Exchange is proposing to eliminate Commentary .02 of this rule for clarity.

Proposed new PCX Rule 6.69, Commentary .03 specifies the reporting procedures for orders that are manually processed when there is a disruption or malfunction with the EOC pursuant to proposed new PCX Rule 6.67(d)(A)(1). This proposed new rule was adopted from current PCX Rule 6.67, Commentary .01.

6. *Cabinet Trades and FLEX Options.* The Exchange also proposes to add a Commentary .01 to PCX Rule 6.67, which states that Cabinet Trades [21] and FLEX[22] options are exempt from the EOC and Electronic Tablet Entry Requirements as set forth in PCX Rule 6.67(c). However, such trades will be processed using manual time stamped order tickets. The PCX will maintain a separate record of quotes, orders and transactions related to such trades in the same format as the COATS data and will make such information available upon Commission request.

7. *Implementation Date.* The system entry requirement proposed in this rule change will become completely operative on January 10, 2005.[23]

8. *Miscellaneous Changes.* The Exchanges proposes to make several minor, non-substantive changes to the text of several existing PCX Rules to correct stylistic, grammatical and typographical errors and to conform the proposed rules to the new EOC and Electronic Table requirements.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [24] of the Act, in general, and further the objectives of Section 6(b)(5),[25] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with provisions of Section 11A(a)(1(B) of the Act,[26] which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

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 self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment from (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rules-comments@sec.gov.* Please include File No. SR–PCX–2004–122 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathon G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–PCS–2004–122. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–PCX–2004–122 and should be submitted on or before January 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–27941 Filed 12–21–04; 8:45 am]

BILLING CODE 8010–01–M

[21] *See* PCX Rule 6.80.

[22] *See* PCX Rule 5.30(b)(4).

[23] *See* proposed PCX Rule 6.67(f).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78k–1(a)(i)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50851; File No. SR–Phlx–2004–51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Phlx Regulation 5, Visitors and Applicants

December 14, 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, 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 and II below, which Items have been prepared by Phlx. On December 6, 2004, Phlx filed 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

The exchange proposes to amend Phlx Regulation 5, Visitors and Applicants. The text of the proposed rule change is set forth below. Additions are italicized. Deletions are bracketed.

* * * * *

Regulation 5—[Visitors and Applicants] *Guests*

Non-member [visitors] *guests* will be permitted on the trading floor at the discretion of the respective floor committee (Options, FCO or Floor Procedures). All [visitors] *guests* must be signed in by a member or Exchange official and accompanied at all times by a member, associated person of a member or an Exchange official.

[As a visitor, the applicant must be escorted by a representative of a member firm at all times while on the trading floor, and failure to do so shall result in a violation of this regulation by such member Firm.

Once an applicant has filed an application with the Office of the Secretary pursuant to By-Law Article XII, Section 12–4, the Examinations Department and the Office of the Secretary shall conduct clearance procedures to verify personal data and financial viability. The applicant may be admitted as a visitor for ten business days, after which the applicant must submit an Applicant Access Card/Floor Badge application which is subject to approval by the Exchange pursuant to satisfactory completion of personal and financial data verification. Twenty-one days after the Access Card is issued, it will automatically expire; an applicant may apply to the Chairman of the Admissions Committee or his designee for a twenty-one day extension.]

1st Occurrence	Official Warning
2st Occurrence	$50.00
3st Occurrence	$100.00
4st Occurrence	$200.00
5st and Thereafter	Sanction is discretionary with Business Conduct Committee

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations'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 update Phlx Regulation 5, Visitors and Applicants, encated as a rule of order and decorum under Phlx Rule 60. Phlx Regulation 5 orginally applied generally to non-member guests' access to the trading floor.[4] It was amended by the Exchange in 1992 to create an ''applicant'' status for prospective Exchange members from whom an application for membership had been filed and for whom the personal background check had been completed, but whose membership application process would not be completed until a subsequent posting period had been completed.[5] That rule filing (File No. SR–Phlx–91–06) stated that, while clearance procedures are being conducted, which normally take about ten business days to complete, the prospective member would remain in a ''visitor'' status, requiring the signature of a member for entry on the floor and constant accompaniment by a member while on the floor. Once the clearance procedures were completed, the applicant would submit an ''Applicant Access Card/Floor Badge Application,'' and upon issuance of the Applicant Access Card[6] and Floor Badge, the applicant would have unescorted access to the floor and not have to be signed in by a member. According to the Exchange, Phlx Membership Services no longer uses an Applicant Access Card/Floor Badge Application and no longer issues Applicant Access Cards. Instead, applicants for membership who desire access to the trading floor are required to register as on-floor trading personnel pursuant to Phlx Rule 620(b), Trading Floor Registration. Once registered under Phlx Rule 620(b), applicants are issued the same access card issued to members, members' staff and Exchange staff to permit access to the Exchange floor.

Therefore, Phlx proposes to return Regulation 5 to its pre-1992 wording. As such, Phlx Regulation 5 would continue to apply to gests who do not qualify for registration as on-floor trading personnel under Phlx Rule 620(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it would eliminate outdated language which no longer reflects current procedures at the Exchange regarding access to the trading floor by applicants for membership.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety. Amendment No. 1 clarified that violations of Regulation 5 would be enforced against members and not the guests themselves, and added a description for the Applicant Access Card.

[4] Vilations of Regulation 5 are enforced against members, member organizations, and/or associated persons who permit their guest to have access to the Exchange floor without properly signing them in, accompanying them, and otherwise ensuring their compliance with the rule.

[5] *See* Securities Exchange Act Release No. 30416 (February 26, 1992), 57 FR 7836 (March 4, 1992) (approving File No. SR–Phlx–91–06).

[6] The Applicant Access Card, an electronic proximity card, was an access card designed to permit access to the Exchange floor for a period of 21 days. After that period expried, the applicant's use of the Applicant Access Card would generate an alert to Exchange personnel who would then obtain the return of the Applicant Access Card from the applicant.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

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 Phlx 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.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2004–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of this filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posed without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–51 and should be submitted on or before January 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–27938 Filed 12–21–04; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50856; File No. SR–Phlx–2004–91]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Establish a Directed Order Process for Orders Delivered to the Exchange Via AUTOM

December 14, 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 December 9, 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. 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 Phlx proposes to amend Phlx Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM)[3] and Automatic Execution System (AUTO–X), and Phlx Rule 1014, Obligations And Restrictions Applicable to Specialists And Registered Options Traders, by adopting: (1) New Phlx Rule 1080(l), Directed Orders, under which Exchange specialists, Streaming Quote Traders (''SQTs'')[4] and Remove Streaming Quote Traders (''RSQTs'')[5] trading on the Exchange's electronic options trading platform, Phlx XL,[6] would receive Directed Orders (as defined below); and (2) Phlx Rule 1014(g)(viii), which would set forth the trade allocation algorithm for electronically executed and allocated trades involving Directed Orders. Below is the text of the proposed rule change. Proposed new language is in *italics.*

Philadephia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(k) No change.

(l) Directed Orders. For a one-year pilot period, beginning on the date of approval of this Rule by the Securities and Exchange Commission, respecting Streaming Quote Options traded on Phlx XL, specialists, RSQTs and SQTs may receive Directed orders (as defined in this Rule) in accordance with the provisions of this Rule 1080(l).

(i)(A) The term ''Directed Order'' means any customer order to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider, as defined below. To quality as a Directed Order, an order must be delivered to the Exchange via AUTOM.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features, AUTO–X, Book Sweep and Book March. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Phlx Rule 1080.

[4] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Phlx Rule 1014(b)(ii)(A).

[5] An RSQT is a participant in the Exchange's electronic trading system. ''Phlx XL'', who has received permission from the Exchange to trade in options for his own account, and to generate and submit option quotations electronically from off the floor of the Exchange through AUTOM in eligible options to which such RSQT has been assigned.

[6] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).

(B) The term ''Order Flow Provider'' (''OFP'') means any member or member organization that submits, as agent, customer orders to the Exchange.

(C) The term ''Directed Specialist, RSQT, or SQT'' means a specialist, RSQT, or SQT that receives a Directed Order.

(ii) When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Specialist, SQT or RSQT is quoting at the Exchange's disseminated price, the Directed Order shall be automatically executed and allocated in accordance with Rule 1014(g)(viii).

(iii) When the Exchange's disseminated price is the NBBO, and the quotation disseminated by the Directed Specialist, RSQT, or SQT on the opposite side of the market from the Directed Order is inferior to the NBBO at the time of receipt of the Directed Order, the Directed Order shall be automatically executed and allocated to those quotations and orders at the NBBO in accordance with Exchange Rule 1014(g)(vii).

(iv) If the Exchange's disseminated price is not the NBBO at the time of receipt of the Directed Order, the Directed Order shall be handled by the specialist in accordance with Exchange rules.

Commentary: No change.

Obligations and Restrictions Applicable to Specialists and Registered Options Traders

Rule 1014.(a)–(f) No change.

(g)(i)–(vii) No change.

(viii) For a one year pilot period, beginning on the date of approval of this Rule by the Securities and Exchange Commission, Directed Orders (as defined in Rule 1080(l)(i)(A)) that are executed electronically shall be automatically allocated as follows:

(A) First, to customer limit orders resting on the limit order book at the execution price.

(B) Thereafter, contracts remaining in the Directed Order, if any, shall be allocated automatically as follows:

(1) The Directed Specialist (where applicable), shall be allocated a number of contracts that is the greater of:

(a) The proportion of the aggregate size at the NBBO associated with such Directed Specialist's quote, SQT and RSQT quotes, and non-SQT ROT limit orders entered on the book via electronic interface at the disseminated price represented by the size of the Directed Specialist's quote;

(b) The Enhanced Specialist Participation as described in Rules 1014(g)(ii)–(iv); or

(c) 40% of the remaining contracts.

(d) Thereafter, SQTs and RSQTs quoting at the disseminated price, and non-SQT ROTs that have placed limit orders on the limit order book via electronic interface at the Exchange's disseminated price shall be allocated contracts according to the following formula;

Equal percentage based on the Number of SQTs, RSQTs and Non-SQT ROTs quoting or with limit orders at BBO (Component A) + *Pro rata percentage based on size of SQT, RSQT and non-SQT quotes and limit orders (Component B)* × *Remaining Order Size*

Where:

Component A: The percentage to be used for Component A shall be an equal percentage, derived by dividing 100 by the number of SQTs, RSQTs and non-SQTs quoting or with limit orders at the BBO.

Component B: Size Pro Rata Allocation. The percentage to be used for Component B of the allocation algorithm formula is that percentage that the size of each SQT, RSQT or non-SQT ROT's quote or limit order at the best price represents relative to the total number of contracts in the disseminated quote.

Final Weighting: The final weighting formula shall be determined by a three-member special committee of the Board of Governors, chaired by the Chairman of the Board, and including the Chairman of the Options Committee and one on-floor Governor (the ''Special Committee''), and shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order.

(2)(a) A Directed RSQRT or SQT (where applicable) shall be allocated a number of contracts that is the greater of the proportion of the aggregate size at the NBBO associated with such Directed SQT or RSQT's quote, the specialist's quote, other SQT and RSQT quotes, and non-SQT ROT limit orders entered on the book via electronic interface at the disseminated price represented by the size of the Directed RSQT or SQT's quote at the NBBO, or

(b) 40% of the remaining contracts.

(c) Thereafter, the specialist, SQTs and RSQTs (excluding the Directed SQT or RSQT) quoting at the disseminated price, and non-SQT ROTs that have placed limit orders on the limit order book via electronic interface at the Exchange's disseminated price, shall be allocated a number of contracts according to the following formula:

Equal percentage based on the number of SQTs, RSQTs, specialist and Non-SQT ROTs quoting or with limit orders at BBO (Component A) + *Pro rata percentage based on size of SQT, RSQT, specialist and non-SQT quotes and limit orders (Component B)* × *Remaining Order Size*

Where:

Component A: The percentage to be used for Component A shall be an equal percentage, derived by dividing 100 by the number of SQTs, RSQTs (other than the Directed SQT or RSQT) specialist and non-SQTs quoting or with limit orders at the BBO.

Component B: Size Pro Rata Allocation. The percentage to be used for Component B of the allocation algorithm formula is that percentage that the size of each SQT, RSQT RSQTs (other than the Directed SQT or RSQT), specialist or non-SQT ROT's quote or limit order at the best price represents relative to the total number of contracts in the disseminated quote.

Final Weighting: The final weighting formula shall be determined by a three-member special committee of the Board of Governors, chaired by the Chairman of the Board, and including the Chairman of the Options Committee

and one on-floor Governor (the ''Special Committee''), and shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order.

(3) If any contracts remain to be allocated after the specialist, SQTs, RSQTs and non-SQT ROTs with limit orders on the limit order book have received their respective allocations, off-floor broker-dealers (as defined in Rule 1080(b)(i)(C)) that have placed limit orders on the limit order book which represent the Exchange's disseminated price shall be entitled to receive a number of contracts that is the proportion of the aggregate size associated with off-floor broker-dealer limit orders on the limit order book at the disseminated price represented by the size of the limit order they have placed on the limit order book.

(C) If the Directed Order is for a size that is greater than the Exchange's disseminated size, remaining contracts shall be allocated manually accordance with Exchange Rule 1014(g)(v).

(D) A Directed Specialist, RSQT, or SQT shall not be entitled to receive a number of contracts that is greater than the size associated with their quotation. Non-SQT ROTs and off-floor broker-dealers shall not be entitled to receive a number of contracts that is greater than the size associated with their limit order.

(h) No change.

Commentary: No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

I. Purpose

The purpose of the proposed rule change is to expand the appeal of Phlx XL by establishing rules that permit specialists, SQTs and RSQTs assigned in options trading on the Phlx XL system (''Streaming Quote Options'') to receive Directed Orders, and to establish a trade allocation algorithm for electronically executed and allocated trades involving Directed Orders that rewards Directed Specialists, SQTs and RSQTs for attracting such order flow to the Exchange.

On July 27, 2004, the Commission approved the Exchange's proposed rule relating to Phlx Xl, and electronic options trading platform in which a new category of Exchange ROT, known as an SQT, is permitted to stream proprietary electronic options quotations into the AUTOM System in options designated as ''Streaming Quote Options'' (*i.e.,* traded on Phlx XL).[7] Recently, the Exchange filed a proposed rule change to expand the scope of Phlx XL by creating a new category of Phlx XL market making participant, known as an RSQT, who would be permitted to stream quotations in Streaming Quote Options from off the floor of the Exchange.[8] Together with that proposed rule change, the Exchange herein proposes to provide a participation guarantee to a Phlx XL participant (*i.e.,* a specialist, SQT or RSQT) that receives a Directed Order from an Order Flow Provider.

Definitions. Proposed Phlx Rule 1080(1)(A) would define the term ''Directed Order'' to mean any customer order to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Providers, as defined below. To qualify as a Directed Order, an order must be delivered to the Exchange via AUTOM. The term ''Order Flow Provider'' (''OFP') under proposed Phlx Rule 1080(1)(i)(B) would mean any member or member organization that submits, as agent, customer orders to the Exchange. Proposed Phlx Rule 1080(1)(i)(C) defines the term ''Directed Specialist, RSQT, or SQT'' as a specialist, RSQT, or SQT that receives a Directed Order.[9]

NBBO Requirement. The Exchange's AUTOM System currently functions to provide automatic executions in Streaming Quote Options only when the Exchange's disseminated bid or offer is the National Best Bid or Offer (''NBBO'').[10] Therefore, in order to participate in automatic executions of Directed Orders, a Directed Specialist, SQT or RSQT would be required to be quoting the NBBO at the time the Directed Order is received. The proposed rule change addresses various situations where, at the time of receipt of the Directed Order, the Exchange's disseminated price is at the NBBO, is not the NBBO, and where the Exchange's disseminated price is the NBBO but the Directed Specialist, SQT or RSQT is not quoting at the Exchange's disseminated price.

First, proposed Phlx Rule 1080(l)(ii) would provide that, when the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Specialist, SQT or RSQT is quoting at the Exchange's disseminated price, the Directed Order would be automatically executed and allocated in accordance with Phlx Rule 1014(g)(viii), which contains the allocation algorithm for Directed Orders described more fully below.

Second, proposed Phlx Rule 1080(l)(iii) would provide that, when the Exchange's disseminated price is the NBBO, and the quotation disseminated by the Directed Specialist, RSQT, or SQT on the opposite side of the market from the Directed Order is inferior to the NBBO at the time of receipt of the Directed Order, the Directed Order would be automatically executed and allocated in those quotations and orders at the NBBO in accordance with Phlx Rule 1014(g)(vii), which is the trade allocation rule applicable to contracts executed on Phlx XL that are not Directed Orders.[11]

Finally, proposed Phlx Rule 1080 (l)(iv) would provide that, when the Exchange's disseminated price is not the NBBO at the time of receipt of the Directed Order, the Directed Order would be handled manually by the specialist in accordance with Exchange rules. In this situation, the Directed Specialist, SQT or RSQT would not be entitled to receive the participation guarantee contemplated in proposed Phlx Rule 1014(g)(viii), discussed more fully below, because that allocation algorithm applies only to Directed Orders that are executed electronically.

As stated above, one primary purpose of the proposal is to reward Directed Specialists, SQTs and RSQTs for establishing relationships with OFPs

[7] *See id.*

[8] *See* SR–Phlx–2004–90.

[9] The word ''Directed'' modifies all three; that is, it is referring to a Directed Specialist, Directed SQT and Directed RSQT.

[10] The Exchange's automatic execution features under Phlx XL, Book Sweep and Book Match, respectively, are designed to execute trades automatically only when the Exchange's disseminated bid or offer is at or equal to the NBBO. *See* Phlx Rules 1080(c)(iii) and 1080(g)(ii).

[11] Phlx Rule 1014(g)(vii) sets forth the allocation algorithm applicable to orders that are automatically executed on Phlx XL. Phlx Rule 1014(g)(vii) would continue to apply to orders other than Directed orders that are automatically executed on Phlx XL. Proposed Phlx Rule 1014(g)(viii) would apply to Directed Orders that are executed automatically of Phlx XL.

that result in a greater number of orders sent to, and executed on, the Exchange. The Exchange believes that the requirement that a Directed Order be executed automatically at the NBBO, and that the Directed Specialist, SQT or RSQT must be quoting the NBBO at the time of receipt of the Directed Order, ensures that the customer order sent by the OFP will receive the best price available.

Trade Allocation. Because one of the main purposes of the proposed rule change is to provide incentives and rewards for specialists, SQTs and RSQTs who enter into relationships with OFPs that result in the delivery of Directed Orders to the Exchange, proposed Phlx Rule 1080(g)(viii) would provide a participation guarantee to Directed Specialists, SQTs and RSQTs who establish such relationships and receive Directed Orders in options in which they are assigned.

Quoting Requirement. In order to be entitled to receive the participation guarantee, Directed Specialists, SQTs and RSQTs would have to fulfill the quoting requirements contained in Phlx Rule 1014(b)(ii)(B). Currently, SQTs and RSQTs (as proposed) are responsible to quote continuous, two-sided markets in not less than 60% of the series in each Streaming quote Option traded on Phlx XL in which such SQT is assigned, while the specialists is required to quote continuous, two-sided markets in not less than 100% of the series in each Streaming Quote Option in which such specialist is assigned.[12] Like the specialist, however, a directed SQT or RSQT would be responsible to quote continuous, two-sided markets in not less than 100% of the series in each Streaming quote Option in which they receive Directed Orders.

Directed Specialist. Under the proposal, a directed Specialist, where applicable, would be allocated a number of contracts that is the greater of: (1) The proportion of the aggregate size at the NBBO associated with such Directed Specialist's quote, SQT and RSQT quotes, and non-SQT ROT limit orders entered on the book via electronic interface at the disseminated price represented by the size of the directed Specialist's quote (*i.e.,* their size pro rata share); (2) the Enhanced Specialist Participation as described in Phlx Rules 1014(g)(ii)–(iv);[13] or (3) 40% of the contracts to be allocated.

Directed SQT or RSQT. A Directed RSQT or SQT, where applicable, would be allocated a number of contracts that is the greater of: (1) Their size pro rata share; or (2) 40% of the contracts to be allocated.

Allocation of Remaining Contracts. Remaining contracts (after the Directed Specialist, SQT or RSQT has received their respective allocation) would be allocated in accordance with a formula contained in the rule that substantially tracks the trade allocation formula for contracts executed and allocated automatically in Streaming Quote Options that do not involve Directed Orders. Specifically, part of the contracts remaining after customer orders are filled and after the Directed Specialist, SQT or RSQT has received their guaranteed participation would be allocated on an equal basis among remaining participants on parity, and part of the contracts allocated on a size pro rata basis, and on a weighted basis to be determined by the special ad hoc subcommittee appointed by the Board.[14]

In the case of a trade allocation involving a Directed Specialist, contracts remaining after customer orders at the execution price are executed, and after the Directed Specialist is allocated their guaranteed number of contracts (the ''Remaining Order Size'') would be allocated according to the following formula:

Equal percentage based on the Number of SQTs, RSQTs and Non-SQT ROTs quoting or with limit orders at BBO (Component A) + *Pro rata percentage based on size of SQT, RSQT and non-SQT quotes and limit orders (Component B)* × *Remaining Order Size*

The percentage to be used for Component A would be an equal percentage, derived by dividing 100 by the number of SQTs, RSQTs or non-SQTs quoting or with limit orders at the BBO. The percentage to be used for Component B of the allocation algorithm formula is the percentage that the size of each SQT, RSQT or non-SQT ROT's quote or limit order at the best price represents relative to the total number of contracts in the disseminated quote.

In the case of a trade allocation involving a Directed SQT or RSQT, contracts remaining after customer orders at the execution price are executed, and after the Directed SQT or RSQT is allocated their guaranteed number of contracts (the Remaining Order Size), would be allocated among the specialist, SQTs or RSQTs (excluding the Directed SQT or RSQT) quoting at the disseminated price, and non-SQT ROTs that have placed limit orders on the limit order book via electronic interface at the Exchange's disseminated price according to the following formula:

[12] *See* Phlx Rule 1014(b)(ii)(B).

[13] Phlx Rules 1014(g)(ii)–(iv) govern the Enhanced Specialist Participation, under which the specialist is entitled to receive a guaranteed number of contracts in situations where the specialist is on parity (*i.e.*, simultaneously bidding or offering at the same price) with one or more ''controlled accounts,'' defined in Phlx Rule 1014(g)(i)(A) to include any account controlled by or under common control with a broker-dealer. If three or more controlled accounts are on parity with the specialist, the specialist is entitled to receive 30% of the contracts to be allocated. If two controlled accounts are on parity with the specialist, the specialist is entitled to receive 40%, and if only one controlled account is on parity with the specialist, the specialist is entitled to receive 60%.

Another Enhanced Specialist Participation program on the Phlx, originally adopted in May 1994 and embodied in current Phlx Rule 1014(g)(iii), is designed to encourage the establishment of new specialist units to trade options classes that have never been listed on the Exchange. *See* Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994) (SR–PHLX–93–29). For a period of six months following the commencement of trading in such a new options class, the new specialist unit is entitled to 50% of an order when one controlled account is on parity with the specialist, and 40% when two or more controlled accounts are on parity with the specialist.

Under Phlx Rule 1014(g)(iv), a specialist who develops and trades a new product is entitled to receive an enhanced Special Participation of 40% when three or more controlled accounts are on parity , and 60% if fewer than three controlled accounts are on parity. Currently, in either of these situations, if a customer is on parity, the customer may not receive a smaller participation than any other crowd participant, including the specialist.

[14] *See* Securities Exchange Act Release No. 50788 (December 3, 2004), 69 FR 71860 (December 10, 2004) (SR–Phlx–2004–57).

Equal percentage based on the number of SQTs, RSQTs, specialist and Non-SQT ROTs quoting or with limit orders at BBO (Component A) + *Pro rata percentage based on size of SQT, RSQT, specialist and non-SQT quotes and limit orders (Component B)* × *Remaining Order Size*

The percentage to be used for Component A would be an equal percentage, derived by dividing 100 by the number of SQTs, RSQTs (other than the Directed SQT or RSQT), specialist and non-SQTs quoting or with limit orders at the BBO. The percentage to be used for Component B of the allocation algorithm formula is the percentage that the size of each SQT, RSQT (other than the Directed SQT or RSQT), specialist or non-SQT ROT's quote or limit order at the best price represents relative to the total number of contracts in the disseminated quote.

In each situation, the final weighting formula as among Component A and Component B would be determined by a three-member special committee of the Board of Governors, chaired by the Chairman of the Board, and including the Chairman of the Options Committee and one on-floor Governor, and shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order.

Off-Floor Broker-Dealers. If any contracts remain to be allocated after the specialist, SQTs, RSQTs or non-SQT ROTs with limit orders on the limit order book have received their respective allocations, off-floor broker-dealer (as defined in Phlx Rule 1080(b)(i)(C)) that have placed limit orders on the limit order book at the disseminated price would be allocated contracts on a size pro rata basis.

Orders for a size greater than the Exchange's disseminated size. Proposed Phlx Rule 1014(g)(viii)(C) would establish that, if the Directed Order is for a size that is greater than the Exchange's disseminated size, remaining contracts would be allocated in accordance with Phlx Rule 1014(g)(v).[15]

Quotation and limit order size. Proposed Phlx Rule 1014(g)(viii)(D) would provide that a Directed Specialist, RSQT, or SQT would not be entitled to receive a number of contracts that is greater than the size associated with their quotation. Non-SQT ROTs and off-floor broker-dealers shall not be entitled to receive a number of contracts that is greater than the size associated with their limit order.

One-Year Pilot Basis. The proposal would be effective on a one-year pilot basis, beginning on the date of Commission approval of proposed Phlx Rules 1080(1) and 1014(g)(viii).[16]

The Exchange believes that the participation guarantees included in proposed Phlx Rule 1014(g)(viii) should reward specialist, SQTs and RSQTs that actively engage in marketing activities and establish relationships with OFPs that generate Directed Orders sent to the Exchange by such OFPs. The Exchange expects such marketing activities and relationships would result in additional order flow to the Exchange, thus adding depth and liquidity to the Exchange's markets, and enabling the Exchange to continue to compete effectively with other options exchanges for order flow.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of Section 6(b)(5) of the Act[18] in particular, in that it is designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by permitting specialists, SQTs and RSQTs trading options on Phlx Xl participants to receive Directed Orders, and by encouraging the capture of order flow on the Exchange by rewarding Directed Order recipients with a participation guarantee in trades involving Directed Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to 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 with 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 it reasons for so finding, or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comment@sec.gov.* Please include File Number SR–Phlx–2004–91 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should rever to File Number SR–Phlx–2004–91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[15] Phlx Rule 1014(g)(v) sets forth the rules and contract allocation algorithm for trades that are executed in the trading crowd.

[16] The Exchange notes that another options exchange has filed a proposed rule change to establish a ''preferred'' market maker order type, which would afford participation grantees to such ''preferred'' market maker, on a one-year pilot basis. *See* Securities Exchange Act Release No. 50732 (November 23, 2004), 69 FR 69967 (December 1, 2004) (SR–CBOE–2004–71).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

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 Reverence 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 the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2004–91 and should be submitted on or before January 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–27939 Filed 12–21–04; 8:45 am]

BILLING CODE 8010–01–M

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4939]

HR/REE—Office of Recruitment, Examination, and Employment; 60-Day Notice of Proposed Information Collection: DS–3091, Thomas R. Pickering Foreign Affairs Fellowship Program, OMB # 1405–0143

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Thomas R. Pickering Foreign Affairs Fellowship Program.
- *OMB Control Number:* 1405–0143.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* HR/REE.
- *Form Number:* DS–3091.
- *Respondents:* University Graduate and Undergraduate Students.
- *Estimated Number of Respondents:* 500.
- *Estimated Number of Responses:* 500.
- *Average Hours Per Response:* 3.
- *Total Estimated Burden:* 1,500.
- *Frequency:* Annual.
- *Obligation to Respond:* Required to Obtain a Benefit.

DATES: The Department will accept comments from the public up to sixty days from December 2, 2004.

ADDRESSES: You may submit comments by the following methods:

- Email: *BetheaND@state.gov.*
- Mail: Department of State, 2401 E Street NW., SA–1 RmH518, Washington, DC 20522.
- Fax: 202–261–8841 Attn: Pickering Program.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests of the proposed information collection and supporting documents, to Norris Bethea, Department of State, 2401 E Street, NW, 5H, Washington, DC 20522, who may be reached on 202–647–8994.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department of State to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

Abstract: The Department of State collects this information to identify qualified candidates for the Thomas R. Pickering Foreign Affairs Program.

Methodology: Applications are accepted by mail.

Dated: October 20, 2004.

Ruben Torres,

Executive Director, Bureau of Human Resources, Department of State.

[FR Doc. 04–27989 Filed 12–21–04; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice 4940]

Finding of No Significant Impact and Summary Environmental Assessment—Tornillo-Guadalupe New International Bridge, County of El Paso, TX

The proposed action is to issue a Presidential Permit to the County of El Paso, Texas to construct, operate and maintain an international vehicular and pedestrian bridge (the proposed ''Tornillo-Guadalupe New International Bridge''), its approaches and facilities at the international boundary between the United States and Mexico, southeast of the city of El Paso, Texas, approximately 1,950 feet upstream on the Rio Grande from the existing Fabens-Caseta Bridge, near the small community of Caseta that is within the municipality of Guadalupe in the State of Chihuahua, Mexico.

I. Background

The U.S. Department of State (''the Department'') is charged with the issuance of Presidential Permits for the construction of international bridges between the United States and Mexico under the International Bridge Act of 1972, 86 Stat. 731, 33 U.S.C. Section 535 *et seq.,* and Executive Order 11423 of August 16, 1968, 33 FR 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511 (1993), Executive Order 13284 of January 23, 2003, 68 FR 4075 (2003), and Executive Order 13337 of April 30, 2004, 69 FR 25299 (2004).

In 2001, Raba-Kistner Consultants, Inc. (RK) prepared, on behalf of the Presidential Permit applicant, the County of El Paso, Texas (the ''Sponsor''), a draft Environmental Assessment of the proposed Tornillo-Guadalupe New International Bridge, port of entry, and connecting roadway. This Environmental Assessment was submitted to the Department as part of the Sponsor's application for a Presidential Permit. The Department placed a notice in the **Federal Register** regarding the receipt of the Sponsor's application for a Presidential permit and seeking public comments regarding the application (68 FR 43567 (2003). No public comments were received in response to this notice.

The Department has acted as the lead federal agency in the preparation and completion of the Environmental Assessment and has worked to address concerns or other issues that have been raised by cooperating governmental agencies. The Department, consistent with Council on Environmental Quality (CEQ) and Department of State

regulations implementing the National Environmental Policy Act (''NEPA''), has conducted its own, independent review of the Environmental Assessment. Numerous Federal, State and local agencies have also independently reviewed the Environmental Assessment. Each such ''cooperating agency'' has approved or accepted the Environmental Assessment, with some recommending certain mitigation measures. These cooperating agencies are:

U.S. Government: The Department of Homeland Security, General Services Administration, United States Section of the International Boundary and Water Commission, Department of Transportation, Department of the Interior, Environmental Protection Agency, Food and Drug Administration, Department of Defense, Department of Commerce, Department of Justice, and the Council on Environmental Quality.

State of Texas: Commission on Environmental Quality, Office of the Attorney General, State Historical Commission, Department of Transportation, Department of Agriculture, Parks and Wildlife Department, and the Rio Grande Council of Governments.

The Sponsor has worked closely with the Federal and state agencies that have raised concerns to address those concerns about the possible environmental impacts of this project. The draft final Environmental Assessment, as amended and supplemented, together with the comments submitted by Federal and state agencies, the responses to these comments, and all correspondence between the agencies and the Sponsor addressing the agencies' concerns, constitute the ''Final Environmental Assessment.'' Based on this Final Environmental Assessment, including mitigation measures that El Paso County has undertaken or is prepared to undertake, and the Department's independent review of that assessment, the Department has concluded that the issuance of the Presidential Permit would not have a significant impact on the quality of the human environment within the United States. Therefore, a Finding of No Significant Impact (FONSI) is adopted and, in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.,* CEQ regulations, 40 CFR 1501.4 and 1508.13, and Department of State regulations, 22 CFR 161.8(c), an environmental impact statement (''EIS'') will not be prepared.

II. Summary Environmental Assessment

A. The Proposed Project (Preferred Alternative)

The proposed Bridge Site is approximately 1,950 feet upstream of the existing Fabens-Caseta Bridge. The new bridge will be 1,274 feet long and 94 feet wide and will have six vehicular lanes and two pedestrian sidewalks. The County will obtain a 271.75-acre contiguous tract of land for the construction of all components of the border facilities. The proposed Bridge Site was selected as the preferred alternative because it represents the most effective use of financial resources in the United States and is the most consistent with the Mexican State of Chihuahua's planning and studies, including plans to build a new highway in Mexico that would begin at Samalayuca on the main Juarez-Chihuahua highway and end at a location approximately 600 meters west of the proposed location of the new bridge.

The proposed roadway is designed to originate at the Tornillo-Guadalupe New International Bridge and border facilities and to route passenger and commercial vehicular traffic north on a new major roadway to its terminus at the Interstate Highway-10 (I–10) and Texas Farm to Market 3380 (FM 3380) interchange. The anticipated length of the major collector is approximately 6.0 miles plus 1.5 miles, which are included for access roadways, side road connectors, and interchange realignments. These features will require approximately 260 acres of land to be acquired for right of way purposes. The width of the right of way is 200 feet, which is sufficient to accommodate the necessary roadway cross section plus all drainage and storm water retention facilities that may be necessary.

The first phase will be a 2-lane roadway with shoulders along both sides and a grade separation over the existing State Highway 20 (SH 20) and Union Pacific Railroad Company's (UPRR) tracks. The final cross section is to be a 4-lane roadway with shoulders and dedicated left-turn lanes at most intersections. Free-flow culverts or bridges will be required at crossings under the jurisdiction of the El Paso County Water Improvement District No. 1.

This roadway alternative was selected as the preferred alternative because it was the least intrusive and most cost-effective alignment. Five residential structures were identified within the proposed project's alignment. Two residential structures are located adjacent to the border facilities and three are near SH 20 and the UPRR tracks. Based on current design features, the structures are not expected to be affected and no relocations are planned.

B. Bridge Site Alternatives Considered

The Department in this case considered two alternative bridge sites and three alternative roadway alignments. The Department also considered a ''no action'' alternative. These are described in detail in the Final Environmental Assessment and in summary fashion as follows:

Bridge Site Alternative No. 1 is located approximately 4.6 miles upstream of the existing Fabens-Caseta Bridge. This alternative was viewed as not preferred because the site lacks direct access to Caseta, Mexico and would require extensive acquisition of agricultural and private underdeveloped lands for right-of-way in the Fabens area. The site also presents traffic safety hazards and would require construction of a new diamond interchange at IH–10, an ineffective use of financial resources.

Bridge Site Alternative No. 2 is 4.3 miles upstream of the existing bridge. While the roadway alignment for this bridge could use the existing diamond interchange at IH–10, the lack of direct access to the Interstate is a negative factor.

No Action Alternative. The Department considers the ''no action'' alternative for the roadway, described below, to constitute a ''no action'' alternative for the bridge as well. The ''no action'' alternative for the bridge was viewed as not preferred for the same reasons provided with regard to the ''no action'' alternative for the roadway.

C. Roadway Alternatives Considered

Roadway Alternative B was designed to originate at the Tornillo-Guadalupe New International Bridge and border facilities and direct passenger and commercial vehicular traffic west and north on the existing Texas Farm to Market 76 (FM 76) alignment to its intersection with Texas Highway 20 (SH 20) in Fabens, Texas. The alignment would continue north on Texas Farm to Market 793 (FM 793) through the Fabens business district to its intersection with Interstate Highway 10 (I–10).

The Roadway Alternative B alignment was eliminated early in the project, and was viewed as not preferred, because it was not considered to be a feasible and prudent option due to taking of additional acreage of potential prime or unique farmlands, relocation of families and splitting family/caregiver support

groups, relocation and/or disruption of commercial businesses and trade, disruption of community services, relocation and disruption of places of religious worship or meetings, and general public opposition.

Roadway Alternative C was designed to originate at the Tornillo-Guadalupe New International Bridge and border facilities and divert vehicular traffic north on the proposed Preferred Alternate route to its intersection with Texas State Highway 20 (SH 20) west of the town of Tornillo, Texas. The alignment would traverse on an easterly route along SH 20 through Tornillo to its intersection with Texas Farm to Market 3380 (FM 3380) and thence north on FM 3380 to the diamond interchange at Interstate Highway 10 (I–10).

Roadway Alternative C was not selected as the preferred route due to the taking of additional acreage of potentially prime or unique farmlands, relocation of families and splitting family/caregiver support groups, relocation and/or disruption of commercial businesses and trade, disruption of community services, relocation and disruption of places of religious worship or meetings, and relocation of a public recreational area.

Roadway Alternative D was designed to originate at the Tornillo-Guadalupe New International Bridge and border facilities and divert vehicular traffic north on the proposed Preferred Alternate route to a point approximately 0.6 miles north of its intersection with State Highway 20 (SH 20) west of Tornillo, Texas. The alignment would traverse on a northerly route through the dune lands to its intersection with Interstate Highway 10 (I–10).

Roadway Alternative D was not selected as the preferred alternative because the alignment would require the construction of approximately 1.8 miles of roadway through the upland desert area. This would require the taking of 43.62 acres of land for right-of-way acquisition. The current land use is considered as idle. The project would require the construction of a diamond interchange at the roadway intersection with I–10. The new diamond interchange would be located approximately 1.95 miles northwest of the existing I–10 and FM 3380 diamond interchange. The short distance between diamond interchanges could create congestion in this portion of the I–10 corridor and traffic safety hazards. Additionally, the burden of cost related to the interchange at I–10 is not considered to be the most effective use of available financial resources.

Roadway Alternative E—No Action. If no action were taken, the long and short-term affects on natural and wildlife resources, other sensitive areas (with the potential exception of ground water resources), the environment, land uses, and human inconveniences would be minimal or negligible. Without the project, the potential for economic development and enhancement of lifestyles of the local inhabitants would be adversely affected in this federally designated economically distressed area. Potential for new commercial or industrial growth would be stagnant or nonexistent due to the lack of a modern border facility and a safer, more direct route to the major transportation corridors.

The No Action Alternative was viewed as not preferred because it would impede the benefits to the United States derived from trade expansion with Mexico, overtax the existing international crossings closer to the El Paso/Ciudad Juarez urban core, and leave in place the obsolete existing Fabens Bridge.

III. Summary of the Assessment of the Potential Environmental Impacts Resulting From the Proposed Action

The Environmental Assessment provides information on the environmental effects of the alternatives outlined above, including the proposed project. On the basis of the Final Environmental Assessment, the Department makes the following determinations regarding the potential environmental impacts of the preferred alternatives for the bridge site and the roadway alignment.

Ground Water and Runoff

Recharge of the Rio Grande Alluvium aquifer is through storm water runoff, seepage from the river and irrigation water returns. The transfer of groundwater between the Rio Grande and the aquifer is seasonal and dependent on the river's flow. During the spring and summer irrigation season, the aquifer gains at the expense of the river's flow and volume. The opposite occurs during the non-irrigation seasons of fall and winter. The project should not have any long-term effects on the inter-basin transfer of groundwater.

As noted, the County intends to acquire 271.75 acres for the border facilities and related activities. While the project will be developed and constructed in stages, ultimately it will cover about 171 acres of land with impervious surfaces. According to the initial storm water runoff retention basin design plan, about 29 acres of land will be used for retention basins. The ongoing design for the major arterial roadway also includes the use of retention ponds and vegetated swales. Based on the design of the retention ponds and related factors, storm water runoff should have only negligible effects on surface water bodies and shallow groundwater aquifers. Wherever practical, cover other than asphalt or concrete will be used to reduce water runoff. In order to mitigate runoff and erosion during the construction period, the County will instruct its consultants to employ best management practices for erosion control, such as the use of hay bales and silt fencing.

Siltation and Sedimentation of Waterways

Land erosion is expected to be minimal and will be controlled through implementation of a Storm Water Pollution Prevention Plan. It is expected that the construction phases of the project will take place during the dry season to minimize the erosional effects of rain. Where applicable, portions of the disturbed lands will be restored to their pre-construction contours and re-vegetated with plants and grasses native to the area.

Precautions To Avoid Injury To Cover Vegetation

There are four distinct vegetative zones in the project area, ranging from a small riparian area to the typical Chihuahuan Desert dunes. Precaution and avoidance measures should include limiting the disturbance of land areas and cover vegetation to those within the construction zone, including barrow pits, rights-of-way and entry and exit points for equipment and personnel. As appropriate, disturbed areas will be reclaimed in accordance with the permanent erosion control requirements of the storm water discharge permit.

Disruption of Wildlife Habitat

The proposed project is not expected to disrupt wildlife habitat. However, in view of the Migratory Bird Treaty Act and the population declines of many migratory bird species, good faith efforts will be implemented to minimize or avoid critical vegetative cover clearing and grubbing activities during migratory birds' general nesting season from March through August.

Wetlands and Floodplains

A review of the National Wetlands Inventory Maps for the project area and a site reconnaissance indicated no wetlands present or identified. Based on a review of Flood Insurance Rate Maps, it was determined that the bridge

crossing will span Zone A, which is described as a special flood hazard area inundated by 100 year floods, and in which no base flood elevation has been established. The border facilities and a part of the access road are in Zone X, which is described as an area outside the 500-year floodplain.

Air Quality

The Texas Commission on Environmental Quality classifies El Paso County and region as a non-attainment area for critical air pollutants. Ozone and Carbon Monoxide are among the critical pollutants. Based on a 1996 annual emissions study, it was determined that 69 percent of the Ozone and Carbon Monoxide non-attainment annual emissions could be attributed to on-road mobile sources.

While studies since 1996 show that the El Paso region has managed to achieve substantial reductions in emissions, the long lines of northbound traffic at the three existing bridges exacerbate the non-attainment status in these areas. According to Texas Department of Transportation data, a vehicle emits 2.5 times as many pollutants while idling as compared to while traveling at 3 miles per hour.

In a Report to the County Commissioners Court prepared in 2001, the County Planning Department concluded that:

> Currently, northbound vehicles on the bridge of the Americas, the Paso del Norte Bridge, and the Zaragoza (Ysleta) Bridge generate the following pollutants daily: 1,877 pounds of volatile organic compounds, 18,292 pounds of Carbon Monoxide, and 751 pounds of nitrous oxide. To arrive at an emission estimate, the number of vehicles crossing the bridge on a daily and annual basis were measured against the waiting time in the line, during rush and non-rush hour, the idling time spent on the bridge and the fuel used by the vehicle.

The proposed project will improve air quality in the urbanized areas of El Paso by alleviating vehicular congestion at the existing ports of entry. Both the Texas Commission on Environmental Quality and the U.S. Environmental Protection Agency reviewed the application, including the Environmental Assessment, in detail. Both concluded that emissions resulting from the proposed project are expected to be well below the 50 tons per year significant level for Volatile Organic Compounds and Nitrogen Oxides and that a general conformity analysis would not be required. Moreover, the U.S. Environmental Protection Agency determined that the proposed project is outside the non-attainment boundary for both PM 10 and CO; therefore, general conformity provisions are inapplicable for these two pollutants. During the construction phase, the County will instruct its consultants and contractors to employ best management practices, such as wetting aggregate to minimize dust.

Listed, Threatened and Endangered Species

The proposed new international bridge and associated roadway are not expected to disrupt wildlife habitat. The project design is not intended to limit or prohibit movements of species. An endangered species habitat assessment conducted in January 2002 concluded that, except for habitat for the Texas Horned Lizard and the Pecos River Muskrat, the project areas did not constitute sensitive habitat for threatened or endangered species or species of concern. There is very little potential for significant impacts. The sponsor will implement mitigating measures even in the absence of a potential for significant impacts. Mitigation efforts for the Pecos River Muskrat will include spans over the waterway so as not to cause a fill or redirection of the existing waterway habitat. A permitted biologist will be on call during the construction phase of the project in order to mitigate any potential impact on the Texas Horned Lizard.

In addition, the County will instruct its construction contractor that any burrow pits or staging areas be located in previously disturbed sites or sites with little or no vegetation and that these sites be reviewed for the potential occurrences of listed species and their habitats.

Hazardous Waste

The proposed project is not located on or near any known hazardous waste facilities and will not generate any hazardous wastes. The proposed border station will include a hazardous waste containment unit in the truck dock area that will provide temporary storage of hazardous waste if a spill occurs.

In the event of a release or spill outside the border station, assistance for containment and remediation efforts would fall under the jurisdiction of the El Paso County Sheriff's Office, whose Environmental Crimes Unit has special emergency procedures that have been made available by the U.S. Department of Transportation.

The use of herbicides or defoliating agents for this project is not expected. In the event such chemical agents are used, it will be done in strict accordance with the manufacturers' requirements and by persons qualified to conduct the applications.

Land Use

There are no public parks, recreational areas, wilderness areas, or unusual or unique areas within or near the vicinity of the proposed project. The project is not located near or in the vicinity of any designated wild and scenic river segments of the Rio Grande.

Part of the proposed project will be on farmlands. The crops cultivated include pecans, cotton, grain and alfalfa. The project will directly and indirectly impact approximately 516 acres of farmland.

The U.S. Department of Agriculture's Natural Resource Conservation Service concluded that the project area does not include any soil mapping units that are classified as prime farmland under the Farmland Protection Policy Act. After reviewing and evaluating the farmland at issue, the NRCS concluded that the project may proceed.

Noise

As with any major construction undertaking, some impacts will occur for which mitigation measures are not reasonable or feasible. One such impact identified during the course of this investigation is related to increased traffic noise. The traffic noise study conducted as part of the Environmental Assessment indicated that exterior noise levels at three houses exceeded existing levels by 8dBA and approached a Category B Noise Abatement Criteria level. The study investigated four typical and acceptable abatement measures and resulted in a finding that none was both feasible and reasonable, and no abatement measures were proposed for the project. Future avoidance measures of noise impacts are to include land use control programs to ensure that no new developments are planned or constructed along or within the predicted 2024 noise impact contours.

Noise abatement measures during the construction phase may include work hour controls and locations, ground support personnel locations and maintenance of vehicle muffler systems.

Cultural Resources

During the course of the archeological survey, four historical sites and one engineering property (Fabens-Caseta Bridge) were discovered. Two of the sites (Tornillo Sites 1 and 4) and the engineering property are eligible for inclusion in the National Register of Historic Places (NRHP) and/or formal designation as State Archeological Landmarks (SAL). One site (Tornillo 3) did not merit SAL designation and one site (Tornillo 2) will require additional

studies to determine its significance and if it is necessary to avoid the site as a mitigation measure. The Texas Historical Commission determined that Tornillo Sites 1 and 4 were archeologically significant and recommends that they be avoided, if possible. Mitigation measures at these sites will be either avoidance or redesign of the roadway, or by excavation and curation of artifacts. Burial of the sites will not be an acceptable mitigation measure due to the shallow and fragile nature of the archeological deposits.

The existing Fabens-Caseta Bridge will be removed upon completion of the Tornillo-Guadalupe New International Bridge, Border Station Facilities and Major Arterial Roadway. The County has agreed to fund demolition of the U.S. part of the bridge. As recommended by the State Historical Preservation Officer (SHPO), the removal of this bridge will be in accordance with the requirements, directives, and plans issued by the Texas Historic Commission's Division of Architecture. In consultation with the SHPO, the IBWC has determined that the bridge is eligible for inclusion in the National Register of Historic Places. As a result, the County and IBWC have negotiated a memorandum of agreement, currently under review by both parties that, among other mitigation measures, will require the County to document the Fabens-Caseta Bridge to Level II, Historic American Buildings Survey (HABS) and Historic American Engineering Record (HAER) Standards, prior to beginning demolition.

The County expects to enter into a programmatic agreement relating to historical sites with the SHPO and appropriate federal coordinators.

Native American Tribes

Four federally recognized Native American groups were identified that may have historical ties to the area. The tribes are: (1) Fort Sill Apache Tribe of Oklahoma, (2) Mescalero Apache Tribe of the Mescalero Reservation of New Mexico, (3) White Mountain Apache Tribe of the Fort Apache Reservation, Arizona, and (4) the Ysleta Del Sur Pueblo of Texas. Each tribe was contacted and invited to consult on the project. The Mescalero Apache Tribe determined that the proposed action would not affect any objects, sites, or locations important to the Tribe. The White Mountain Apache Tribe replied that they deferred to the representatives of the Mescalero Apache Tribe and Fort Sill Apache Tribe. The Fort Sill Apache Tribe failed to respond to repeated telephone calls and letters. The Ysleta Del Sur Pueblo determined that consultation would be required and requested that they be consulted through each phase of the project.

Environmental Justice/Socio-Economic Issues

A potential impact for which direct mitigation measures may not be reasonable or feasible in all instances involves personal economic issues. The construction of the Tornillo-Guadalupe New International Bridge will result in a toll being charged to offset maintenance costs and repayment of revenue bonds. The County anticipates permanent closure and removal of the toll-free Fabens-Caseta Bridge upon completion of the new bridge and border facilities. The closure and removal of the toll-free bridge may result in economic impacts to regular users of the bridge. The County of El Paso recognizes this and, on April 19, 2004, the County Commissioners Court passed a resolution to the effect that the Tornillo-Guadalupe Port of Entry would be toll free for pedestrians. Private and commercial vehicles would pay tolls.

While the County of El Paso may not be able to fully mitigate all such impacts directly, the short and long term employment and economic opportunities resulting from implementing the project will greatly offset and lessen the effects of the impacts. The construction of the bridge, border station facilities, and roadway should provide short-term employment opportunities to local residents and a positive economic ripple affect to the surrounding area businesses. The long-term employment opportunities for the local residents of this economically distressed portion of El Paso County are promising. The County of El Paso anticipates implementing its economic development plan and tax abatement policies in conjunction with the Renewal Community Program. The creation of a 2,000-acre industrial park is one major feature of the County's economic development plan. The industrial park would be developed on the north side of the IH 10 transportation corridor, extending from Clint to the Fabens area. The long-range plans include planned affordable housing residential districts and commercial developments. The developments would bring infrastructure, such as water supply lines and sanitary sewer lines, to this region of the County. Overall, the project would improve the quality of life for the local and adjacent area residents.

The projected economic developments potentially are of great significance in a County where 30.9 percent of the population lives below the poverty threshold, compared to 18.5 percent for the State as a whole. The County's unemployment rate in October 2003 was 8.9 percent, while the national average at that time was 6.0 percent and Texas' rate was 6.1 percent.

Cumulative Impacts

The most significant cumulative impacts of the demolition of the Fabens-Caseta Bridge and the construction of the Tornillo-Guadalupe New International Bridge will be socio-economic.

The construction of the Tornillo-Guadalupe New International Bridge and related roads and infrastructure will have positive long- and short-term economic impacts. The estimated construction costs for the proposed new bridge, border facilities, and major arterial roadway are $46,544,000. Importation of a major labor force is not expected, thus allowing local residents the opportunity to gain employment, develop trade skills, and increase personal incomes.

On a long-term basis the construction of new bridges has generally resulted in significant regional increases in population, tourism, employment, and income. The County of El Paso anticipates implementing an economic development plan that includes industrial development areas, residential districts, and tax abatement policies. The development of a 2,000-acre industrial park is one major feature of the County's plan. The planned industrial park will be located on the north side of the Interstate Highway 10, extending from Clint, Texas to the Fabens, Texas area. Long-range plans include affordable housing residential districts, green spaces, and commercial developments. The employment opportunities will include skilled and semi-skilled construction labor, manufacturing jobs, and retail sales staff. Through tax incentives for businesses, the unskilled labor force will be afforded training opportunities resulting in additional job opportunities.

The Tornillo-Guadalupe New International Bridge will be in a low-income area. The traffic and financial feasibility study that is part of the Presidential Permit Application found that the toll revenues supporting the financial feasibility of the new bridge would come from automobile and truck traffic, with commercial vehicles generating 79 percent of the tolls. Pedestrian traffic will produce little or no net revenues. In order to accommodate the pedestrian crossers in

this low-income area and promote social justice, the El Paso County Commissioners Court passed a resolution dated April 19, 2004 that eliminates pedestrian tolls on the new bridge. The resolution states: ''Therefore Be It Resolved, by El Paso County Government that the new Tornillo/Guadalupe Port of Entry will be toll-free for pedestrians only, as expenditure of future funds to collect tolls from pedestrians at the new Tornillo/Guadalupe Bridge is expected to exceed pedestrian toll revenues to be collected.''

IV. Conclusion: Analysis of the Environmental Assessment Submitted by the Sponsor

Based on the Department's independent review of the Final Environmental Assessment, comments received during its preparation and comments received by the Department from Federal and State agencies including measures which are proposed to be taken to prevent or mitigate potentially adverse environmental impacts, the Department has concluded that issuance of a Presidential Permit authorizing construction of the proposed Tornillo-Guadalupe New International Bridge as proposed in Bridge Site Alternative No. 3 as set forth in the Environmental Assessment, would not have a significant impact on the quality of the human and/or natural environment within the United States. Accordingly, a Finding of No Significant Impact (''FONSI'') is adopted and an environmental impact statement will not be prepared.

The Final Environmental Assessment prepared by the Department addressing this action is on file and may be reviewed by interested parties at the Department of State, 2201 C Street NW., Room 4258, Washington, DC 20520 (Attn: Mr. John Ritchie, Tel (202) 647–8529).

Dated: December 15, 2004.

John A. Ritchie,

Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs, Department of State.

[FR Doc. 04–27988 Filed 12–21–04; 8:45 am]

BILLING CODE 4710–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of U.S.-Oman Free Trade Negotiations; Public Comments on Scope of Environmental Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: This publication gives notice that, pursuant to the Trade Act of 2002, and consistent with Executive Order 13141 (64 FR 63169) (Nov. 18, 1999) and its implementing guidelines (65 FR 79442), the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the proposed United States-Oman Free Trade Agreement. The TPSC is requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for U.S. environmental laws and regulations, and identification of complementarities between trade and environmental objectives such as the promotion of sustainable development. The TPSC also welcomes public views on appropriate methodologies and sources of data for conducting the review. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATES: Public comments should be received no later than February 25, 2005.

ADDRESSES: *Submissions by electronic mail: FR0510@ustr.gov. Submissions by facsimile:* Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review should be addressed to Jennifer Prescott or David J. Brooks, Environment and Natural Resources Section, USTR, telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On November 15, 2004, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified Congress of the President's intent to enter into trade negotiations with Oman. Ambassador Zoellick outlined specific U.S. objectives for these negotiations in the notification letters to Congress. Copies of the letters are available at *http://www.ustr.gov/Document_Library/Press_Releases/2004/November/U.S._Announces_Intent_to_Negotiate_FTAs_with_UAE_Oman.html*.

In addition to this request for public comments, the TPSC also has invited the public to provide written comments and/or oral testimony at a public hearing that will take place on January 14, 2005. The purpose of this hearing is to assist USTR in amplifying and clarifying negotiating objectives for the proposed FTA and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement (*see* 67 FR 70498, December 6, 2004). USTR will take into account in the environmental review any public comments or testimony on Oman FTA environmental issues submitted in response to the December 6 notice.

2. Environmental Review

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to the Trade Act of 2002 and consistent with Executive Order 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442).

Environmental reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. Reviews address potential environmental impacts of the proposed agreement and potential implications for environmental laws and regulations. The focus of the review is on impacts in the United States, although global and transboundary impacts may be considered, where appropriate and prudent.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject

line: ''United States-Oman FTA Environmental Review'' followed by ''Written Comments.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 04–28022 Filed 12–21–04; 8:45 am]

BILLING CODE 3190–W5–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of U.S.-United Arab Emirates (UAE) Free Trade Negotiations; Public Comments on Scope of Environmental Review

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ADDRESSES: *Submissions by electronic mail: FR0509@ustr.gov.*

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

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2. Environmental Review

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to the Trade Act of 2002 and consistent with Executive Order 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442).

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3. Requirements for Submissions

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Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 04–28023 Filed 12–21–04; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Announcement of FAA Advisory Circular (AC) 145–RSTP (Draft), Repair Station Training Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of AC, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on AC 145–RSTP that provides guidance on eligibility, application, and selection for the repair station training program.

DATES: Submit comments on or before January 21, 2005.

ADDRESSES: Send all comments on AC 145–RSTP to Mr. Herbert E. Daniel, Aircraft Maintenance Division, General Aviation and Repair Station Branch (AFS–340), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; facsimile (202) 267–5115; e-mail *Herbert.E.Daniel@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Herbert E. Daniel, AFS–340, at the address, facsimile, or e-mail listed above, or by telephone at (202) 267–3109; or Mr. Dan Bachelder, AFS–340, at the address or facsimile listed above or e-mail *Dan.Bachelder@faa.gov* or by telephone at (202) 267–7027.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed AC 145–RSTP is available on the FAA's Regulatory Guidance Library Web site at: *http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgDAC.nsf/MainFrame?OpenFrameSet* under the Open for Comment link. Interested persons are invited to comment on the AC by submitting written data, views, or suggestions, as they may desire. Please identify AC 145–RSTP, Repair Station Training Program, and submit comments, either hardcopy or electronic, to the appropriate address listed above.

Issued in Washington, DC, on December 17, 2004.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 04–28008 Filed 12–17–04; 2:42 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

DATES: The ATSRAC will meet January 12 and 13, 2005, from 8:30 a.m. to 5 p.m. MST (10:30 a.m. to 7 p.m. EST).

ADDRESSES: Sheraton Tucson Hotel & Suites, 5151 E. Grant Road, Tucson, AZ 85712.

FOR FURTHER INFORMATION CONTACT: Shirley Stroman, Office of Rulemaking, ARM–208, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470; fax (202) 267–5075; or e-mail *shirley.stroman@faa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces a meeting of the Aging Transport Systems Rulemaking Advisory Committee. The FAA will hold the meeting at the location listed under the **ADDRESSES** heading of this notice. The meeting agenda will include the following topics:

- Small transport aircraft maintenance program development.
- Review and approval of HWG13 final report.
- Discussion of HWG12 recommendations.
- MMEL wiring issues.
- New requirements for design approval holders.
- Future of ATSRAC—New charter.

The meeting is open to the public; however, attendance will be limited by the size of the meeting room. The FAA will make the following services available if you request them by December 30, 2004.

- Teleconferencing.
- Sign and oral interpretation.
- A listening device.

Individuals using teleconferencing services and calling from outside the Washington, DC metropolitan area will be responsible for paying long-distance charges. To arrange for any of these services, contact the person listed under the **FOR FURTHER INFORMATION CONTACT** heading.

The public may present written statements to the Committee by providing 20 copies to the Committee's Executive Director. Public statements at the meeting will be considered if time

allows. You may contact the individual under the **FOR FURTHER INFORMATION CONTACT** heading for additional instructions if you want to file a written statement.

Issued in Washington, DC, on December 16, 2004.

Brenda Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. 04–28007 Filed 12–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34614] [1]

Permian Basin Railways, Inc.—Acquisition of Control Exemption—Arizona Eastern Railway Company, Inc.

Permian Basin Railways, Inc. (Permian),[2] a noncarrier and short line railroad holding company, has filed a verified notice of exemption to acquire control through purchase of 100% of the outstanding stock of Arizona Eastern Railway Company, Inc. (AERC),[3] a Class III short line railroad.

The transaction was scheduled to be consummated on or about December 1, 2004.

Permian states that: (i) The railroads do not connect; (ii) the transaction is not part of a series of anticipated transactions that would connect these railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34614, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 13, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–27860 Filed 12–21–04; 8:45 am]

BILLING CODE 4915–01–P

[1] Simultaneously with this filing, in STB Finance Docket No. 34613, Permian filed a verified notice of exemption to acquire control of West Texas and Lubbock Railroad Company, Inc., a Class III short line railroad.

[2] Permian owns the stock of two Class III short line railroads, West Texas and Lubbock Railway Company, Inc. and the Austin & Northwestern Railway Company, Inc., d/b/a Texas New Mexican Railroad.

[3] AERC is currently owned by Kyle Railways, Inc., a wholly-owned subsidiary of RailAmerica Transportation Corp., a short line railroad holding company.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34613] [1]

Permian Basin Railways, Inc.—Acquisition of Control Exemption—West Texas and Lubbock Railroad Company, Inc.

Permian Basin Railways, Inc. (Permian),[2] a noncarrier and short line railroad holding company, has filed a verified notice of exemption to acquire control through purchase of 100% of the outstanding stock of West Texas and Lubbock Railroad Company, Inc. (WTLRR),[3] a nonoperating [4] Class III short line railroad.

The transaction was scheduled to be consummated on or about December 1, 2004.

Permian states that: (i) The railroads do not connect; (ii) the transaction is not part of a series of anticipated transactions that would connect these railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34613, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: December 13, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–27976 Filed 12–21–04; 8:45 am]

BILLING CODE 4915–01–P

[1] Simultaneously with this filing, in STB Finance Docket No. 34614, Permian filed a verified notice of exemption to acquire control of Arizona Eastern Railway Company, Inc., a Class III short line railroad.

[2] Permian owns the stock of two Class III short line railroads, West Texas and Lubbock Railway Company, Inc. (WTLR) and the Austin & Northwestern Railway Company, Inc., d/b/a Texas New Mexican Railroad.

[3] WTLRR is currently owned by RailAmerica Transportation Corp., a short line railroad holding company.

[4] WTLRR leases its tracks and facilities to WTLR.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements; Activity Under OMB Review; Airline Service Quality Performance

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the

nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on October 14, 2004 (69 FR 61079).

DATES: Written comments should be submitted by January 21, 2005.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone number (202) 366–4387, fax number (202) 366–3383 or e-mail *bernard.stankus@bts.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Airline Service Quality Performance—Part 234.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2138–0041.

Forms: BTS Form 251.

Affected Public: U.S. air carriers that provide scheduled passenger service.

Abstract: Part 234 gives air travelers information concerning their chances of on-time flights and the rate of mishandled baggage by the 19 largest scheduled domestic passenger carriers.

Estimated Annual Burden Hours: 3,021 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

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

Issued in Washington, DC, on December 15, 2004.

Donald W. Bright,

Assistant Director, Office of Airline Information.

[FR Doc. 04–28009 Filed 12–21–04; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 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 Tuesday, January 18, 2005, from 1:30 p.m. to 3 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

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 Area 2 Taxpayer Advocacy Panel will be held Tuesday, January 18, 2005 from 1:30 p.m. to 3 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., 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 Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: December 17, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–28014 Filed 12–21–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, January 19, 2005, at 1 p.m., Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

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 Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Wednesday, January 19, 2005, at 1 p.m. Eastern daylight time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623, or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report, and discussion of next meeting.

Dated: December 17, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–28015 Filed 12–21–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and

suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Wednesday, January 19, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6096.

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 Area 7 Taxpayer Advocacy Panel will be held Wednesday, January 19, 2005 from 9 a.m. Pacific Time to 10 a.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. 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 206–220–6096, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: December 17, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–28016 Filed 12–21–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 69, No. 245

Wednesday, December 22, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement, Lower Snake River Reservoirs Navigation Maintenance, in the States of Washington and Idaho

Correction

In notice document 04–27573 beginning on page 75308 in the issue of Thursday, December 16, 2004 make the following correction:

On page 75308, in the third column, under **SUMMARY**, four lines from the bottom ''Tastabend '' should read ''Fastabend ''.

[FR Doc. C4–27573 Filed 12–21–04; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Vol. 69, No. 245

Wednesday, December 22, 2004

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

69805–70050 1
70051–70178 2
70179–70350 3
70351–70536 6
70537–70870 7
70871–71338 8
71339–71690 9
71691–72108 10
72109–74404 13
74405–74946 14
74947–75222 15
75223–75450 16
75451–75818 17
75819–76372 20
76373–76594 21
76595–76834 22

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7850 70351
7851 70353
7852 71689
7853 74945
7854 74947
7855 76371
7856 76595

Executive Orders:
12473 (Amended by EO 13365) 71333
13286 (See EO 13362) 70173
13289 (See EO 13363) 70175
13303 (Amended by EO 13364) 70177
13315 (See EO 13364) 70177
13350 (See EO 13364) 70177
13362 70173
13363 70175
13364 70177
13365 71333
13366 76591

Administrative Orders:
Memorandums:
Memorandum of October 21, 2004 70349
Memorandum of December 8, 2004 74935
Memorandum of December 8, 2004 74937
Memorandum of December 8, 2004 74939
Memorandum of December 8, 2004 74941
Presidential Determinations:
No. 2005–07 of November 29, 2004 72109
No. 2005–08 of November 29, 2004 74931
No. 2005–09 of December 6, 2004 74933
No. 2005–11 of December 10, 2004 76587

4 CFR

Proposed Rules:
21 75878

5 CFR

317 70355
352 70355
359 70355
451 70355
530 70355
531 .....70355, 75451
534 70355
575 70355
841 69805
842 69805
843 69805

6 CFR

Proposed Rules:
5 70402

7 CFR

56 76373
210 .....70871, 70872
220 70872
301 76378
319 71691
354 71660
371 76378
457 74405
905 .....70874, 76597
920 76379
958 76381
980 76381
982 76385
1005 71697
1006 71697
1007 71697
1464 70367
1775 70877
1806 75454
1822 75454
1902 75454
1925 75454
1930 75454
1940 75454
1942 75454
1944 75454
1951 .....70883, 75454
1955 75454
1956 75454
1965 75454
3560 75454
3565 75454

Proposed Rules:
319 71736
500 75880
929 69996
930 71744
983 71749
989 71753

9 CFR

166 70179
317 74405
381 74405
430 70051

10 CFR

19 76599
25 74949
34 76599

40 76599
55 76599
60 76599
95 74949
Proposed Rules:
25 75007
95 75007

11 CFR

Proposed Rules:
100 76626
104 76626
114 76628
300 71388

12 CFR

201 75819
506 76601
516 76601
541 76601
560 76601
563 76601
564 76601
567 76601
570 76601
Proposed Rules:
226 70925

13 CFR

121 70180
125 75820
Proposed Rules:
121 70197

14 CFR

23 ....70885, 74407
25 76389
39 ....69807, 69810, 70368, 70537, 70539, 71339, 71340, 71342, 71344, 71347, 71349, 71351, 71353, 74411, 74412, 75223, 75225, 75228, 75231, 75233, 75236, 75826, 75830, 75833, 76603, 76605, 76610
71 ....70053, 70185, 70371, 70372, 70541, 70542, 71701, 71702, 72111, 72112, 74953, 74954, 74955, 75454, 76042, 76391
73 ....70887, 72113
91 74413
95 74413
97 74415
121 75835
Proposed Rules:
39 ....69829, 69832, 69834, 69836, 69838, 69842, 69844, 70202, 70204, 70564, 70566, 70568, 70571, 70574, 70936, 70938, 72134, 72136, 74461, 74463, 74465, 75267, 75270, 75273, 75275, 75277, 75280, 75282, 76632
61 74898
63 74898
65 74898
67 74898
71 ....70208, 71756, 75490, 75491, 76421
91 74898
121 74898
135 74898

15 CFR

6 74416
732 71356
734 71356
740 71356
742 71356
744 71356
750 69814
772 71356
806 70543
Proposed Rules:
710 70754
711 70754
712 70754
713 70754
714 70754
715 70754
716 70754
717 70754
718 70754
719 70754
720 70754
721 70754
722 70754
723 70754
724 70754
725 70754
726 70754
727 70754
728 70754
729 70754

16 CFR

1 76611

17 CFR

15 76392
16 76392
17 76392
18 76392
19 76392
21 76392
240 70852
248 71322
275 72054
279 72054
Proposed Rules:
228 75774
229 75774
230 75774
240 ....71126, 71256, 75774
242 ....71126, 75774
249 71126

18 CFR

11 71364
Proposed Rules:
Ch. 1 70077

21 CFR

1 ....71562, 71655
10 74418
11 71562
179 76401
510 70053
520 ....70053, 74418
522 ....70054, 70055
558 70056
880 70702
1310 74957
Proposed Rules:
165 70082
1301 70576

22 CFR

122 70888
129 70888
Proposed Rules:
226 75885

23 CFR

650 74419
655 69815

24 CFR

200 74894
202 75802
206 75204
570 70864
Proposed Rules:
200 75812
206 70244
970 75188
2004 70868
3280 70016

25 CFR

Proposed Rules:
542 69847

26 CFR

1 ....70547, 70550, 75455, 76612, 76614
25 70547
31 ....69819, 70547, 76404
53 70547
55 70547
156 70547
301 70547
602 ....70547, 70550, 76614
Proposed Rules:
1 ....70578, 71757, 75492, 76422, 76635
26 70404
31 76422
301 71757

27 CFR

9 ....70889, 71372

28 CFR

16 72114
906 75243

29 CFR

570 75382
579 75382
580 75382
1926 70373
2590 75798
4011 69820
4022 ....69820, 74973
4044 ....69821, 74973
Proposed Rules:
1 75408
4 75408
1210 76423
1952 75436

30 CFR

18 70752
917 75835
938 ....71528, 71551

31 CFR

10 75839
103 74439
515 75468
538 75468
560 75468
Proposed Rules:
10 75887

32 CFR

503 76412
630 76412
635 75245
Proposed Rules:
634 76548
637 75287

33 CFR

100 ....70551, 70552
117 ....70057, 70059, 70373, 71704, 71706, 74441, 74975, 75472, 75845
165 ....70374, 71708, 71709, 74442, 76413, 76415, 76417
Proposed Rules:
100 70578
110 ....71758, 75009
117 ....70091, 70209, 72138, 75011, 75013, 75493
165 ....70211, 71758, 75009

34 CFR

Proposed Rules:
606 76636
607 76636
611 76636
637 76636
648 76636
656 76636
657 76636
658 76636
660 76636
661 76636
662 76636
663 76636
664 76636
669 76636

35 CFR

Ch. I 71375

36 CFR

13 70061
242 70074
1228 74976
Proposed Rules:
242 70940

37 CFR

201 70377
253 69822

38 CFR

21 74977

40 CFR

9 ....70552, 75472
52 ....69823, 70893, 70895, 71375, 71712, 72115, 72118, 75473, 75478, 75847, 76417, 76617
63 74979
70 75478
81 75847
180 ....70897, 71714, 76619
228 75256
271 ....70898, 74444
300 ....74448, 75847
712 70552
Proposed Rules:
52 ....69863, 70944, 70945, 71390, 71764, 75495
60 ....69864, 71472
63 ....69864, 75015, 76642

70 75495
82 76655
93 72140
271 ....70946, 74467
272 71391
300 ....74467, 75891
720 75496
721 70404

41 CFR

Proposed Rules:
51-2 70214
51-3 70214
51-4 70214

42 CFR

1003 74451

Proposed Rules:
1001 71766

43 CFR

44 70557
1880 70557

44 CFR

64 ....70377, 75481
65 ....70185, 71718, 72128, 75483
67 ....70191, 70192, 71721, 72131, 75484

Proposed Rules:
67 ....72156, 72158, 75496, 75499

45 CFR

Proposed Rules:
650 71395

46 CFR

310 74454
531 75850

47 CFR

0 70316
1 ....70378, 72020, 75144
2 ....71380, 72020
4 70316
11 72020
15 ....71380, 72020
18 70562
21 72020
22 75144
24 75144
27 ....70378, 72020, 75144
54 74985
63 70316
64 71383
73 ....71384, 71385, 71386, 71387, 72020, 74988, 75860, 75861, 76420
74 ....70378, 72020
76 72020
78 72020
79 72020
90 ....70378, 75144
101 ....70378, 72020

Proposed Rules:
1 ....72046, 75174
22 75174
24 75174
27 ....72046, 75174
73 ....71396, 75016, 75017
90 74174

48 CFR

Ch. 1 ....76340, 76358
2 ....76341, 76347, 76350, 76352
4 76341
9 76347
11 76358
12 76350
13 76350
14 76341
15 ....76341, 76350
19 76355
22 ....76347, 76352
28 76347
41 76358
42 76356
44 ....76347, 76358
51 76358
52 ....76341, 76347, 76352, 76358
Ch. 2 74995
203 74989
206 74990
209 74989
212 74991
213 74991
217 74992
219 74995
225 74991
236 75000
237 75000
252 ....74989, 74991
909 75001
970 75001
Ch. 35 75266

Proposed Rules:
619 76660
625 76660
628 76660
652 76660
901 75017
970 75017

49 CFR

171 ....70902, 75208, 76044
172 ....75208, 76044
173 ....70902, 75208, 76044
174 70902
175 ....70902, 75208, 76044
176 ....70902, 76044
177 70902
178 ....70902, 76044
180 76044
219 72133
571 ....70904, 74848, 75486, 76298
585 70904
586 70904
589 70904
590 70904
596 70904
597 70904

Proposed Rules:
121 76423
371 76664
571 75020
572 70947
1507 71767

50 CFR

14 70379
17 ....70382, 71723
100 70074
222 69826
223 69826
229 75862
300 71731
622 70196
635 ....70396, 71732, 71735
648 ....70919, 70923, 75864
679 ....69828, 70924, 74455, 75004, 75005, 75865

Proposed Rules:
17 ....69878, 70412, 70580, 70971, 71284, 72161, 74468, 75608, 76428
20 71770
21 75892
92 76362
100 70940
223 76673
226 ....71880, 74572
229 70094
635 71771
648 70414
660 70973
679 ....70589, 70605, 70974, 76682

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 DECEMBER 22, 2004

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Hazelnuts grown in—

Oregon and Washington; published 12-21-04

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Marine mammals:

Commercial fishing authorizations—

Atlantic Large Whale Take Reduction Plan; published 12-20-04

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:

Derivatives transaction execution facility registration or contract market designation; application procedures; published 11-22-04

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Various States; published 12-22-04

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Bacillus pumilus GB34; published 12-22-04

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Grants:

Home Investment Partnerships Program; homeownership affordability requirements; amendments; published 11-22-04

NUCLEAR REGULATORY COMMISSION

Miscellaneous amendments; published 12-22-04

Production and utilization facilities; domestic licensing:

Risk-informed categorization and treatment of structures, systems, and components for nuclear power reactors; published 11-22-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 12-7-04

Boeing; published 12-7-04

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Optional 10-year writeoff of certain tax preferences; published 12-22-04

corporations; section 1374 effective dates; published 12-22-04

TREASURY DEPARTMENT

Thrift Supervision Office

Technical amendments; published 12-22-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Irish potatoes grown in—

Washington; comments due by 12-27-04; published 11-26-04 [FR 04-26124]

Olives grown in—

California; comments due by 12-27-04; published 10-28-04 [FR 04-24089]

Walnuts grown in—

California; comments due by 12-28-04; published 10-29-04 [FR 04-24160]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Noxious weeds:

Caulerpa; comments due by 12-27-04; published 10-26-04 [FR 04-23921]

Plant-related quarantine, foreign:

Import regulations; requests for changes; submission requirements; comments due by 12-27-04; published 10-28-04 [FR 04-24150]

AGRICULTURE DEPARTMENT

Farm Service Agency

Multi-family housing programs:

Direct multi-family housing loans and grants; comments due by 12-27-04; published 11-26-04 [FR 04-25599]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Multi-family housing programs:

Direct multi-family housing loans and grants; comments due by 12-27-04; published 11-26-04 [FR 04-25599]

AGRICULTURE DEPARTMENT

Rural Housing Service

Multi-family housing programs:

Direct multi-family housing loans and grants; comments due by 12-27-04; published 11-26-04 [FR 04-25599]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Multi-family housing programs:

Direct multi-family housing loans and grants; comments due by 12-27-04; published 11-26-04 [FR 04-25599]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish; comments due by 12-29-04; published 12-15-04 [FR 04-27432]

Western Alaska Community Development Quota Program; comments due by 12-27-04; published 11-26-04 [FR 04-26177]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Washington; comments due by 12-29-04; published 11-29-04 [FR 04-26295]

Air quality implementation plans; approval and promulgation; various States:

Indiana; comments due by 12-30-04; published 11-30-04 [FR 04-26400]

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]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Deltamethrin; comments due by 12-27-04; published 10-27-04 [FR 04-24040]

Pyraclostrobin; comments due by 12-28-04; published 10-29-04 [FR 04-24247]

Radiation protection programs:

Transuranic radioactive waste for disposal at

Waste Isolation Pilot Plant; waste characterization program documents; availability—
Hanford Site, Plutonium Finishing Plant, WA; comments due by 12-30-04; published 11-30-04 [FR 04-26480]
Water pollution control:
National Pollutant Discharge Elimination System—
Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Interconnection—
Incumbent local exchange carriers; reclassification from competitive local exchange carriers; comments due by 12-30-04; published 11-30-04 [FR 04-26385]
Radio services, special:
Maritime services—
Automatic Identification Systems; electromagnetic frequency identification; comments due by 12-30-04; published 11-15-04 [FR 04-25289]
Radio stations; table of assignments:
New Jersey and Texas; comments due by 12-27-04; published 11-22-04 [FR 04-25808]
Ohio and Kentucky; comments due by 12-27-04; published 11-22-04 [FR 04-25807]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Environmental impact considerations;
Humanitarian device exemption; categorical exclusion; comments due by 12-27-04; published 11-24-04 [FR 04-25974]
Medical devices:
Immunology and microbiology devices—
Hepatitis A virus serological assays; reclassification; comments due by 12-29-04; published 9-30-04 [FR 04-22009]
Reports and guidance documents; availability, etc.:
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]
Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]
Virginia; comments due by 12-27-04; published 9-27-04 [FR 04-21523]
Drawbridge operations:
Florida; comments due by 12-30-04; published 11-30-04 [FR 04-26339]
New Jersey; comments due by 12-28-04; published 10-29-04 [FR 04-24255]
Ports and waterways safety:
Buzzards Bay, MA; regulated navigation area; comments due by 12-27-04; published 10-26-04 [FR 04-23963]

HOMELAND SECURITY DEPARTMENT
Transportation Security Administration
Maritime and land transportation security:
Commercial drivers licenses; hazardous materials endorsement; security threat assessment; comments due by 12-27-04; published 11-24-04 [FR 04-26066]

HOMELAND SECURITY DEPARTMENT
U.S. Citizenship and Immigration Services
Immigration:
Full costs recovery; appeal and motion fees adjustment; comments due by 12-30-04; published 11-30-04 [FR 04-26370]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species permit applications
Recovery plans—
Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

LABOR DEPARTMENT
Occupational Safety and Health Administration
Occupational safety and health standards:
National consensus standards and industry standards; clarification and deletion of outdated references; comments due by 12-27-04; published 11-24-04 [FR 04-26045]
National consensus standards; update; comments due by 12-27-04; published 11-24-04 [FR 04-26047]

NUCLEAR REGULATORY COMMISSION
Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

SMALL BUSINESS ADMINISTRATION
Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 12-27-04; published 11-24-04 [FR 04-26032]
Boeing; comments due by 12-27-04; published 10-27-04 [FR 04-23924]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 12-27-04; published 11-24-04 [FR 04-26030]
General Electric Co.; comments due by 12-27-04; published 10-27-04 [FR 04-24035]
Pacific Aerospace Corp., Ltd.; comments due by 12-27-04; published 11-22-04 [FR 04-25795]
Raytheon; comments due by 12-27-04; published 11-10-04 [FR 04-25033]
Rolls-Royce Ltd.; comments due by 12-28-04; published 10-29-04 [FR 04-24230]
Class E airspace; comments due by 12-27-04; published 11-16-04 [FR 04-25416]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Labor and personal services; source of compensation
Public hearing; comments due by 12-27-04; published 12-7-04 [FR 04-26838]

VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Surviving spouse's rate; compensation payments for service-connected disability; indemnity compensation for non-service-connected deaths; comments due by 12-27-04; published 10-25-04 [FR 04-23488]

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*.

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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. 4012/P.L. 108–457
To amend the District of Columbia College Access Act of 1999 to reauthorize for 2 additional years the public school and private school tuition assistance programs established under the Act. (Dec. 17, 2004; 118 Stat. 3637)

S. 2845/P.L. 108–458
Intelligence Reform and Terrorism Prevention Act of 2004 (Dec. 17, 2004; 118 Stat. 3638)

Last List December 14, 2004

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